APPENDIX S
Public Comments Received During the Public Review Period

1.0 INTRODUCTION

The purpose of this appendix is to fully document the public review period and the comments received on the Draft Supplemental Environmental Impact Statement (SEIS). Additionally, this appendix provides responses to all public comments, including those received during the public hearing in compliance with the National Environmental Policy Act (NEPA).

The public comment period originally extended from October 10, 2008 through November 25, 2008. This comment period and notice of availability was documented in the *Federal Register*, and that *Federal Register* notice is included in this appendix. The notice of availability of the Draft SEIS was also published in the *New Orleans Times-Picayune* and *St. Bernard Voice*. An announcement of the availability and copies of the Draft SEIS were also placed on the U.S. Army Corps of Engineers, New Orleans District's (CEMVN) website www.nolaenvironmental.gov. Based on multiple public requests, the public comment period was extended for 60 days, and all comments dated by January 26, 2009 were accepted. The notice for the comment period extension in the *Federal Register* is also included in this appendix. Comments were received in the form of emails, letters and agency memoranda. During the review period, a public hearing was held. The public hearing occurred on November 12, 2008 and the project was described and public comments were accepted.

All comments were treated equally, responses were provided to all comments, and comments are in the order in which they were received. No attempts have been made to bias the decision-maker through the order of the comments received or the responses to the comments. Every comment was given equal weight, whether that comment was expressed by a single individual or agency, or by numerous individuals.

2.0 COMMENT PROCESSING

Comments were addressed in one of two ways. Either a factual change was made to the SEIS and that change was noted in the response to comment or a response to the comment was provided that directly addressed the commenter's question or concern. Each commenter has been included in the distribution list for the Final SEIS. A list of comments received and the date of receipt are provided in Table S-1.

Table S-1. List of Comments Received During Public Review Period

Commentor	Date of Comment
Kenneth Ducote	11 October 2008
Seminole Nation of Oklahoma	16 October 2008
Louisiana Department of Environmental Quality	23 October 2008
Holy Cross Neighborhood Association	24 October 2008
Community Based Mitigation Committee Meeting	29 October 2008
National Marine Fisheries Service	29 October 2008
Louisiana Division of Historic Preservation	3 November 2008
St. Bernard Parish Council	4 November 2008
Citizens Against Widening the Industrial Canal (1)	6 November 2008

Table S-1, continued

Commentor	Date of Comment
Public Meeting Transcript	12 November 2008
Public Meeting Comment Cards	12 November 2008
Corps Reform Network	12 November 2008
Department of Interior	14 November 2008
Port of New Orleans	14 November 2008
U.S. Environmental Protection Agency Region 6	16 November 2008
Louisiana Department of Wildlife and Fisheries	17 November 2008
Louisiana Department of Transportation (1)	18 November 2008
Louisiana Department of Transportation (2)	18 November 2008
Alabama-Coushatta Tribe of Texas	19 November 2008
Lafayette College	16 December 2008
Marna David/JW Tatum	9 January 2009
Michael Vega	22 January 2009
Dean Reynolds	23 January 2009
Robert N. Stearns Attachment	24 January 2009
Citizens Against Widening the Industrial Canal (2)	24 January 2009
University of Wisconsin-Madison	25 January 2009
Authored by Numerous Non-governmental Organizations	26 January 2009
Lake Pontchartrain Basin Foundation/Louisiana Wildlife Federation/Coalition to Restore Coastal Louisiana	26 January 2009
Tulane Environmental Law Clinic	26 January 2009
Alexander S. Kolker Declaration	26 January 2009
Barry Kohl Declaration	26 January 2009
Barry Sulkin Declaration	26 January 2009

CEMVN received over 415 comments from government agencies, non-government organizations, private and public institutions, and the general public. The comments were categorized and tallied by topic and subtopic (Table S-2). Not all comments were specific enough to be categorized by subtopic, thus, tallies for each topic may exceed the total tally for the subtopics within it. Nearly 25 percent of the comments received were categorized as concerns relating to the Dredged Material Management Plan, and the most common concerns within this category related to: 1) the risk of subsidence, erosion, and flooding of the confined disposal facility; 2) the risks of exposing the biological and human environment to contaminated sediments; and 3) the lack of compliance with regulations. General project planning and design concerns were also relatively abundant, comprising more than 10 percent of comments. Approximately half of the comments in this category requested additional information or clarification of specific actions proposed under the recommended plan (*e.g.*, bridge construction); and the other half of comments in this category expressed concern that the detail provided was inadequate to determine consistency of the project with applicable regulations. Another broad category, scope, received approximately 10 percent of comments. Concerns over the scope of the project related to a lack of consideration of alternative actions (*e.g.*, use of existing lock), a lack of consideration of existing conditions (*e.g.*, closure of MRGO), or an inadequate assessment of specific effects (*e.g.*, effects of the project on efforts to

rebuild). The Economic Study and cost-benefit analysis also received more than 10 percent of comments. Concerns related to the Economic Study included an inaccurate assessment of cost or benefits, especially a lack of consideration for costs to the community, and a lack of justification for the deep-draft alternative. Concerns related to increased flood risks resulting from the project, which generally expressed concern of the lack of detailed planning or design; and the impacts of the proposed mitigation plan on the biological and human environment each received 5 percent of comments.

Table S-2. List of Comments Received During Public Review Period

Count	Topic
47	**Scope**
6	Needs or concerns of community not addressed.
2	No Action Alternative not addressed.
1	Use of existing lock not addressed.
3	Dr. Stearns' "Failure to Hold Water" not addressed.
6	Process has been biased and input has been falsely presented by USACE.
1	Far-reaching impacts (e.g., flooding) not addressed.
1	Post-Katrina conditions not addressed.
1	Recommended Plan goes beyond scope of authorized lock replacement project.
1	Impacts on, or extension of mitigation to, Orleans Parish not addressed.
5	Existing efforts to rebuild or effects on those efforts in assessment of impacts not addressed.
1	Alternate locations for new lock site not addressed.
4	SEIS is insufficient to comply with Court's ruling or NEPA.
2	SEIS relies too heavily on 1997 EIS.
3	Closure of MRGO not addressed.
1	Reevaluation of levees post-Katrina not addressed.
1	Change in priorities from transportation to basic infrastructure post-Katrina not addressed.
2	Replacing existing lock with a shallow-draft lock not addressed.
3	Effects on local retail and commercial business not adequately assessed.
10	**Dredging Operations**
6	Clam shell bucket alternative not considered / effects of hydraulic dredging not adequately assessed.
2	Effects of sediment plume not assessed.
1	Effects of newly exposed sediments in bottom of IHNC not assessed.
1	Effects of deeper channel on aquatic environment not assessed.
8	**Navigation Safety**
1	Effects to navigation on the Mississippi River not assessed.
1	Effects of larger tows and vessels navigating the IHNC not assessed.
1	Effects of vessels carrying hazardous materials not assessed.
2	National Transportation Safety Board recommendation not addressed.
2	**Industrialization**
1	Effects of increased pollution resulting from industrialization not assessed.
2	**Unavailable Reference Material**
2	All necessary materials for review of the SEIS were not made available to the public
18	**Increased Flood Risk**
2	Effects of bringing Mississippi River deeper into urban area not assessed.

Table S-2, continued

Count	Topic
3	Historical floods are consequence of IHNC project and have not been assessed.
10	Effects of dredging, onsite and offsite construction, and deeper channel on flood risk reduction system not adequately assessed.
7	**Request for Extension of Comment Period**
48	**Project Design and Planning**
5	Effect of subsurface conditions at new lock site not assessed.
1	Effect of subsurface conditions at CDF and offsite construction area not assessed.
6	Design of St. Claude or Claiborne Bridge not disclosed or inadequate.
2	Design of new floodwall and levee alignment inadequate.
1	Final Fish and Wildlife Coordination Act report is not included in SEIS.
3	Alternative location for offsite construction not considered.
2	Site north of Florida Avenue not considered for new lock site.
2	Plans to rebuild GIWW levees not considered.
23	All information necessary to determine compliance not provided, or fails to comply with regulations.
3	**Old Lock Demolition**
1	Effects of dynamiting not assessed.
2	Historical value of old lock is not adequately assessed.
27	**Vehicular Traffic**
1	Effects of increased traffic on air quality not assessed.
8	Short-term or long-term effects of bridge closure/operation not adequately assessed (e.g., emergency medical).
2	Effect of postponed improvements to Florida Avenue Bridge not adequately assessed.
4	Methods to evaluate traffic conditions are incorrect.
1	Plans for paving streets not adequately disclosed.
1	Detour and construction routes not adequately disclosed.
1	Safety of St. Claude bridge not assessed.
4	**Property Values**
2	Effects of declining property values not adequately assessed.
2	Loss of residential property not addressed.
100	**Dredged Material Disposal Plan**
16	Risk of subsidence, erosion, or flooding of CDF not adequately assessed.
21	Effects of disposal or discharge on human, aquatic, or wetland environment not adequately assessed.
4	Longevity of CDF or Mitigation Area not adequately assessed.
2	Level of acceptable contamination or standards to guide disposal decisions not disclosed.
2	Methods to treat effluent not adequately assessed.
3	Upland disposal option not considered.
2	Effect on GIWW levees not adequately assessed.
4	Long-term maintenance and monitoring not disclosed.
2	Effects of filling wetlands on the fishing industry not assessed.
3	Effects of increased shoaling at mouth of Mississippi River not assessed.
2	Testing of sediment during and after dredging and disposal not addressed.
2	Escape of contaminants through surface water, groundwater, air, and adjacent soil not adequately assessed.
7	Failed to consider alternative locations for confined disposal facility.
12	SEIS does not comply with applicable regulations.

Table S-2, continued

Count	Topic
1	Effects are based on the incorrect assessment of mixing in Bayou Bienvenue.
1	"Engineering controls to minimize exposure" not considered.
2	Effects on human health and safety not adequately assessed.
1	Disposal of sediments in landfill not adequately assessed.
2	Methods used to assess impacts are incorrect.
24	**Proposed Mitigation Plans**
1	Existing conditions of open water area not assessed.
1	Effects of discharge to Bayou Bienvenue not adequately assessed.
9	Flood protection provided by wetlands not assessed.
2	Sufficient detail to assess impacts not provided.
2	Contingency plan if waiver for discharge to Bayou Bienvenue is not issued.
1	Recommended Plan does not mitigate for fill cell impacts.
1	Alternative locations for confined disposal facility not assessed.
3	Proposed mitigation does not consider, or is not compatible with, current proposals for cypress restoration in same area.
2	Proposed mitigation does not comply with regulations.
7	Effects on essential fish habitat not adequately assessed.
4	Effect of previous excavation near the flood wall not assessed.
3	Effect of removing the Galvez Street Warf not assessed.
51	**Economic Study**
1	Economic study incorrectly assumes deep draft benefits.
2	Increased risks (e.g., flooding, hazardous cargo, increased crime, pollution, etc) to community not included in costs.
6	All costs associated with project not included in study.
1	Cost to people or USACE resulting from strong opposition not included in study.
2	All of the available data is not used in study, or study does not consider current traffic levels.
8	Future traffic with new lock or delays with existing lock are overestimated.
1	National Economic Development benefits are not maximized.
4	Deep draft increment is not justified or necessary.
3	Current cost-share agreement is inaccurately disclosed.
1	Closure of MRGO not considered in study.
2	Economic study does not agree with Dr. Stearns' assessment.
1	Current economic climate and recent bank bailouts not considered in study.
6	Methods to quantify delay not disclosed, or efforts to reduce current delays not considered.
2	Revised CRBR does not justify project.
1	Economic study does not project traffic conditions if the existing lock remains in use.
2	All economic benefits would be received by the Port of New Orleans.
4	**Environmental Justice**
4	All effects (e.g., impacts to marshes, public safety, and sustainability) not assessed in terms of environmental justice impacts.
6	**Community Based Mitigation Plan**
3	Questions regarding previously approved projects or allocation of funds.
1	CMBC is unrepresentative and secretive.
2	SEIS does not insure that locals would be hired for new jobs.
1	**Corrections**

Table S-2, continued

Count	Topic
1	Table 5-17 in the SEIS incorrectly classifies Lake Pontchartrain.
5	**Noise**
3	Effects on community not adequately assessed.
1	**Air Pollution**
1	Effects of increased dust on human health not adequately assessed.

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8586–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2008 (73 FR 19833).

Draft EISs

EIS No. 20080309, ERP No. D–TVA–E65082–00, Mountain Reservoirs Land Management Plan, Implementation, Proposes to Develop a Plan for Managing Nine Mountain Reservoirs: Chatuge, Hiwassee, Blue Ridge, Nottely, Ocoees 1, 2, and 3, Apalachia, and Fontana Reservoirs, Fannin, Towns, and Union Counties, GA; Cherokee, Clay, Graham, and Swain Counties, North Carolina; and Polk County, TN.

Summary: EPA expressed environmental concerns about shoreline development and potential water quality impacts. Rating EC2.

EIS No. 20080315, ERP No. DA–BLM–K67011–NV, Betze Pit Expansion Project, Development of New Facilities and Expansion of Existing Open-Pit Gold Mining, Eureka and Elko Counties, NV.

Summary: EPA expressed environmental concerns about impacts from tailings closure and cessation of mine dewatering, which could include soil salinity accumulations, saline and/or alkaline runoff conditions, accelerated eolian or surface water erosion, fire, and cheatgrass or other weed infestations. Rating EC2.

EIS No. 20080239, ERP No. DS–UAF–A10051–MA, Pave Paws Early Warning Radar Operation Project, Continued Operation of the Solid-State Phased-Array Radar System (SSPARS), also known as Pave, Phased Array Warning Systems (PAWS), Cape Cod Air Force Station, MA.

Summary: EPA does not object to the proposed project. Rating LO.

Final EISs

EIS No. 20080245, ERP No. F–FHW–J40181–UT, I–15, Corridor Project, Transportation Improvement from Utah County to Salt Lake County, UT.

Summary: EPA continues to express environmental concerns about wetland and air quality impacts.

EIS No. 20080317, ERP No. F–FHW–E40815–00, Interstate 73 North Project, Construct on New Alignment, from I–95 to Future I–74 in NC, Funding, U.S. Army COE Section 404 Permit, Dillon and Malboro Counties, SC, and Richmond and Scotland Counties, NC.

Summary: EPA continues to have environmental concern about wetland impacts and the compensatory mitigation plan.

EIS No. 20080323, ERP No. F–CGD–A99225–00, Rulemaking for Dry Cargo Residue (DCR) Discharges in the Great Lakes, To Regulate Nonhazardous and Nontoxic DCR Sweeping from Vessels in the Great Lakes that fall under the Jurisdiction of the United States.

Summary: EPA does not object to the proposed project.

EIS No. 20080335, ERP No. F–BLM–E60016–00, Alabama and Mississippi Resource Management Plan, Analyzes Management Alternatives for the Public Land and Resources, in Portions of the States of Alabama and Mississippi.

Summary: EPA continues to have environmental concerns because the FEIS presented minimal discussion of how the preferred disposal method will affect the ground water resources, including the Southern Hills Regional Sole Source Aquifer.

Dated: October 7, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8–24172 Filed 10–9–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8586–4]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly Receipt of Environmental Impact Statements Filed 09/29/2008 Through 10/03/2008 Pursuant to 40 CFR 1506.9

EIS No. 20080401, Draft Supplement, FHW, OR, Sunrise Project, Proposes to Build a New East-West Oriented, Limited-Access Highway between I–205 to Rock Creek Junction, Funding and U.S. Army COE Section 404 Permit, Clackamas County, Oregon, Comment Period Ends: 11/28/2008, Contact: Thomas Picco 503–731–8230.

EIS No. 20080402, Final EIS, AFS, MT, Whitetail-Pipestone Travel Management, Develop Site-Specific Travel Management Plan, Jefferson and Butte Ranger Districts, Beaverhead-Deerlodge National Forest, Jefferson and Silver Bow Counties, MT, Wait Period Ends: 11/10/2008, Contact: Terry Sexton 406–287–3223.

EIS No. 20080403, Final EIS, FHW, UT, Layton Interchange Project, Improvements on I–15 (Exit-330) to Provide Unrestricted Access Across the Unicon Pacific Railroad and to Address Traffic Congestion on Gentile St. in West Layton, Layton City, UT, Wait Period Ends: 11/10/2008, Contact: Doug Atkin 801–963–0182.

EIS No. 20080404, Draft EIS, DOI, 00, Grand Staircase—Escalante National Monument (GSENM), Draft Monument Management Plan Amendment & Draft Rangeland Health, Implementation, Portions of Kane and Garfield, Utah and Coconino County, AZ, Comment Period Ends: 01/08/2009, Contact: Paul Chapman 435–644–4309.

EIS No. 20080405, Draft Supplement, COE, LA, Inner Harbor Navigation Canal (IHNC) Lock Replacement Project, Proposal for Relieving Navigation Traffic Congestion Associated with IHNC Lock, Located between the St. Claude Avenue and North Claibone Avenue Bridge, Orleans, LA, Comment Period Ends: 11/25/2008, Contact: Richard E. Boe 504–862–1505.

EIS No. 20080406, Final EIS, BIA, MT, Absaloka Mine Crow Reservation South Extension Coal Lease Approval, Proposed Mine Development Plan, and Related Federal and State Permitting Actions, Crow Indian Reservation, Crow Tribe, Bighorn County, MT, Wait Period Ends: 11/10/2008, Contact: Rick Stefanic 406–247–7911.

EIS No. 20080407, Draft EIS, AFS, CA, Moonridge Animal Park Relocation Project, Application for a Special-Use-Permit to Construct and Operate a Wild Animal Park and Associated Facilities, Mountaintop Ranger District, San Bernardino National Forest, San Bernardino County, CA, Comment Period Ends: 11/24/2008, Contact: Paul Bennett 909–382–2819.

EIS No. 20080408, Draft EIS, COE, GA, Fort McPherson Project, Disposal and

Amended Notices

EIS No. 20080405, Draft Supplement, COE, LA, Inner Harbor Navigation Canal (IHNC) Lock Replacement Project, Proposal for Relieving Navigation Traffic Congestion Associated with IHNC Lock, Located between the St. Claude Avenue and North Claibone Avenue Bridge, Orleans, LA, *Comment Period Ends:* 01/24/2009, *Contact:* Richard E. Boe 504–862–1505. Revision of FR Notice Published on 10/10/2008; Extending Comment Period from 11/25/2008 to 01/24/2009.

Dated: November 24, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8–28313 Filed 11–26–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8746–8]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Pub. L. 92463, EPA gives notice of a public teleconference of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. NACEPT represents diverse interests from academia, industry, non-governmental organizations, and local, state, and tribal governments. The purpose of this teleconference is to discuss and approve draft NACEPT recommendations on EPA's Draft Biofuels Strategy and the 2009–2014 EPA Strategic Plan Change Document. A copy of the agenda for the meeting will be posted at *http://www.epa.gov/ocem/nacept/calnacept.htm*.

DATES: NACEPT will hold a public teleconference on Monday, December 15, 2008, from 2 p.m.–4 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held in the U.S. EPA East Building, 1201 Constitution Ave., NW., Room 1132, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Sonia Altieri, Designated Federal Officer, *altieri.sonia@epa.gov*, (202) 564–0243, U.S. EPA, Office of Cooperative Environmental Management (1601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to NACEPT should be sent to Sonia Altieri, Designated Federal Officer, at the contact information above by Wednesday, December 10, 2008. The public is welcome to attend all portions of the meeting, but seating is limited and is allocated on a first-come, first-served basis. Members of the public wishing to gain access to the conference room on the day of the meeting must contact Sonia Altieri at (202) 564–0243 or *altieri.sonia@epa.gov* by December 10, 2008.

Meeting Access: For information on access or services for individuals with disabilities, please contact Sonia Altieri at (202) 564–0243 or *altieri.sonia@epa.gov*. To request accommodation of a disability, please contact Sonia Altieri, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: November 18, 2008.

Sonia Altieri,

Designated Federal Officer.

[FR Doc. E8–28342 Filed 11–26–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8746–7]

Extension of Public Comment Period for the Proposed Reissuance of General NPDES Permit (GP) for Offshore Seafood Processors in Alaska (AKG524000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of Public Comment Period on the draft general NPDES permit for Offshore Seafood Processors in Alaska (AKG524000).

SUMMARY: On September 26, 2008, EPA Region 10 proposed to issue a general permits to cover Offshore Seafood Processors in Alaska 73 FR 55840. In response to requests from the regulated community, EPA is extending the public comment period from November 10 to December 10, 2008.

DATES: The end of the public comment period is now extended to December 10, 2008. Comments must be received or postmarked by that date.

Public Comment: Interested persons may submit written comments on the draft permit to the attention of Lindsay Guzzo at the address below. All comments should include the name, address, and telephone number of the commenter and a concise statement of comment and the relevant facts upon which it is based. Comments of either support or concern which are directed at specific, cited permit requirements are appreciated. After the expiration date of the Public Notice on December 10, 2008; the Director, Office of Water and Watersheds, EPA Region 10, will make a final determination with respect to issuance of the general permit. The proposed requirements contained in the draft general permit will become final upon issuance if no significant comments are received during the public comment period.

ADDRESSES: Comments on the proposed General Permit should be sent to Lindsay Guzzo, Office of Water and Watersheds; USEPA Region 10; 1200 Sixth Avenue, Suite 900, OWW–130; Seattle, Washington 98101 or by e-mail to *Guzzo.Lindsay@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Lindsay Guzzo, 206–553–0268, G*uzzo.Lindsay@epa.gov*. Copies of the draft general permit and fact sheet may be downloaded from the EPA Region 10 Web site at *http://yosemite.epa.gov/r10/WATER.NSF/NPDES+Permits/DraftPermitsAK*. They are also available upon request from Audrey Washington at (206) 553–0523, or e-mailed to *washington.audrey@epa.gov.* For information on physical locations in Alaska and Seattle where the documents may be viewed, see the September 26, 2008, notice at 73 FR 55840.

Dated: November 20, 2008.

Michael F. Gearheard,

Director, Office of Water & Watersheds, Region 10.

[FR Doc. E8–28322 Filed 11–26–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0837; FRL–8391–1]

Pesticide Experimental Use Permit; Receipt of Application; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of an application 68467–EUP–O from Mycogen Seeds c/o Dow Agrosciences LLC requesting an experimental use permit (EUP) for the plant-incorporated protectants *Bacillus thuringiensis* Cry1A.105 protein and the

Kenneth Ducote

From: Kenneth Ducote
Sent: Saturday, October 11, 2008 4:50 PM
To: IHNC LOCK REPLACEMENT MVN
Subject: Inner Harbor Navigation Canal Lock Replacement Project - Mitigation

U.S. Army Corps of Engineers
c/o Richard Boe (PM-RP)
P O Box 60267
New Orleans, LA 70160-0267

Dear Mr. Boe:

Prior to Hurricane Katrina, USACE allocated $5,000,000 towards the construction of a Lower 9th Ward middle school annex for the King School as part of USACE's commitment to the community of project impact mitigation funds with respect to the lock replacement and canal widening work.

Please advise if that commitment remains in the project mitigation plans.
Thank you for your assistance.

Kenneth J. Ducote
Kenneth J. Ducote, Ph.D., AICP
Consulting and Research Services for Planning, Management and Education

1 - The needs of the community are continually assessed through the Community Based Mitigation Committee. If the injunction is lifted by the Court, this committee will resume assessing community needs. CEMVN is committed to meeting these needs within the $43 million budget constraint as recommended by the committee.

Seminole Nation of Oklahoma

Historic Preservation Office

Mr. Richard Boe
U. S. Army Corps of Engineers (PM-RP)
P. O. Box 60267
New Orleans, Louisiana 70160-0267

October 16, 2008

Re: Environmental Impact Statement (EIS) for the Inner Harbor Navigation Canal (IHNC) Lock Replacement project.

Dear Mr. Boe:

We have reviewed the proposed Environmental Impact Statement (EIS) for the Inner Harbor Navigation Canal (IHNC) Lock Replacement project. At this time, we have no interest in this site. However, we would like to reserve the right to participate in future consultation if discoveries are made or resources are impacted that are of significance to the Seminole Nation of Oklahoma.

If you have any further questions, please do not hesitate to contact my office.

Sincerely,

Jennifer Johnson, M.Ed

Tribal Historic Preservation Officer

1 - Your comment has been noted, and CEMVN is committed to continuing coordination with the Seminole Nation of Oklahoma. The Nation will be notified if any cultural or historical sites are discovered during the implementation of the project.

P.O. Box 1498 Wewoka, OK 74884 405.257.7271

-----Original Message-----
From: Joanna Gardner [mailto:Joanna.Gardner@LA.GOV]
Sent: Thursday, October 23, 2008 2:36 PM
To: Boe, Richard E MVN
Subject: DEQ SOV: 81014/1835 EIS Inner Harbor Navigation Canal

October 23, 2008

Richard Boe
USACE
PO Box 60267
New Orleans, LA 70160-0267
richard.e.boe@usace.army.mil <mailto:richard.e.boe@usace.army.mil>

RE: 81014/1835
EIS Inner Harbor Navigation Canal
Lock Replacement project
Orleans Parish

Dear Mr. Boe:

The Department of Environmental Quality, Office of Environmental Assessment and Office of Environmental Services received your request for comments on the above referenced project. Please take the appropriate steps to obtain and/or update all necessary approvals and environmental permits regarding this proposed project.

1 – Comment noted. CEMVN is committed to obtaining all necessary approvals and environmental permits regarding the IHNC Lock Replacement Project.

There were no objections based on the limited information submitted to us. However, the following comments have been included. Should you encounter a problem during the implementation of this project, please make the appropriate notification to this Department.

2 – Your comment has been noted. CEMVN is committed to continuing coordination with the Louisiana Department of Environmental Quality.

The Office of Environmental Services/Permits Division recommends that you investigate the following requirements that may influence your proposed project:

* If your project results in a discharge to waters of the state, submittal of a Louisiana Pollutant Discharge Elimination System (LPDES) application may be necessary.
* If the project results in a discharge of wastewater to an existing wastewater treatment system, that wastewater treatment system may need to modify their LPDES permit before accepting the additional wastewater.
* LDEQ has stormwater general permits for construction areas equal to or greater than one acre. It is recommended that you contact Melissa Conti at (225) 219-3078 to determine if your proposed improvements require one of these permits.
* All precautions should be observed to control nonpoint source pollution from

3 – CEMVN concurs that a General Stormwater Permit in compliance with the National Pollution Discharge Elimination System will be necessary for the recommended plan. CEMVN will acquire a General Stormwater Permit following the completion of project plans and specifications, and prior to construction activities.

construction activities.

3 continued – See previous page.

* If any of the proposed work is located in wetlands or other areas subject to the jurisdiction of the U.S. Army Corps of Engineers, you should contact the Corps to inquire about the possible necessity for permits. If a Corps permit is required, part of the application process may involve a Water Quality Certification from LDEQ.

4 – CEMVN has completed a 404(b)(1) evaluation for the recommended plan and it is located in Appendix Q. CEMVN has submitted an application to LDEQ for a Water Quality Certification pursuant to the requirements of Section 401 of the Clean Water Act.

* All precautions should be observed to protect the groundwater of the region.

5 – CEMVN is committed to taking precautions to protect the groundwater of the region.

* Please be advised that water softeners generate waste waters that may require special limitations depending on local water quality considerations. Therefore if your water system improvements include water softeners, you are advised to contact DEQ, Water Permits to determine if special water quality based limitations will be necessary

6 – CEMVN will coordinate with LDEQ to apply for all necessary permits.

* Any renovation or remodeling must comply with LAC 33:III.Chapter 28.Lead-Based Paint Activities, LAC 33:III.Chapter 27.Asbestos-Containing Materials in Schools and State Buildings (includes all training and accreditation) and LAC 33:III.5151.Emission Standard for Asbestos for any renovations or demolitions.

7 – Comment is noted.

Currently, Orleans Parish is classified as an attainment parish with the National Ambient Air Quality Standards for all criteria air pollutants.

8 – Comment is noted.

Please forward all future requests to Ms. Joanna Gardner, LDEQ/Performance Management/ P.O. Box 4301, Baton Rouge, LA 70821-4301 and we will expedite it as quickly as possible.

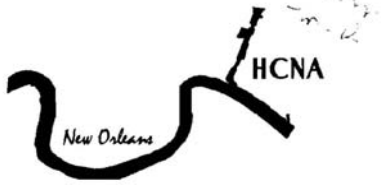
If you have any questions, please contact me at (225)219-3958 or by email at joanna.gardner@la.gov. Permitting questions should be directed to the Office of Environmental Services at 225-219-3181.

9 – Comment is noted.

Sincerely,

Joanna Gardner
Performance Management
Louisiana Department of Environmental Quality Office of the Secretary PO Box 4301 Baton Rouge, LA 70821-4301 FAX 225.325.8208
225.219.3958
joanna.gardner@la.gov

Holy
Cross
Neighourhood
Association



Oct. 24, 2008

Col. Alvin B. Lee
Commander & District Engineer
New Orleans District, USACE
7400 Leake Avenue
PO Box 60267
New Orleans, LA 70160

Re: Supplemental Environmental Impact Statement INHC Lock Replacement Project

Dear Sir,

We were unable to obtain a copy of the Supplemental Environmental Impact Statement until mid October. The 6 volumes plus supplemental materials present a tremendous burden to neighborhood citizens with less discretionary reading time than a Corps. employee who can devote 8 hours a day to it's contents. In light of the length of the Impact Statement, the narrow window for study, and the fact that the project POC for citizens, Richard Boe, is on vacation at this time, we are requesting a 60 day extension of the Nov. 24 deadline for public comment regarding this report.

Sincerely,

Linda Novak
Corresponding Secretary,
Holy Cross Neighborhood Assoc.

P.O. Box 3417 New Orleans LA 70177 office tel. 504-324-9955

1 - CEMVN extended the comment period on the Draft SEIS for a period of 60 days.

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CBMC Member Questions & Comments Regarding the Draft SEIS
From CBMC Meeting Held October 29, 2008 & Telephone Calls Made October 30, 2008 to Members Unable to Attend

1. What does the Corps mean by "replacing" the St. Claude Bridge? How is it going to be replaced? Will it be bigger and/or wider? How many lanes?

   The existing St. Claude Bridge will be demolished and replaced with a double bascule low level bridge. The new bridge will have the same number of lanes (*i.e*., four) as the existing bridge. Adequate clearances would be included on the new St. Claude Bridge and approach ramps to be compatible with the Regional Transit Authority's (RTA) long-term plan to implement streetcar service along the Desire route. A temporary four-lane bridge with two lanes in each direction and a five foot wide sidewalk would be installed and left in place during the St. Claude Bridge replacement activities.

2. Is the Corps considering where they are going to put canals and bayous?

   No canals or bayous would be constructed or altered as a result of implementing the project. A short canal beneath the Florida Avenue Bridge, which would have diverted fresh water from the IHNC into the Bayou Bienvenue wetlands, was previously considered. However, the Louisiana Department of Transportation and Development has suspended plans to build a new Florida Avenue Bridge and the canal is not currently proposed.

3. Where is the Corps planning on putting green spaces?

   Both sides of the new lock would be backfilled and landscaped to create greenspace and recreation areas for community use. Improved lighting and greenspace would be provided in the vacant areas created by reconstruction of the St. Claude Avenue Bridge approaches. Public right-of-ways along existing streets would be landscaped.

4. Is the Corps going to take peoples' land?

   The new lock, temporary bypass channels, new bridges and levees/floodwalls would be constructed within the existing footprint of the Inner Harbor Navigation Canal. Real estate needed for the lock construction was purchased from the Port of New Orleans for $16.8 million. The Confined Disposal Facility, including both the Fill Cell and the Disposal Cell, and the off-site construction area would be constructed within undeveloped lands located south of the Gulf Intracoastal Waterway and east of the Inner Harbor Navigation Canal.

5. Why can't the mitigation funds be released so we can take care of the neighborhoods while this case is in court - particularly funds in which the purpose was decided upon and voted on before the injunction?

The Community Based Mitigation Plan and its funds are a part of the project. When the Federal District Court judge enjoined the project and stopped work on the project, all project related activities, including the Community Based Mitigation Plan, were stopped. This is not a CEMVN decision; the stop work order was issued by the Federal Court.

6. Comment – The acronyms used throughout the SEIS are confusing and readers can't keep flipping back to the list.

   The SEIS has been revised to reduce the use of less commonly used acronyms and abbreviations.

7. Why is the floodwall on the West side (Upper) of the IHNC lower than the other side?

   Two breaches occurred south of Florida Avenue on the east side of the IHNC during Hurricane Katrina flooding the Lower Ninth Ward and parts of St. Bernard Parish. Under Task Force Guardian the damaged I-wall on the east side of the IHNC was replaced with a T-wall under the Lake Pontchartrain and Vicinity Hurricane Protection Project at the authorized flood protection elevation of +15.5 feet. The I-wall type floodwalls on the west side of the IHNC were not damaged during Hurricanes Katrina or Rita and are at an elevation of +14 feet. CEMVN is committed to upgrading all components of the Greater New Orleans Hurricane Storm Damage and Risk Reduction System to the 100-year level of protection by 2011. The entire IHNC corridor will be inside of the 100-year system.

8. What modifications will be made to the Claiborne Avenue Bridge?

   The towers would be raised 10 feet and a modified lift-span would replace the current lift-span. The modified lift-span would provide an additional 4 feet of clearance for waterborne traffic when the bridge is in the down position.

9. Concerns about Bayou Bienvenue – Can the Corps assure us that the dredged material they're planning to put in the bayou won't harm it?

   All dredged material disposal plans are subject to review by the U.S. Environmental Protection Agency and the Louisiana Department of Environmental Quality. No dredged material placement is proposed for Bayou Bienvenue; all dredged material would be placed into confined disposal areas either north or south of Bayou Bienvenue. Additionally, no effluent from the confined disposal facility would be discharged into Bayou Bienvenue. Effluent from the wetland mitigation restoration in the triangular-shaped area south of Bayou Bienvenue would be discharged into Bayou Bienvenue. Prior to initiation of project construction, CEMVN will obtain all necessary permits in compliance with the Clean Water Act.

10. Please clarify the plan for the dredged material.

    The Dredged Material Disposal Plan is discussed in detail on pages 42 through 47. Based on the suitability of the material for various disposal options, dredged material would be discharged into the Mississippi River, placed in the triangular-shaped area south of Bayou Bienvenue for wetland mitigation, temporarily stored and then used as backfill, or permanently disposed of in a confined disposal facility.

11. If the Corps is planning to open bayous and canals, will they open the Tupelo Canal?

    No canals or bayous would be constructed or altered as a result of implementing the project.

12. Suggestion (agreed upon by CBMC members present) – Use the Float-in-Place (FIP) method because there will be fewer adverse impacts to the community.

    The Float-in-Place plan is CEMVN's recommended plan.

13. Will the Cast-in-Place (CIP) and Float-in-Place (FIP) methods produce a lock with comparable structural integrity?

    The structural components of both plans were designed in accordance with USACE manuals, as well as independently developed technical publications and computer programs. Both methods of construction have been successfully implemented in the past. While a comparison of the structural integrity resulting from each plan has not been conducted, the basic lock components of each plan are very similar and would be of comparable structural integrity.

14. How will we know that the dredged material from the Canal will not be toxic to the community?

    All dredged material disposal plans are subject to review by the U.S. Environmental Protection Agency and the Louisiana Department of Environmental Quality. All dredged material was evaluated for the presence of contaminants and the selected disposal of dredged material was based upon this evaluation. All dredged material that has been determined through laboratory analysis to be unsuitable for open water disposal would be placed into a temporary confined area for later use as backfill around the new lock or placed in a confined disposal facility for permanent storage. Upon completion of dredged material placement and dewatering, the confined disposal facility would be an upland area covered in vegetation. The confined disposal facility would permanently contain all contaminated materials in a stable site located away from any residential or commercial areas. Furthermore, although some of the dredged material was deemed unsuitable for

disposal in aquatic environments, it has been determined to not be a human health and safety risk.

15. Where does the Corps plan to put the dredged material?

The Dredged Material Disposal Plan is discussed in detail on pages 42 through 47. Depending on the suitability of the material for various disposal options, dredged material would be discharged into the Mississippi River, placed in Bayou Bienvenue to establish wetland for mitigation, temporarily stored and then used as backfill, or permanently disposed of in a confined disposal facility.

16. What will be in the CDFs and how will this affect the marsh creation and Bayou Bienvenue?

There would be two Confined Disposal Facilities. The larger of the two facilities would be used to temporarily store dredged material that will later be used as backfill around the lock after its construction and for capping of the smaller facility. The smaller facility would permanently contain contaminated dredged materials. The area where marsh would be created is located in an area of open water south of Bayou Bienvenue and would not be affected by the Confined Disposal Facilities.

17. Can you justify the project based on the current traffic?

If the Remaining Benefits to Remaining Costs Ratio was based on current traffic (i.e. 2008), the ratio would be less than 1.0. However, the analysis used to determine this ratio is not based on vessel traffic observed in a single year. Because traffic in any one year is not necessarily representative of a larger time frame, the analysis is based on trends observed in traffic over reasonable period of available data. The period of data used for the analysis in the SEIS is 1992 to 2002. Data for years 2003 through 2006 are available. Between 2002 and 2004, use of the lock increased by 2,124 tons or 12.7 percent. While the total tonnage of commodities moving through the lock decreased sharply in 2005, demand for the lock was still higher than observed in 2002 and increased by 2.7 percent between 2005 and 2006. If the 2.7 percent growth rate observed the year following Hurricane Katrina is sustained until 2010, total tonnage in that year would be 19,211, or just 600 tons (i.e., or 3 percent) below the projections used in the analysis.

18. Do you expect the traffic to increase?

Based on observed trends in vessel traffic from 1990 to 2002, the cost benefit analysis assumes a gradual increase (0.8 annual compound growth) in shallow draft traffic over the life of the project. While future demand for deep draft lockages through the IHNC lock may arise, none appears to exist following the closure of the MRGO. This SEIS assumes that shallow draft traffic would increase and deep-draft traffic would essentially remain at

zero. If after construction, deep-draft traffic increased, the realized benefits could be greater than the predicted benefits.

19. What is the time frame to get vessels through the lock currently? If the vessels were backed up, would the new lock make this process faster?

It generally takes between 40 and 50 minutes to lock a vessel depending on the difference in elevation of water at either end of the lock. Currently (2007), the average waiting time to enter the lock is 10 to 15 hours. This is an average delay caused by the high volume of traffic relative to the lock's capacity, down time for maintenance, and curfews associated with the three bridges crossing the IHNC.

When vessels are backed up, the process of moving vessels through the canal is limited by the number of vessels which can move through the lock at one time. The new lock would be 114 percent longer and 46 percent wider resulting in a total area that is nearly three times greater than the existing lock. Increasing the size of the lock would allow a greater number of vessels to move through the lock at one time and, thus, would allow vessels to be moved through the lock faster than they arrive. Because the time it takes to operate a lock can not easily be reduced, increasing the size of the lock is the most effective means available for reducing delays on the canal.

20. What exactly will the new lock improve?

A new lock would be 560 feet longer, 35 feet wider, and 4.5 feet deeper than the existing lock. This increased width and length would allow a larger number of vessels to move through the lock at one time. Reduced lockage delays would improve waterborne commerce on the GIWW and reduce the costs of goods transported on vessels. The increased depth of a new lock would accommodate deep-draft vessels. Accommodating deep draft vessels would provide a greater opportunity for development along the IHNC, especially north of the Florida Avenue Bridge. The components of the existing lock have degraded over time and, consequently, maintenance of the existing lock is more expensive, takes longer, and is required more often compared to a new lock. A new lock would reduce maintenance related costs and delays and would provide a more dependable route to the eastern portions of the GIWW and businesses located along the IHNC.

21. How will the new lock affect vehicular (automobile) traffic?

Although the new lock would allow for more efficient operation of the bridges, this improved efficiency would not result in any significant benefits to the level of service on the affected bridges. Due to the increased size of the proposed lock, it would accommodate a larger number of vessels per lockage. Although each bridge operation would take a few minutes longer, the number of bridge operations per day would substantially decrease. At

times, deep-draft traffic may require the opening of both the St. Claude and Claiborne bridges simultaneously. Following Hurricane Katrina, traffic volumes have fallen substantially, and it is assumed that although bridge operation will be more efficient there will be little benefit experienced by commuters. During emergencies, emergency vehicles call bridge operators to notify them of an emergency and bridges are required to remain passable when emergency vehicles are approaching (33 CFR 117.31 "Operation of draw for emergency situations").

22. Concern about peak traffic hours - Can you give us a schedule of when bridges will or will not be up?

    The new lock will not permit lockages during rush hour traffic. A vessels curfew will not allow vessels to pass through the lock or bridges during rush hours 7:00 to 9:00 AM and 4:30 to 6:00 PM Monday through Friday. This is the same as the existing condition.

23. Will the new bridges have safety devices installed to counter human error?

    All modifications to the bridges conducted as part of the project will meet applicable Federal and state bridge safety standards.

24. How will the closure of MRGO affect the lock? For example, will hazardous cargo now traveling through the MRGO now go through the IHNC? Will there be more traffic through the IHNC as a result of the MRGO closure?

    Closure of the MRGO will eliminate the ability of deep-draft vessels to service existing industry along the IHNC and GIWW/MRGO. Shallow-draft vessels will be affected during lock closures because the alternative route into the GIWW from the Mississippi River through Baptiste Collette Bayou and the MRGO will not be available. In anticipation of the MRGO's de-authorization, most companies along the IHNC and MRGO section of the Port of New Orleans that required deep-draft vessel support via the MRGO have either moved or are planning to move operations to the Mississippi River section of the port or to other ports along the Gulf Coast. The companies that choose to continue to operate along the MRGO are primarily those that can use the existing IHNC Lock. While future demand for deep-draft lockages through the IHNC lock may arise, none appears to exist since the MRGO's deep-draft de-authorization. The primary sources of hazardous materials currently moving through the lock can be found in commodity groups which are carried primarily by shallow-draft vessels, including: crude petroleum, industrial chemicals, agricultural chemicals, and petroleum products. The movement of these commodities through the lock would not be affected by closure of the MRGO or the replacement of the IHNC Lock.

25. Will the Chalmette Corridor extend to the Industrial Canal?

    The commercial corridor in the Chalmette area of St. Bernard Parish is not expected to grow westward to Orleans Parish and the IHNC.

26. Statement/Concern – CBMC member is opposed to the project as it will expose the community to more toxins.

    All contaminated materials would be disposed of in a Confined Disposal Facility. Once contained, these contaminants would not pose a risk to human health.

27. Statement/Concern – Let's get on with closing the MRGO before going on to another project (IHNC).

    The U.S. Army Corps of Engineers began a study in 2006 to de-authorize deep-draft navigation on the portion of the MRGO between the GIWW and the Gulf of Mexico. The resulting Report to Congress calls for a rock closure structure to be constructed just south of Bayou La Loutre near Hopedale, Louisiana. The report was submitted to Congress in June 2008, officially de-authorizing the MRGO. The contract to close the MRGO at the Bayou LaLoutre ridge was awarded in December 2008 and a Notice to Proceed has been issued to the contractor. A second closure of the MRGO near Bayou Bienvenue has also been awarded to a contractor as part of the 100-year level of protection surge barrier complex. Construction of the closure structure at Bayou La Loutre began in January 2009. Construction of the closure complex at Bayou Bienvenue is also underway.

28. How will this project affect St. Bernard?

    Commuters from St. Bernard Parish would primarily be affected by increased short-term traffic delays while temporary bridges are in use. However, Paris Road offers a detour route for St. Bernard Parish traffic during bridge construction. Following construction of the new bridges, the more efficient passage of vessels through the lock would result in a decrease in the number and total duration of bridge openings. St. Bernard Parish would not be affected by noise or changes in aesthetic conditions. Effluent from the dredged materials used for marsh establishment would potentially be discharged into Bayou Bienvenue, but would not result in the death or poisoning of aquatic organisms. Fish, crabs, and other animals caught in the bayou would not be poisonous or affect human health if consumed.

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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701

October 29, 2008 F/SER46/RH:jk
225/389-0508

Ms. Elizabeth Wiggins, Chief
Environmental Planning and Compliance Branch
Planning, Programs, and Management Division
New Orleans District, U.S. Army Corps of Engineers
Post Office Box 60267
New Orleans, Louisiana 70160-0267

Dear Ms. Wiggins:

NOAA's National Marine Fisheries Service (NMFS) has received the draft Supplemental Environmental Impact Statement (SEIS) for the Inner Harbor Navigation Canal (IHNC) Lock Replacement project transmitted by your letter dated October 7, 2008. The SEIS evaluates the potential impacts associated with a number of alternative construction methodologies to replace the lock in the IHNC. Impacts associated with lock replacement were first evaluated in an Environmental Impact Statement (EIS) released in 1997. The selected Float-in-Place construction methodology has been revised from that discussed in the previous EIS, as has the proposed mitigation plan.

NMFS has reviewed the SEIS and is concerned that information necessary to determine potential impacts and the need for project revisions associated with the mitigation component of the IHNC lock replacement effort is missing. While the document indicates that 85 acres of a 440-acre area would be used to create marsh to offset project impacts to wetlands and forested habitats, no design details for that effort are provided. NMFS is concerned that the construction and use of containment dikes to force dredged sediment to stack to elevations suitable for marsh establishment would impede marine fishery access to at least 85 acres of shallow water bottoms, some of which may contain submerged aquatic vegetation. Also missing is information on the intended initial or final elevations of the marsh creation effort. If the sediment placed in the area is too high, at least 85 acres of water bottoms could be converted to supratidal or upland elevations for an extended period of time. Information on the proposed initial fill elevations and expected compaction rates should be provided to allow a determination of the duration of time the disposal area would take to dewater and compact to reach the appropriate marsh elevations. Also missing are details of when containment dikes would be breached and/or degraded, a vegetative planting component for the mitigation site, and a monitoring plan to document the success of the mitigation effort and the need for remedial actions, if necessary.

1 - A conceptual wetland mitigation plan has been developed and included in the Final SEIS. The SEIS documents short-term impacts to Essential Fish Habitat resulting from the establishment of wetlands; however, the mitigation plan is considered to be beneficial due to widespread loss of coastal wetlands in Louisiana. Additionally, the wetland mitigation plan provides concepts for initial fill elevations and final target marsh elevations following dewatering. It is the goal of the mitigation plan to create a final surface elevation that would provide a sustainable intertidal wetland. Future detail designs will refine the conceptual elevations provided in the mitigation plan.

As is documented in the SEIS, some project components are located in areas identified as essential fish habitat (EFH) under provisions of the Magnuson-Stevens Fishery Conservation and

Management Act (Magnuson-Stevens Act). NMFS has a "findings" with the New Orleans District (NOD) on the fulfillment of coordination requirements under provisions of the Magnuson-Stevens Act. In that findings, the NOD and NMFS agreed to complete EFH coordination requirements for federal civil works projects through our review and comment on National Environmental Policy Act documents prepared for those projects. Therefore, NMFS recommends the following to ensure the conservation of EFH and associated fishery resources:

EFH Conservation Recommendation

Design details for the marsh creation effort should be developed, in coordination with NMFS, and incorporated into the Final SEIS. Those design details should include the method and duration of containment, timing and means of containment removal, vegetative planting intentions, and a monitoring plan.

Consistent with Section 305(b)(4)(B) of the Magnuson-Stevens Act and NMFS' s implementing regulation at 50 CFR 600.920(k), your office is required to provide a written response to our EFH conservation recommendation within 30 days of receipt. Your response must include a description of measures to be required to avoid, mitigate or offset the adverse impacts of the proposed activity. If your response is inconsistent with our EFH conservation recommendation, you must provide a substantive discussion justifying the reasons for not implementing that recommendation. If it is not possible to provide a substantive response within 30 days, the NOD should provide an interim response to NMFS, to be followed by the detailed response. The detailed response should be provided in a manner to ensure that it is received by NMFS at least 10 days prior to the final approval of the action.

We appreciate the opportunity to review and comment on the draft SEIS.

Sincerely,

for Miles M. Croom
Assistant Regional Administrator
Habitat Conservation Division

c:
FWS, Lafayette
EPA, Dallas
LA DNR, Consistency
F/SER46, Swafford
nmfs.ser.eis@noaa.gov
nmfs.hq.nepa@noaa.gov
ppi.nepa@noaa.gov
Files

2 - A wetland mitigation plan has been developed and included in the Final SEIS. The plan, located in Appendix M, includes conceptual design for the establishment of a salt marsh community and includes a description of the method and duration of containment, timing and means of containment removal, vegetative planting intentions, and a monitoring plan. A revised mitigation plan was sent to NMFS and EPA during the public comment period which addressed each of the above concerns.

MITCHELL J. LANDRIEU
LIEUTENANT GOVERNOR

State of Louisiana
OFFICE OF THE LIEUTENANT GOVERNOR
DEPARTMENT OF CULTURE, RECREATION & TOURISM
OFFICE OF CULTURAL DEVELOPMENT
DIVISION OF HISTORIC PRESERVATION

PAM BREAUX
SECRETARY

SCOTT HUTCHESON
ASSISTANT SECRETARY

November 3, 2008

Elizabeth Wiggins
Chief, Environmental Planning and Compliance Branch
Department of the Army
New Orleans District, Corps of Engineers
P.O. Box 60267
New Orleans, LA 70160-0267

Re: Draft EIS for the Inner Harbor Navigation Canal (IHNC) Lock Replacement Project
New Orleans, Orleans Parish, Louisiana

Dear Ms. Wiggins:

Thank you for the opportunity to review the draft Environmental Impact Statement (EIS) for the above-reference property. Your letter (with compact disc) was received by our staff on October 8, 2008. We reviewed the information and we have no issues with the current draft EIS.

If you have questions, please contact Nicole Hobson-Morris in our Division of Historic Preservation at (225) 219-4597.

Sincerely,

Scott Hutcheson
State Historic Preservation m

1 - Your comment has been noted, and CEMVN is committed to continuing coordination with the Louisiana Division of Historic Preservation. You will be notified if any cultural or historical sites are discovered during the implementation of the project.

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St. Bernard Parish Council

8201 West Judge Perez Drive Chalmette, Louisiana, 70043
(504) 278-4228 Fax (504) 278-4209
www.sbpg.net

Polly Boudreaux
Council at Large

Frank Auderer

Ray Lauga, Jr.
Councilman
District A

George Cavignac
Councilman
District B

Kenneth "Kenny" Henderson
Councilman
District C

Mike Ginart, Jr.
Councilman
District D

Fred E. Everhardt, Jr.
Councilman
District E

#19

EXTRACT OF THE OFFICIAL PROCEEDINGS OF THE COUNCIL OF THE PARISH OF ST. BERNARD, STATE OF LOUISIANA, TAKEN AT AN EXECUTIVE FINANCE COMMITTEE MEETING HELD IN THE COUNCIL CHAMBERS OF THE ST. BERNARD PARISH GOVERNMENT COMPLEX, 8201 WEST JUDGE PEREZ DRIVE CHALMETTE, LOUISIANA ON WEDNESDAY, NOVEMBER 12, 2008 AT FOUR O'CLOCK P.M.

ON MOTION OF MR. EVERHARDT, SECONDED BY MR. HENDERSON, IT WAS MOVED TO **ADOPT** THE FOLLOWING RESOLUTION:

RESOLUTION SBPC #431-11-08

BE IT RESOLVED, THAT THE ST. BERNARD PARISH GOVERNENT DOES HEREBY REQUEST THAT THE CORP OF ENGINEERS NOT MAKE A FINAL DECISION TO RELOCATE ANY DREDGE MATERIAL TO ST. BERNARD PARISH UNTIL AFTER ALL APPROPRIATE TESTING HAS BEEN DONE ON SAID MATERIAL BY DUALLY QUALIFIED LABORATORY FOR THE DETECTION OF ALL TOXINS, CARCINOGENS, OR OTHER HAZORDUS MATERIALS SO AS TO HELP ENSURE THE CONTINUED HEALTH SAFETY AND WELLBEING OF OUR CITIZENS AND FISHERIES.

1 - Appendix C of the Draft SEIS is a summary of the methods and results of an evaluation of contaminant levels in the IHNC sediments conducted by Weston Solutions. Included in the report is an assessment of the disposal plans compliance with water quality standards and potential impacts to health, safety, and wellbeing of citizens and fisheries.

NOW THEREFORE, BE IT RESOLVED ST. BERNARAD PARISH GOVERNMENT DOES HEREBY REQUEST ALL COPIES OF LAB REPORTS OF SAID MATERIAL AND PRIOR WRITTEN NOTICE AN OPPORTUNITY FOR HEARING BEFORE ANY FINAL DECISION REGARDING THE RELOCATION IF ANY DREDGE MATERIAL.

2 - A Water Quality and Sediment Evaluation, which summarizes the findings laboratory analyses; a summary of the report prepared by Weston Solutions; and the IHNC Evaluation of Material Generated from Lock Construction prepared by Weston Solutions is provided in Appendix C of the SEIS. Copies of the 13 appendices supporting the original Weston Report which includes all of the sample logs and analytical results have been provided.

THE ABOVE AND FOREGOING HAVING BEEN SUBMITTED TO A VOTE, THE VOTE THEREUPON RESULTED AS FOLLOWS:

YEAS: LAUGA, CAVIGNAC, HENDERSON, GINART, EVERHARDT, AUDERER

NAYS: NONE.

ABSENT: NONE.

THE COUNCIL CHAIR, MR. LANDRY, CAST HIS VOTE AS **YEA.**

AND THE MOTION WAS DECLARED **ADOPTED** ON THE 12TH DAY OF NOVEMBER, 2008.

St. Bernard Parish Council

8201 West Judge Perez Drive Chalmette, Louisiana, 70043
(504) 278-4228 Fax (504) 278-4209
www.sbpg.net

CERTIFICATE

I HEREBY CERTIFY that the above and foregoing is a true and correct copy of a motion adopted at a Regular Meeting of the Council of the Parish of St. Bernard, held at Chalmette, Louisiana, on Tuesday, November 4, 2008.

Witness my hand and the seal of the Parish of St. Bernard on this 4th day of November, 2008.

ROXANNE ADAMS
CLERK OF THE COUNCIL

November 6, 2008

Colonel Alvin Lee
District Engineer
U.S. Army Corps of Engineers
7400 Leake Avenue
New Orleans, LA 70118

Re: IHNC Lock Project SEIS

Dear Colonel Lee,

We request an extension of 45 days to review the six-volumes and support documents of this report. We would have preferred to have seen parts of it earlier during the planning process itself—we made requests for some documents not forthcoming--- but, as it is, the full SEIS now comes on us all at once in a narrow, busy window.

CAWIC is working on other Corps projects in this immediate area, namely, Bayou Bienvenue restoration, MRGO closing & wetland rebuilding, CWPPRA, and CWPRA. All of this other Corps planning already has schedule demands on us, and is all related with the IHNC lock project in implications.

The SEIS has taken USACE 18 months instead of 12, with seasoned professionals and consultants working full days. We ask the same consideration for our volunteers examining this larger work with its broad implications for our community.

We ask you to support this effort by providing documentation we will be requesting by FOIA in the shortest possible time.

We request extension of the comment period for 45 days, at a minimum, to allow us to examine this SEIS, obtain supporting data from you as necessary, and develop comments, and we ask your expeditious assistance in doing so. This project is of compelling importance to our community and the purpose we were established. We feel this request is reasonable and necessary.

Thank you for this consideration.

Sincerely,

John Koeferl
President
CAWIC
4442 Arts Street
New Orleans, LA 70122

1 - CEMVN extended the comment period on the Draft SEIS for a period of 60 days.

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INNER HARBOR NAVIGATION CANAL LOCK
REPLACEMENT PROJECT
PUBLIC MEETING

Public Hearing held on Wednesday, November 12th, 2008, presentation beginning at 7:00 p.m., at Martin Luther King, Jr. Charter School, 1617 Caffin Avenue, New Orleans, Louisiana 70117.

0002

A G E N D A

Introduction.....Rene Poche
Welcome.....Col. Alvin Lee
Comments from
Port of New Orleans.....Joe Cocchiara

Presentation of IHNC
Lock Replacement Project.....Larry Poindexter
Overview of Supplemental

0003

MR. POCHE:

Good evening, ladies and gentlemen. And thank you for coming out this evening to tonight's public hearing.

One small administrative, but very important administrative note, the restrooms are through the double doors there on your right. And we have a water fountain over there back behind the poster.

My name is Rene Poche, and I will be facilitating tonight's hearing.

Some of the folks that we have here tonight will speak to you and present to you. We have Colonel Al Lee, the Army Corps of Engineers New Orleans District Commander; Mr. Larry Poindexter, the Senior Project Manager for Lock Replacement; and Mr. Richard Boe, the Environmental Manager for the Project.

But before we get to the presentation, I want to go over the ground rules for tonight's hearing. Please note that they are posted here and posted over there. You can take a look at it at your convenience. We have speaker cards that are available at the sign-in table, and you can register to speak at any time during the hearing.

You will be called to the microphone in the order in which you sign the cards. Only come up to the microphone when your name is called. You will have three minutes to comment or ask questions. And you may not yield any unused portion of your time to another speaker.

All comments, written or oral, will be considered equally. And responses to comments or questions made during tonight's proceedings will be addressed in the Final Supplemental Environmental Impact Statement. And I'm going to go over these again right before we get to the comment period after the presentations.

Right now, though, I would like to turn it over to Colonel Al Lee, the District Manager for the Army Corps of Engineers.

COLONEL LEE:

Thank you, Rene. And good evening and welcome. I am Colonel Alvin Lee, the New Orleans District Commander for the United States Army Corps of Engineers located here in New Orleans, Louisiana.

And I really want to thank everyone for coming out tonight. I do want to recognize our nonfederal sponsor, Mr. Joe

Cocchiara, from the Port of New Orleans, with whom we have been working on this project for approximately 50 years.

And Joe will talk a little bit later after a couple of presentations we are going to give to you and give you some information on this Supplemental Environmental Impact Statement and the project itself.

Throughout this time over the past 50 years, the Inner Harbor Navigation Canal Replacement Lock Project has been the source of great public concern. There has been potential disruptions to the community that are associated with long-duration projects like lock replacements. And these typically are made up of noise problems from pile-driving activities, traffic delays because of the construction and concerns about flood protection. And these all understandably lay at the heart of your

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concerns.

In addition to these impacts, the dredging activity, particularly the disposal of contaminated materials that have accumulated in the Inner Harbor Navigation Canal as a result of years of industrial use of the canal has been an ongoing public concern.

In the last year in response to your concerns, the Federal District Court, Eastern Louisiana District enjoined the project. And the Court mandated in accordance with the National Environmental Policy Act the preparation of a Supplemental Environmental Impact Statement to describe the changes and existing conditions after Hurricane Katrina and analyze the impacts on the post-Katrina,

human and natural environment. And that's why we are here tonight.

Tonight we are here to share the details of the draft for the Supplemental Environmental Impact Statement that is currently available, and it's open for a public comment period.

In the development of the

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Supplemental Environmental Impact Statement, it is purpose to note that our objectives, purpose and needs for the project have remained unchanged since the initial 1997 Environmental Impact Statement.

The objectives and the development plans that will reduce or eliminate delays to navigation between the Mississippi River and the tidewater facilities and waterways to the east of the Mississippi River. And while doing this, avoiding residential relocations and minimizing other impacts on the local residents, businesses and the environment to the maximum extent possible.

Where impacts to local residents are unavoidable, the plan also includes recommended mitigation features. And the Supplemental Environmental Impact Statement evaluated four plans in detail.

The first plan is a No-Build or Deauthorization Plan.

The second plan was the original 1997 EIS Plan.

The third plan was what we

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refer to as a Cast-In-Place.

And the fourth, 3b -- that was called 3a, the Cast-In-Place Plan. The 3b

Plan is a Float-In-Place Plan.

All of these plans include the completing of sampling and data analysis associated with water quality and sediment evaluation and associated construction of a confined disposal site for the contaminated sediments.

Tonight, we will discuss a recommended plan of a Float-In-Place construction, as well as the elements of the other plans that I just talked about.

I want to reiterate that we are discussing a draft version, because before the Supplemental Environmental Impact Statement can be finalized, the National Environmental Policy Act requires a 45-day public comment period.

This process provides us the opportunity to listen to your concerns and comments. And this evening each of you will have the opportunity to provide your comments directly to us. Your comments are a vital

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part of the NEPA process because that helps us finalize and develop the best alternative as we go forth. All input is warranted and requested.

I also realize that you have family and neighbors that could not be here tonight. And I ask you to please let them know that we are requesting their participation as well.

During the presentations, you will find out the mechanisms besides this meeting that will allow you to provide public comment directly to the United States Army Corps of Engineers regarding this Supplemental EIS.

I would like to thank everyone for joining us this evening and for providing your input into the National Environmental Policy Act process.

Now I would like to introduce Mr. Larry Poindexter. Larry is the Senior Project Manager for the IHNC Lock Replacement Project. And at this time I will turn it over to Larry.

MR. POINDEXTER:

Good evening. Tonight I will be giving you an overview of the Inner Harbor Navigation Canal Lock Replacement Project. The locally known -- the IHNC is locally known as the Industrial Canal.

The project itself was constructed in 1923. It's some 85 years old. It's a small lock that requires a lot of maintenance, and it does not allow large vessels to traverse the lock itself.

The regional values, the IHNC Lock, it provides continuous route from the Brownsville, Texas area -- Brownsville, Texas area through the New Orleans IHNC Lock and then down to Fort Myers, Florida.

Some of the local values of the IHNC, as you can see, we are located here about five blocks from the IHNC Lock itself, the existing lock.

With the closure of the M.R.G.O., this particular lock replacement is more critical than ever. It allows traffic through, like I said, lock through large ships and barges.

The 1997 Environmental Impact Statement, it was authorized by the Rivers and

Harbors Act of 1956 and reauthorized by the Water Resources Development Act of 1986.

The purpose of the lock is to reduce and eliminate the delays that are occurring in the lock at this time, passing traffic to the east. It will minimize relocations, and it will also avoid and minimize environmental impacts to the surrounding area.

The 2008 Supplemental Environmental Impact Statement. In 2005 -- excuse me. In 2005, Hurricane Katrina struck the Gulf Coast and caused significant damage to the community and surrounding areas.

It was in 2006 that the Federal Court enjoined the project, which was already under construction, and basically directed the Corps to look at the damages associated with Hurricane Katrina.

The Corps started their process for the SEIS to address those concerns.

The SEIS alternatives, there were four alternatives. Again, the No-Build, which means that we will not build the new

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lock replacement, and there will be No Action Plan.

Plan 2 is the 1997 EIS Plan.

And then 3a was the Cast-In-Place, which is construction at the lock site itself, the new lock site.

The Float-In Plan really is a plan in which you have the lock be built in two different locations. The modules would be constructed off-site in an off-site construction facility and then floated into place into the new lock location.

The Plan 1:

No-Build/Deauthorize. If we did not build the new lock replacement, Congress would deauthorize the project, and the new lock would not be constructed. And the Federal Government would continue to operate the existing lock, maintain it, even though it's inefficient, and it's quite a bit of maintenance that goes into the maintaining of this existing lock.

Here is the new lock site just north of Claiborne Avenue and south of Florida Avenue. The old lock is 75 by -- pardon me.

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The old lock is 75 feet by 640. The new lock will be 110-feet wide, 1,200-feet long and 36-feet deep.

We will replace the existing St. Claude Bridge with a temporary bridge until it's constructed. And then we will construct a new lock site again at two locations, one being off-site which is considered the off-site facility, which modules would be constructed and then floated into place at a new lock site again north of Claiborne.

We would extend flood protection to include the 100-year flood protection that is currently being proposed.

Plan 3a and 3b is a comparison here. We have 3a, which is the Cast-In-Place, which means that you would build the lock replacement on-site, and that one particular area would create greater impacts to the surrounding community if you were to build the Cast-In-Place as opposed to the Float-In-Place, which is the recommended plan.

We will construct it in two different locations, modules floated into the new location and then constructed there. And

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the off-site again would be less impact to the neighborhood.

Some of the highlights of the 2008 Plan, what we did was we refined the community needs assessment, resources. That particular piece of mitigation is about $43 million that was just inflated as a result of inflation.

Then we have a change in the status of the new Florida Avenue Bridge, which was scheduled by DOTD to construct this bridge. However, because of funding constraints, that bridge is not being built at this time.

We also refined the Dredged Material Disposal Plan, which was addressed in 1997, but a little bit more in detail to determine what the disposal facilities would look like and also address their locations.

We also updated the estimated cost. As a result of Hurricane Katrina, the cost between material and labor has gone up significantly since that time. So we were obligated to update those cost estimates.

And, finally, the components of

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the 1997 plan have been implemented. We were under construction prior to the enjoinment. And so we were able to do at least -- there were two -- three contracts that we completed, one being the demolition of the Galvez Street Wharf. Another was the removal of some of the facilities in the area and also remediation of some contaminated material on the East Bank.

We are located here. This is the existing lock. This is the new lock just north of Claiborne. We have two areas here --

well, going back here, we have Wetland Mitigation, this triangle area here, which we will be placing material.

We also have the Upland Disposal Area and the confined. This particular area here is where the unsuitable material will be placed and kept. This area here will be used at some point in time. After the lock is completed, we will use it for a backfill.

This is the off-site area that I was talking about where the modules would be constructed and then floated down to the new lock location.

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The Community Impact Mitigation Plan, it looks at four areas, the neighborhoods of St. Claude, the Ninth Ward, Bywater and Holy Cross.

And in this mitigation plan, what we are going to do is, we are going to address noise aesthetics, police protection and fire, traffic congestion, community cohesion, and community facilities and services.

And now I want to turn it over to Richard Boe.

MR. BOE:

Thank you, Larry.

Good evening. I will start by discussing the Dredged Material Management Plan.

In 2007/2008, we conducted extensive analysis of all the material that will be excavated for project construction from within the Inner Harbor Canal and along its banks.

As of this extensive testing,

we determined that disposing some of the material into the Mississippi River complied

with applicable regulations, including the Clean Water Act and the State of Louisiana's Water Quality Standards. And it would be safe to do so in this fresh water environment. Site one down at the bottom of the slide, pumping material directly into the Mississippi River, some of it.

We also determined that some of the material was suitable for wetland restoration purposes. So we are proposing to rebuild approximately 85 acres of wetlands in that large triangular-shaped area of shallow open water, just north of Florida Avenue.

Use of this material for wetland restoration would mitigate for impacts of the off-site construction facility and the Upland Disposal Area and the Confined Disposal Facility.

Dredged materials that would be suitable for open water disposal but that would be required for other project purposes, including backfill around the new lock construction site, would be placed temporarily in the Upland Disposal Area, site three on the slide.

All material that is not suitable for disposal in open water will be disposed of in a permanent, confined, closed facility. Also shown in four of the slide.

Levees would be constructed around this Confined Disposal Facility to contain the dredged material. This area, as well as the Upland Disposal Area, are located within the 100-Year Storm Surge Protection

System that is currently being constructed and is expected to be completed by 2011.

Material from the Upland Disposal Area would be used to cap or put a cover over the material that is placed within the Confined Disposal Facility to eliminate any problem of contaminants.

The materials that we are proposing to place in the Confined Disposal Facility had some constituents of concern. Naturally occurring element.

Barium is a naturally-occurring element used in the petroleum industry.

Aroclors are compounds used to make various industrial -- for various industrial purposes. It's not used anymore.

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Polyaromatic Hydrocarbons or PAHs are also used for various industrial processes.

The material that we will be dredging is naturally-occurring material at the bottom of the canal and the soils along its east bank, but they do contain some contaminants of concern.

But it's very important to know that the concentrations of these constituents are low compared relative to concentrations routinely found in dredged material from other waterways and harbors around the United States.

Construction contracts to mitigate for air quality impacts. Construction contracts would require contractors to properly maintain their construction equipment and repair or replace any faulty equipment. Construction contracts would also require contractors to minimize

dust from the construction sites using such practices as wetting down the construction sites.

Our proposed Dredged Material Disposal Plan meets all applicable EPA regulations and Clean Water Act guidelines.

No significant adverse impacts to aquatic life are expected. There would be some short-term impacts from suspended sediments, also known as turbidity, during dredging operations but only in close proximity to the dredging disposal locations.

There will be no impacts to municipal drinking water intakes.

We have applied for and will obtain State Water Quality Certification from the Louisiana Department of Environmental Quality before we proceed further construction.

Again, all dredged material that has been determined to be unsuitable for open water disposal will be placed in a Confined Disposal Facility.

We do expect an increase in noise levels during project construction, especially related to the new construction for the new lock and construction for the new St. Claude Avenue Bridge.

The image on the left shows the current noise levels in the area. The image on the right shows the worst-case scenario of noise anticipated during construction, which would happen only during the day while those people are at work.

We would mitigate these noise impacts to residents in the highest noise

areas by offering to provide additional insulation or insulated windows to those structures.

Additional mitigation, the next slide. Construction contractors would be required to limit noise to certain levels to specified distances from their construction sites and required to monitor the noise levels and verify adherence to specifications.

Also, they will use innovative pile-driving equipment designed to minimize noise levels, such as vibratory hammers and underwater pile-driving equipment.

Pile driving and heavy truck hauling would be restricted to the daylight hours only and would not exceed ten hours per day.

Pile driving for the St. Claude

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Avenue Bridge replacement would be done during the summer to avoid impacting school children and schools.

Residents located immediately adjacent to the high-noise activity would be compensated if they choose to temporarily relocate.

The Lock Replacement Project will impact two known cultural resources, those being the St. Claude Avenue Bridge and the existing Inner Harbor Canal Lock, both of which are eligible for listing in the National Register of Historic Places.

The mitigation of those impacts, we have documented those structures in accordance with guidelines developed by the National Park Service.

Memorandum of Agreement for this was thoroughly coordinated with the

Advisory Council on Historic Preservation and the State Historic Preservation Office.

There is also a possibility of disturbing various archeological sites while we excavate the off-site construction facility. And we will have a professional archeologist on-site to monitor excavation in the high-probability areas.

Aesthetics in the area. There are flood walls that must be constructed to assure adequate flood protection. And these flood walls would have the potential to affect the aesthetic appeal of the area and a potential to adversely affect recreational activities.

As mitigation, both sides of the new lock would be backhoed and landscaped to create green space and recreation areas. Street lighting would be provided in the nearby neighborhoods. And recreation -- and recreation paths would be built in proximity to flood walls and levees while possible.

Continuing on aesthetics, bridges approaches, piers and realigned levees could adversely affect the aesthetic appeal of historic neighborhoods. We would mitigate by landscaping and providing textured surfaces and lighting to these new structures.

The oak trees on the side of the lock would have to be removed for the project, and we would mitigate by either trying -- either transplanting those trees or buying mature nursery stock and planting them on nearby public lands.

Community impacts include: A housing improvement program and vacant lot

cleanup program have been partially implemented as mitigation.

Other community-based mitigation, such as parks, lighting and improvements would have long-term impacts on property values in the area. But we understand that property values in the area could temporarily be impacted during construction activities.

Alternate traffic flow -- vehicular transportation impacts and mitigation. Alternate traffic flow would be provided by the temporary bridge at St. Claude Avenue.

Local streets that serve construction traffic would be resurfaced prior to construction, if necessary, and afterwards, if necessary.

Construction-related traffic, we understand that construction-related

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traffic would increase overall traffic delays. And that is why we are proposing to resurface and designation of specific routes for construction traffic.

This is the summary of where we are in the process. The ones that are checked have been accomplished. We have posted our notice of intent in the Federal Register.

We have gone through the scoping process. I am sure a lot you were at the scoping meeting back in April of 2007.

We have prepared a Draft EIS.

And now we are in the area that is outlined in green, public review period for the draft EIS which extends through November 25th.

Once we address all the

comments, those will be included as an appendix to the Final EIS, which will be sent out for another 30-day Agency Review, during which time you will also be afforded the opportunity to comment.

We will package the Final EIS, along with the comments and our responses and forward them to our Mississippi Valley

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Division Office in Vicksburg, Mississippi where General Walsh, our Mississippi Valley Division Commander, has been given the authority to sign the Record of Decision for the EIS.

The Final EIS and Record of Decision will be submitted to Federal District Court for final review.

And that concludes my presentation. Again, I am Richard Boe. Here's my contact information, and you will certainly see me afterwards if you would like to. Make sure you get in contact with me. I have some business cards if you would like to call and you have any additional questions at a later date.

Thank you very much for your attention.

I would like to now introduce our nonfederal sponsor, Mr. Joe Cocchiara for the Port of New Orleans.

MR. COCCHIARA:

Thank you, Richard. And I would like to thank Colonel Lee for the opportunity to present the position and the

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respect of the Port of New Orleans on the IHNC Lock Replacement Project.

The position of the Port of New

Orleans is very simple to state. We believe it's time to build a new lock in the Industrial Canal, and I trust that doesn't surprise anybody in the room.

The Industrial Canal lock was constructed in 1923, 85 years ago. It was a great project for its time. But the lock was designed to have a useful life of 40 years. The existing lock is obsolete. It's inefficient, and it's living on borrowed time.

As is manifested, long delays routinely happen when the lock breaks down or requires maintenance.

The lock is a vital part of the nation's transportation system. Why else would 20-million tons of industrial cargo move through such a deficient facility each year if it didn't have to.

The lock is essential both to the nation's transportation and to the viability of the city's only substantial industrial acreage. It's about national jobs,

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and it's about local jobs.

Modernizing the lock gives us the opportunity to improve water-borne access and economic opportunity, not just for the Port of New Orleans but for the city of New Orleans and for the industries throughout the Gulf Coast.

A new lock also gives us an opportunity to upgrade the infrastructure around the lock. The project would replace the St. Claude Avenue Bridge, which was also built in the 1920's. The project would also make improvements to the Claiborne Avenue Bridge.

You know, whether you realize

it or not, we all pay the price of outmoded transportation infrastructure. Everything we buy has transportation costs built into the price. Bottlenecks, such as the IHNC Lock, make transportation costs more; and, therefore, makes goods cost more.

Maritime transportation sector is one of the vital industries that the local economy is built upon. Even after the impacts of Hurricane Katrina, the Port of New Orleans

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remains one of the city's most reliable sources of jobs.

More than 45 companies are located along the Industrial Canal. These include four terminal operators, ship building and repair companies, warehouse and distribution companies, coffee roasters, truck depots, basic materials, cement and oil field equipment firms and steel distributors.

These companies employ thousands of workers. We must make sure that they continue to have reliable transportation access, which is the reason they located here in the first place.

Since this project was authorized in 1956, it's been refined many times in order to the reduce the negative impacts on the surrounding neighborhoods and to accentuate the positive benefits to the community.

The original plan called for the displacement of 223 homes. The project was redesigned so that no homes would be displaced.

The lock was designed to be

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built off-site and floated in place, which

will reduce the impact of construction noise.
A temporary bridge will be built in order to eliminate traffic construction during the reconstruction of the St. Claude Avenue Bridge.
And an unprecedented Community Mitigation Plan was put into place to offset impacts from the project.
The Corps has taken a historic steps to work with the community to ensure that this project is mutually beneficial for the community and for navigation.
The Port of New Orleans is in business to sustain new development, and we have been happy to work with the Corps as the project local sponsor to engage the community and improve the project.
We are New Orleanians, too. We want to be a positive force for a change in our region. We can't afford to keep delaying a vital project that's been on the books since 1956. It's time to build a new lock on the Industrial Canal.
Thank you very much.

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MR. POCHE:
Now we will move on to the comment/question period. Before we get to that, I am going to go over the ground rules one more time with you. Again, speaker request cards are available over here in the corner. If you would like to speak, just go on out, and you can get up and speak when your name is called. And you can do that at any time during this hearing tonight.
You will be called to the microphone in the order in which you signed in. And only approach the microphone when

your name is called. You will have three minutes to comment or ask questions. You may not yield any unused portion of your time to another speaker.

All comments, written or oral, will be considered equally, and responses to the comments or questions made during tonight's proceedings will be addressed in the Final Supplemental Environmental Impact Statement.

So a couple of other things that I would ask is that when folks are up

0032

here speaking, please respect their time. If you really have something that you feel passionate about and you want to talk about it, please sign a card, and we will gladly have you come up here and let you say what you want to say to the Board.

Also, we understand that everyone in this room has strong feelings and opinions about the Corps of Engineers. And I think we will all agree that we will accept that everyone has strong opinions and feelings about the Corps of Engineers. And we would ask that you keep your comments focused on the topic at hand tonight, which is the IHNC Lock Replacement.

So having said that that, we will call up our first speaker tonight. Pam Dashiell from the Holy Cross Neighborhood Association.

One other thing I forgot to mention, when you get within 15 seconds of your three minutes, I will let you know so you can start wrapping things up.

MS. DASHIELL:

Focused on the issue at hand

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this evening, Joe, Joe Cocchiara of the Port, mentioned paying a price. Well, the Lower Ninth Ward has paid a huge price. The Lower Ninth Ward and the city of New Orleans has paid a price for the greed of the Port, the incompetence and ineptitude of the Corps. And that's an essential incompetence. Not to knock the folks here, not to knock the people in New Orleans, but the Corps is essentially rotten. It does not work, has not worked and will never work.

And this project is probably the best example of the rottenness and the confluence again of greed and not -- no concern at all for people.

The Corps has several missions, one of which is to serve the interest of the maritime industry. And, apparently, that is the guiding interest here because there is no benefit, no net benefit to the community, to the people, who you are also supposed to serve.

The problems with this lock are many, safety. I am not -- the -- your whole presentation was about the construction phase.

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If it were to happen, what about the end product, the end product where the people in the Lower Ninth Ward, who have been the agents of their own recovery without help from government, with harm from government, would be irreparably damaged. We would be closer to a major shipping channel than any other community in the country.

And bringing back the Port into it, look what happened just a few weeks ago. Look what happens all the time on the river,

1 - The new lock would support maritime traffic on the GIWW from Naples, Florida to the Brownsville, Texas, and includes secondary support for other components of the inland waterway system such as the Tennessee-Tombigbee Waterway, and the Red, Missouri and Ohio Rivers. The Port of New Orleans would be responsible for funding all costs beyond that required for a shallow-draft lock. Although the Port of New Orleans would benefit from the project, these benefits would be shared with New Orleans and the affected communities in the form of increased job opportunities, increased tax revenues, and increased local spending. Over $43 million would be spent to mitigate impacts on the community resulting from the project. The beneficial effects of the project combined with the benefits of the mitigation plan would provide incentive for growth of retail and commercial businesses serving the affected communities. Although the project would have significant adverse effects during construction, these adverse effects have been mitigated to the maximum extent practicable and the projects long-term effects would likely benefit affected communities, as well as the Port of New Orleans, metropolitan New Orleans and the Nation.

2 - The IHNC is currently a major shipping channel, and operation of the lock would continue without the project. Other than the operation of bridges to allow barges to pass, there is little adverse effect of vessel traffic through the IHNC on the surrounding community. The industrial infrastructure supported by the shipping industry is already in place, thus, increased industrialization of the IHNC is likely to be minimal. The Draft SEIS projects an increase in vessel traffic with or without the project. However, with the project, a more efficient operation of the lock would result in a more efficient operation of the bridges and subsequent reduction in the only direct effect of barge traffic in the IHNC on the surrounding communities.

on the canal. And you want to bring in gang barges, gangs of barges and deep-draft ships to a community that is struggling and doing everything possible to bring itself back. Are you trying to kill us again?

This project has been on the books, as you said, since 1950 -- 1956. And generation after generation of people in this community and in other communities have passed the baton on to make sure that it does not happen. And, believe me, that will continue.

MR. POCHE:

You have 15 second, ma'am.

MS. DASHIELL:

I am done, and this project is done.

MR. POCHE:

Next will be Lindsay Carr. Lindsay Carr, Tulane Environmental Law.

MS. CARR:

Good evening, ladies and gentlemen. My name is Lindsay Carr. I am a student attorney with the Tulane Environmental Law Clinic. I am here today to give comments on behalf of Gulf Restoration Network, Holy Cross Neighborhood Association, and Louisiana Environmental Action Network.

Let me start by saying that there are numerous problems with the Supplemental Environmental Impact Statement. I am only going to address two of them because of limited time today.

The first is that the cost of this project outweigh the benefits by far.

And second is a myriad of problems that are associated with the Corps' plan to confine -- to confine toxic dirt in

2 (continued) - See previous page.

our wetlands next to the GIWW.
So, first, let's address the

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cost the benefits. The Corps' own cost-benefit analysis, in four out of the six scenarios that they go through, the cost outweigh the benefits.
And in the two scenarios where the costs don't outweigh the benefits, the Corps manipulated numbers and ignored a federal guideline that told them which numbers they should be using.
On top of this, to make matters worse, the Corps didn't take into consideration the cost to the community. The Corps didn't take into consideration the cost of having a medical emergency when both bridges are up or the cost of loss of business to local businesses or the cost of traffic delays because of construction. These costs need to be taken into consideration.
And I have to ask that with the cost of this project outweighing the benefits why the No Action alternative isn't the recommended plan.
The second major issue has to do with the Corps' plan to dispose of toxic sediments in a wetlands next to the GIWW.

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This wetland is a functioning wetland. It provides a second level of flood protection for this neighborhood, a neighborhood that has experienced more than anybody the damage that can come with floods.
The second problem with this is that the Corps claims this confined disposal facility will last in perpetuity, forever. It's a fact of life that especially the

3 - The USACE recognizes the increased cost and decreased benefits identified in the 2008 updated economic analysis. The cost benefit analysis conducted for the 2008 SEIS conforms to the guidelines provided by the White House Office of Management and Budget.

4 - The cost - benefit analysis does consider changes in vehicle traffic. In 1997, when vehicle traffic was substantial greater than the post-Katrina conditions and it could be assumed that the Florida Avenue Bridge would be replaced, the project would have resulted in reduced traffic and monetary benefits in the form of reduced delay. However, traffic volumes have decreased substantially post-Katrina and the plans to replace the Florida Avenue Bridge have been indefinitely postponed. Considering these changes in the existing conditions, the 2008 updated economic analysis assumes that the increased efficiency of the new lock would not result in substantial benefits by reducing vehicle traffic delays. While intangible costs (i.e., costs which can not be quantified) to the community are not part of the cost benefit analysis, these “costs” are considered adverse effects in the overall assessment provided by the SEIS. CEMVN is committed to avoid, minimize, and mitigate for these losses through various measures, including a $43 million Community Based Mitigation Plan.

5 - The Corps recognizes the increased cost of the project and the reduced benefits. However, using the OBM discount rate, as recommended by the OBM guidelines for cost benefit analysis, the project would result in net benefits. Although actual interest rates may change over time, the OBM discount rate is fixed and allows relative comparison of projects over time.

6 - The Confined Disposal Facility would be located north of Bayou Bienvenue in an area of low quality wetlands and would be within the Greater New Orleans Hurricane and Storm Damage Risk Reduction System. Because the Confined Disposal Facility and backfill site are within the protection levees, they do little to reduce hurricane and storm damage. The loss of these functioning wetlands would be mitigated through establishment of higher value wetlands south of Bayou Bienvenue in the area where other wetland restoration efforts have been proposed. The establishment of wetlands south of Bayou Bienvenue through the beneficial use of dredged material would complement all future restoration efforts in the area.

7 - See next page

residents in this community know that nothing lasts for over.

Nothing built by the Corps lasts forever. Nothing built by anybody lasts forever. And you are expecting these residents to accept a plan without truly explaining the costs and where they have no benefits. And the only benefits go the shipping industry.

The Corps has a legal obligation to take a hard look at the environmental and social impacts of this decision. And until they do that, this project can't go forward.

Thank you.

MR. POCHE:

0038

Our next speaker is Darryl Malek-Wiley from the Sierra Club.

MR. WILEY:

Good evening. My name is Darryl Malek-Wiley, a regional representative of the Sierra Club.

And I am here to say that the process we are going through is fatally flawed. This Supplemental EIS is not sufficient to meet the NEPA standards and that the Corps of Engineers in the writing of the document has made it impossible for the average lay person to really understand what we are talking about.

And in reading the document, and I have been reading all six volumes, plus appendices. Time and time again, I have come across a statement. Quote, support of the Appendices A through M for Appendix D are available electronically upon request.

Well, that means that you got

7 (continued) - Similar designs for the containment of contaminated materials have been successfully implemented in the past. Once the CDF is capped and vegetation has established, the soils would be held in place and the contaminants would be effectively contained in an upland hill.

8 - The 1997 EIS and 2008 SEIS provide a detailed analysis of both the costs and the benefits to the affected communities. These assessments suggest several benefits to the affected communities, as well as New Orleans and the Nation.

9 - The Draft SEIS provides an abstract and summary in order to give the reader a brief overview of the recommended plan, alternatives to the recommended plan and an analysis of the impacts. More detailed information concerning the history of the project, construction methodology and schedule for implementation of the recommended plan and alternatives is provided in the body of the SEIS. Finally, detailed studies that support the SEIS are provided in appendices. CEMVN recognizes that the IHNC Lock replacement is a complex project and has prepared a SEIS that fully describes the recommended plan, reasonable alternatives to the recommended plan and an analysis of direct, indirect and cumulative impacts associated with each alternative as required by NEPA and CEQ.

10 - The initial mailing of materials occurred on 6 and 7 October 2008 and included a summary or digital copy of all seven volumes of the SEIS. Paper and digital copies of all seven volumes of the SEIS were made available at four local public libraries, the CEMVN office, and on the internet. A Notice of Availability was published in the Federal Register and in local papers announcing the location of SEIS copies for public review and contact information for questions and concerns. Digital and paper copies of all materials requested by agencies or individuals were filled within 24 hours of the request.

more documents out there that you are not including in the document that we are supposed to be looking at that you have to know somebody to call and make sure you get copies

0039

of it. That is not the way the environmental impact process is supposed to work.

The Corps of Engineers is supposed to make a document so that it is readable by an average citizen. And this thing is not. It's just totally ridiculous in the way it's set up.

Time and time again, you will read the document that said we are referencing the 1997 EIS. Well, where is that document? What do you mean? You read a paragraph that says we are talking about a document that you don't even have in your hands, so you can't even talk about, understand going back and forth.

And I don't know if you have somebody on staff that goes through documents to make them boring, but I am sure that you do someplace. And I don't know how much they get paid. I don't know what G scale they are on as far as pay, but it's probably high up there.

The questions about the Confined Disposal Area, I am going to enter into the record this document that is the

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Wetland Restore Restoration Community-Based Bayou Bienvenue Lower Ninth Report done by the University of Wisconsin. The Lower Ninth Ward citizens have been taking the concept of coastal wetland restoration into their own hands in talking about restoring Bayou Bienvenue.

10 - (see previous page)

11 - In compliance with Section 1502.21 of CEQ Regulations for Implementing NEPA, the 2008 SEIS incorporates material provided in the 1997 EIS to minimize the bulk of the material presented. In order to facilitate agency and public review, the incorporated material was cited and its content was briefly described. The 1997 EIS was made available on the Corps project website prior to the Notice of Availability on October 10, 2008 and will continue to be available for the duration of the planning process. The address of the project website was identified in letters mailed or hand delivered to interested parties prior to October 10. No written or oral requests for copies of the 1997 EIS were received during the public comment period.

12 - The CDF would be located north of Bayou Bienvenue in an area previously used for disposal of material dredged from the GIWW and MRGO. Effluent from the CDF could be discharged into the IHNC or GIWW. Only effluent determined to be to be safe for humans and the biological environment and meeting all Clean Water Act regulations would be discharged into bayous or canals. The University of Wisconsin's plans to restore wetlands is primarily located south of Bayou Bienvenue in the area where the IHNC Lock project has also proposed to establish wetlands as mitigation for project impacts.

And here you-all come along and talk about putting a confined sediment disposal area that is going to be over 17-foot tall right in the area we are talking about restoring and making a natural, beautified area.

And we feel that the Corps of Engineers once again is trying to destroy Lower Ninth. They have flooded this area three times. They flooded it after they built -- this project is tied. 1956, it was the new lock M.R.G.O. project, the Mississippi River-Gulf Outlet.

The Mississippi River-Gulf Outlet flooded this area in 1965. It flooded it with Katrina. And it flooded it again with Rita. So I can't understand the Corps talking in any kind of faith about how good they are doing it.

I know I am going to come up later and give another three minutes.

MR. POCHE:

15 seconds.

MR. WILEY:

15 seconds. This process is not properly conducted. The document is not a viable analysis of all the environmental and environmental justice. The environmental justice analysis is nonexistent.

MR. POCHE:

Next is Jill Witkowski from Tulane Environmental Law.

MS. WITKOWSKI:

Good evening. My name is Jill Witkowski. I am the deputy director of the Tulane Environmental Law Clinic. I represent the Holy Cross Neighborhood Association, Gulf

12 - (see previous page).

13 - The IHNC and MRGO were constructed prior to the enactment of NEPA in 1969. However, CEMVN has been committed to protection of New Orleans throughout its history. Although flooding of 2005 did prove that the risk reduction system was inadequate, much of the system was not constructed to authorized levels due to lack of funding provided by Congress. Furthermore, the system is intended to provide risk reduction and is not designed to protect the city against all sizes of storms. In response to Hurricane Katrina, CEMVN is planning numerous projects as components of the GNOHSDRRS to meet the 100-year level of flood protection. For the IHNC, the 100-year level of flood protection would be provided by constructing gated structures, one to provide protection from Lake Borgne storm surges and the other to provide protection from Lake Pontchartrain storm surges. Other improvements that will protect the affected communities include higher levees, improved floodwalls, new floodgates, and modifications to the 17th Street, London Avenue, and Orleans Avenue canals.

14 - Environmental Justice issues have been mitigated through the implementation of the Community Impact Mitigation Plan; and through mitigation measures that reduce impacts from project construction on noise, transportation and visual resources in the affected neighborhoods.

Restoration Network, and Louisiana Environmental Action Network.

And I am here to talk about why the Supplemental EIS is not the right procedure to comply with the district court's order.

If you actually look at the judge's ruling, he ruled that the Corps did not take a hard look at the environmental impacts of this project. He did not rule on our claim about Supplemental EIS.

He said you didn't take a hard look. And Katrina proved that. Katrina proved that you didn't know on your Confined Disposal Facility what category of hurricane this Confined Disposal Facility is supposed to withstand.

And what happens if it's only to built withstand a three, and we get a category five? What happens then? What happens? Will this Confined Disposal Facility weaken the levees? The levees aren't designed with this Confined Disposal Facility in mind. How are they going to work together? What happens if there is overtopping and these sediments are spread out?

Those questions are not answered in this Supplemental EIS. In fact, in your Confined Disposal Facility Conceptual Design Report, it actually said that these questions are beyond the scope of this effort.

In fact, this is the scope of this effort to find out, to tell these community members sitting behind me what risks they are expected to take, what risks they are expected to take on behalf of the shipping

15 - According to the judge's ruling, the project was enjoined until the USACE complied with NEPA. The court's opinion was that the Corps, at a minimum, must prepare a supplemental EIS addressing the significant new circumstances relevant to environmental concerns that have arisen since Hurricane Katrina. Therefore, a Supplemental EIS was prepared because the United States District Court for the Eastern District of Louisiana required USACE to address the significant new circumstances related to post-Hurricane Katrina conditions and to more completely evaluate the environmental concerns associated with disposing of dredged material from the IHNC Lock Replacement project. The 1997 EIS and Record of Decision were prepared by USACE to fully document the decision associated with the IHNC Lock Replacement project; the Court's finding that the document contained insufficiencies associated with dredged material handling and disposal, and that existing conditions had changed due to Hurricane Katrina does not invalidate the decision-making process under NEPA. Further, the 1997 EIS concerns an ongoing program to replace the IHNC Lock, and as such meets the recommendations for preparation of a supplemental document under CEQ's 40-most Frequently Asked Questions.

16 - The Conceptual Confined Disposal Facility Design for the IHNC Lock Replacement Project prepared by the USACE Environmental Research and Development Center and included as Appendix E to the Draft SEIS described the modeling efforts for "the potential for overtopping in the event of widespread flooding" to be "beyond the scope of this effort". However, the Conceptual Confined Disposal Facility Design report also recognizes that there is a potential for overtopping in storm events that would exceed the Greater New Orleans flood protection system design elevation and that armoring of exterior containment dikes located as to be vulnerable to levee failure be considered in future detailed Confined Disposal Facility designs. The conceptual design also notes that the preliminary dike profile is substantial and would serve as a barrier to impacting water currents. Once the facility is capped, the contaminated sediments would be effectively contained within an upland hill.

At this time, detailed plans and specifications have not been prepared for the Confined Disposal Facility or any other component of the Lock Replacement project as this would constitute continuing with project implementation and the expenditure of funds towards its completion without NEPA analysis. Conceptually, the Confined Disposal Facility Design report makes adequate recommendations as to the next steps for modeling and design necessary to protect the Confined Disposal Facility from overtopping.

industry.

And this Supplemental EIS does not answer these questions. And if you take this back in front of the judge, I am going to stand in front of the judge and say the same thing. These questions, Judge, that you saw were unanswered, that you ruled in our favor to send this back to the Court to take a hard look at this, they still haven't answer these questions. And we deserve a right to know, to take a hard look. And until you take a hard look at these environmental impacts, this project cannot go forward.

Thank you.

MR. POCHE:

Next is John Koeferl.

MR. KOEFERL:

I'm John Koeferl. I am the president of the Citizens Against Widening the Industrial Canal, CAWIC. Well, I didn't

0044

get -- three minutes won't get me very far.

But I want to tell you when I started reading this, I was so impressed with its dishonesty. And what I mean is the Corps is constantly building on the record. Okay? And the record is not a very clean record.

For instance, the site selection process that you go on for a long time about, and it is -- was not a clean process. There were ten sites, then eight sites. And it didn't happen as you say. It was a straw process. Okay? It was a process of elimination. All the other sites were eliminated, and that left this site. And this is the site that was chosen. And it was chosen because it was considered a weak neighborhood and the Port wanted control here.

17 - The project was enjoined because the potential effects of flooding and subsequent overtopping of the confined disposal facility were not fully assessed. To address these concerns, a full evaluation of contaminants in the IHNC sediments and the potential effect of these contaminants on the human and biological environment was summarized in the Draft SEIS and details of the evaluation were provided in Appendix C. Furthermore, a conceptual design of the Confined Disposal Facility was further developed, summarized in the Draft SEIS, and discussed in detail in Appendix E.

18 - The site selection process was discussed in detail on pages 44 through 53 of the 1997 EIS and is summarized in Section 4.1 of the 2008 Draft SEIS and discussed again in detail in Section 6.1. The selection criteria included feasibility and costs, as well as, impacts to communities and the natural environment. The site selection process was also guided by President Carter in 1977, the Water Resources Development Act of 1986, the 1991 Appropriations Bill, and the Water Resources Development Act of 1996. Alternative alignments within the IHNC have also been considered. The location of the replacement lock within the IHNC and the alignment north of the Claiborne Avenue Bridge where chosen to minimize adverse impacts to communities and the environment.

And none of that is in the official document. And it was written up as an environmental science and objective choice, but it was not.

Legitimacy is also anchored in the deliberations of the neighborhood working group, which was community people meeting with the Corps and the Port back in the early

'90's. And the record of that is one sided and incomplete. The real thing was much more interesting before the minutes were doctored.

Neighborhood leaders finally walked out incomplete unwillingness and distrust of the Corps. What did the Corps do? The Corps recouped, went to Washington and said they a win-win project. The neighborhood was onboard. And they got the project authorized.

Then they came back and showed a movie about it in the neighborhood after showing it all around. We were horrified. This is so dishonest. And, yet, this is the record on which the 1997 EIS was built. And it's wrong.

The Community Mitigation Process is also a problem for us. It's unrepresentative. It's much more show than substance. It's often secretive. It's always available for the Corps to check off another box on its legal requirement. But it's not a good process. And it doesn't in any way address the real adverse impacts that we need some kind of process to do. Okay? They need

to be included in the costs.

I just have a couple of more things here.

18 - (see previous page).

19 - CEMVN has no evidence of such allegations.

20 – The Community Based Mitigation Plan was developed in coordination with the Community Based Mitigation Committee, which is comprised of local residents and professional consultants. The Community Based Mitigation Committee conducted a series of four meetings from March through May of 2007 to assess community needs in the post-Katrina environment. Appendix H of the 2008 SEIS is a Needs Assessment Report prepared from the findings of these meetings and review of other community planning groups within the City of New Orleans. Mitigation for adverse impacts not directly affecting community rebuilding efforts, cohesion, or other socioeconomic factors were also developed. These include measures to reduce air and water quality impacts, vehicular traffic impacts, wetland impacts, and others. These mitigation measures were included in the 1997 EIS and the SEIS. Through the NEPA process, the public and government agencies were afforded the opportunity to comment on these mitigation measures and suggest alternatives. CEMVN is committed to minimizing the impacts of the project and would provide $43 million dollars which could be used to fund any plans to provide incentives for the development of local business.

I have read the document that the Corps had made and commissioned in 1986 about the lock project. I mean about the lock.

MR. POCHE:

15 seconds.

MR. KOEFERL:

The history of the lock. And this is a beautiful study that has had its executive summary and its last page altered to suit this project.

That lock project, the recommendation was to leave that lock intact because of its national -- national maritime and engineering significance. It should be left intact. The page was altered to show the Corps could tear it down. That's wrong.

MR. POCHE:

The next guest speaker, Charles Allen, Holy Cross Neighborhood Association.

MR. ALLEN:

Thank you. I am going to get

0047

right straight to the point by simply reiterating what has been stated already.

And, basically, Corps of Engineers, you are showing how heartless you truly are.

UNIDENTIFIED SPEAKER:

We can't hear you.

MR. ALLEN:

You are showing how heartless you truly are, the Corps of Engineers. The socioeconomic costs for this project are huge. We know all too well how good your work is as was pointed out. In '65 during Betsy, 2005 during Katrina and Rita. We know how good your work really is.

21 - CEMVN conducted studies of the potentially significant historic properties in the area between 1987 and 1992, and a comprehensive summary of these studies was provided in the 1997 EIS and briefly summarized in the 2008 Draft SEIS. The demolition of the lock has been properly coordinated with the Louisiana State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Properties (ACHP). All of the proper measures needed to record the lock have been completed in accordance with SHPO and ACHP standards. Mitigation measures would be implemented as part of the recommended plan.

22 - The IHNC and MRGO were constructed prior to the enactment of NEPA in 1969. However, CEMVN has been committed to protection of New Orleans throughout its history. Although flooding of 2005 did prove that the risk reduction system was inadequate, much of the system was not constructed to authorized levels due to lack of funding provided by Congress. Furthermore, the system is intended to provide risk reduction and is not designed to protect the city against all size storms.

I am going to submit into the record because you clearly don't know our post-Katrina story. One of our numerous plans was developed to basically recover our community in a very smart, community-driven, sustainable manner. And this lock replacement project kills that dream of a truly sustainable community. You are going to get a copy of that in the record. Just as you pushed this SEI, Supplemental EIS, on us, you got something you need to read from our community. Okay? As well as several other documents you need to read. Okay?

23 - Community specific components of the Unified New Orleans Plan were fully considered in the development of the Draft SEIS and the Community Based Mitigation Plan (see Section 5.3.6 of the Draft SEIS).

There should also be an extension of the public comment period. Okay. Because as it was pointed out earlier, you don't have all documentation together as you should in order to give a good and thorough and heartfelt review from the community. You don't have it together.

24 - A 60-day extension of the public comment period was granted to provided ample opportunity for review and comment on these documents.

So you have got some homework to do. We are going to make sure you get this necessary documentation.

And as was said earlier, this project is done. Okay? It's done. This goose is cooked, and this community is not going to see it go any further.

MR. POCHE:

Burt Lodrine, Ladrine, a resident (phonetical).

MR. LODRINE (phonetical):

Yes. I am a resident here. But my family has been in business since 1883.

During Hurricane Betsy, my family rescued another company affiliate from on top of their building over on Caffin Avenue

near the Florida Avenue Canal.
And during that period of time, our family's business location was used as a Red Cross shelter. And even before Katrina, they housed about two to three hundred people from down in Plaquemines Parish. And we also took a couple of kids to our home in Pontchartrain Park just to take them away from that environment of the post-Hurricane Betsy situation where we were living.
But I also have the distinction to share with you that I was born on August 29th, 1957. Now, August 29th, 1957 might not mean much to people. But what might mean something to anyone in this room is that on August 29th, 2005 Katrina came in and ruined my 48th birthday.
So not only did it ruin my birthday, but, you know, my family and I own several pieces of property in this area. And what happened, we noticed that General GI Joe Russel Honore came through here. And after the City had given notice to everybody to evacuate, there were still some people that

0050

hung back.
So even though they had notice to get out of here, what they did was they ruined a lot of doors of the front -- of the front of person's houses. And, you know, I don't think that was fair. Because everybody got notice. If they wanted to get out, they should have gotten out some type of way.
What happened is -- I noticed I have property in both middle-class neighborhoods and also upper-American neighborhoods. And if you look at type of way that the homes were gone into in the

middle-class neighborhoods, I mean it's a bit of a, you know -- there was just no care or concern in how they went into the homes, even though they didn't have to go -- but then again, you look at upper America where we also own property, instead of going through the front doors, you know what they did? They went through the windows so they wouldn't damage the front doors.

So as I said, this is just a little -- this is just a little opening to what I am trying to get at right now. We are

0051

creatures of habit. What we have done yesterday, we are going to do tomorrow.

We are looking at three issues basically. We are talking about contaminants. We are talking about noise level. And, also, we are talking about paving.

We got the agriculture tract where people are fighting contaminants there for years and also the noise situation. You said it would only take place during the day when people are at work. Well, sir, in my case, I work at my home. I have several properties which I rent. So while I'm working at home at work during the day, this would affect me if I were in the area.

And, thirdly, sir, tell me when was the last time the government paved any street back here in the Lower Industrial Canal District because I don't recall it otherwise. When does it happen, sir?

As I said, and this is all facts, sir, not fiction. As I said, take it for what it's worth. But as I said, like the last gentleman just said, this goose is cooked. And I am not here -- I am not here --

25 – CEMVN acknowledges that significant noise impacts would occur within the neighborhood near the construction site, in particular those areas adjacent to the proposed new lock site. Mitigation measures would be implemented to reduce the increased noise levels to the greatest extent possible, including sound proofing affected structures, and temporary relocation of affected individuals if they choose, during construction. Additionally, no substantial long-term noise impacts would occur as a result of the recommended plan.

26 - Streets would be paved (if necessary) to accommodate increased flow of traffic through detours and to support heavier construction traffic. Road conditions after the IHNC Lock construction is completed are difficult to predict at this time; however, it is anticipated that construction and detour traffic would damage some roads. All damaged roads would be repaired and repaved following the completion of construction.

0052
I don't think that there is any other opportunity, you know, for anything else to be done. I realize this is a done deal.
But just like the gentleman said, I am here to just let you all know, ladies and gentlemen, that we are not going away even though Katrina has come through here, and it's really a form of ethnic cleansing, we are not going away. Like my dad told me a long time ago -- he died in 2001. He said, "Burke, you are going to die with your boots on." And I am ready to go.
Good evening.
MR. POCHE:
The next speaker is Vanessa Greeringer from ACORN.
MS. GREERINGER:
Hello. My name -- my name is Vanessa Greeringer. I am the chair for the Lower Ninth Ward Chapter of ACORN.
I am going to start off first by saying, let's just be real here. You all are in the business of signing a death certificate when it comes to our community. You know what it's going to do to this
0053
community. You know that. I mean, you sit here, and you talk about what you all plan to give us. Those things are going to be addressed, most assuredly, in our recovery plan. Even though you all know we have been fighting to recover on our own.
We don't want that lock here. We want it deauthorized. We are going to be dealing with traffic jams. Haven't you killed enough of us? Haven't you spilled enough of our blood already?

What do you think traffic jams for 10 or 15 years, noise levels off the charts -- okay -- emergency medical -- if we had to get out of here in an emergency medical situation, how would we get through these traffic jams, you know, and the possibility that both of these bridges will be up at the same time.

You know, don't sit here and lie to us. Why are we continuously the scapegoat of other people's dreams? You know, we are sick and tired of other people making money on the backs of this community.

What has the Port Authority or

0054

the Corps of Engineers ever done for us? Have you ever adopted a community center here or a school or a park or a senior citizens center? Nothing. You have given us nothing. We are sick and tired of it.

You are in bed with the shipping industry. Hence, my sign. We are sick and tired of this. So we are letting you know we are continuously pursuing our declaration of war against you. Okay? Know that. We are not going away. Deauthorize this plan. Take your $1.3 billion and put it on the front door of our protection.

Thank you.

MR. POCHE:

The next speaker is Calvin Alexander from the Holy Cross Neighborhood Association.

MR. ALEXANDER:

Good evening. It's time to build a new lock on the IHNC. The old one is 85 years old. That's wonderful.

One of the questions I have yet

27 - The short-term adverse impacts on vehicle traffic are expected to arise during bridge replacement or modification. The most substantial short-term impacts would occur during closure of the Claiborne Avenue Bridge for modifications, which is anticipated to take 4 weeks. A detour route to Florida Avenue would be enacted during this time. Although demolition and construction of a new St. Claude Avenue Bridge would require 10 months, a temporary four-lane bridge with two lanes in each direction and a five foot wide sidewalk would be installed before demolition to minimize impacts to vehicle traffic. Thus, the duration of anticipated impacts to vehicle traffic would occur during the 4 week closure of the Claiborne Bridge which is substantially less than the 10 to 15 years required to complete the entire project. During the closure of the Claiborne Bridge, emergency vehicles call bridge operators to notify them of an emergency and bridges are required to remain passable when emergency vehicles are approaching (33 CFR 117.31 “Operation of draw for emergency situations”). This requirement is a part of the USCG bridge permit for these crossings. It is highly unlikely that all three bridges would be closed to traffic at the same time under any circumstance. Florida Avenue is north of the proposed new lock location and the Claiborne and St. Claude Bridges are south of the new lock location. Vessels entering and exiting the lock would only need bridges on one side or the other to open for passage. The probability of both the St. Claude and Claiborne Bridges being open at the same time is greater because they are on the same side of the new lock location, deep-draft vessels would require the opening of both bridges, and there is a distance of only 1,900 feet between the two bridges. Such circumstances of both bridges opening simultaneously can be greatly reduced. Large ocean going vessels will be traveling at 1 knot through the IHNC and can stop between the St. Claude Bridge and Claiborne Bridge on guide walls if necessary to allow for bridge closure (Captain AJ Gibbs 2008). There is no need for both the St. Claude and the Claiborne Bridges to be open at the same time (Captain AJ Gibbs).

28 - The new lock would support maritime traffic on the GIWW from Naples, Florida to the Brownsville, Texas, and includes secondary support for other components of the inland waterway system such as the Tennessee-Tombigbee Waterway, and the Red, Missouri and Ohio Rivers. Over $43 million would be spent to mitigate impacts on the community resulting from the project. The beneficial effects of the construction project combined with the benefits of the mitigation plan would provide incentive for growth of retail and commercial businesses serving the affected communities. CEMVN believes these benefits would positively affect the Port of New Orleans and affected communities, as well as metropolitan New Orleans and the Nation.

29 - CEMVN is not aware of any waterborne traffic diversions as a result of the existing lock, except those diversions that have occurred through Baptiste Collette Bayou and the MRGO when the IHNC Lock has been closed for maintenance. For inland, …

to have answered is how much traffic does this old lock disallow? We have never gotten an answer. How much traffic is not able to go into that canal because of the lock? That has never been answered.

We have been told that there was much upgrading going to happen on the riverfront facilities so that they could be upgraded, and this would not have to happen on the Industrial Canal.

You alluded in your presentation to the new Florida Avenue Bridge. Well, you know, I asked some questions prior to this meeting about DOTD and its plan for that new bridge as a part of the total project involved in the lock replacement. I have yet to really, truly receive a satisfactory answer. The only answer I got tonight was that because of a lack of gas taxes with the decrease in oil and gas sales, it's presently not funded. It still has not gone away. So also be aware of that.

We have been asking what specific type of capping would be used for that Confined Disposal Area. You talked about finding things like barium, aroclors, polyaromatic hydrocarbons, etc. We haven't been given any specific levels. And I know those questions have also been asked. Precisely what levels of the chemicals and chemistry have been found in your analysis?

It's time to build a new lock on the IHNC. The existing one is a 85 years old. February of '09 of this upcoming year, my mother-in-law will be 93 years old. Is it time to get rid of her, too?

29 (continued) - … shallow-draft vessels, there are no other reasonable east-west alternatives besides the use of the IHNC Lock now that the MRGO is being closed. Currently no traffic is being diverted (via alternative mode of transportation), however, over a 50 year period of analysis with projected traffic growth, traffic diversion is expected to occur ranging from 1 to 9 million tons.

30 - IHNC and its connection to the GIWW is a vital link in the Nation's inland waterway system. It provides the safest and shortest route to navigate from the eastern leg of the GIWW to the Mississippi River and connecting waterways. Without the GIWW and IHNC, vessels navigating this route would be subject to adverse weather conditions in the Gulf of Mexico and would be required to travel 153 miles of the river from its mouth to New Orleans. Although businesses can adjust their strategies or infrastructure to operate under these given conditions, the existing lock limits the opportunity for businesses to move goods over long distances at much lower costs than businesses dependent upon land based transportation. The additional expense required to navigate around the lock versus through the lock or resulting from delays experienced while navigating through the lock limit the opportunity for growth of these businesses.

31 - That is correct. The Louisiana Department of Transportation and Development's plans to build the high-rise Florida Avenue Bridge across the IHNC are on hold.

32 - Capping material would be obtained from suitable material dredged during construction of the IHNC Lock.

33 - The highest level of barium found in sediment samples averaged 1,211 mg/kg. See Table 2-2a in Appendix C for the level minimum, maximum and average concentrations of barium in sediment samples. As described in Appendix R, these levels do not pose a threat to human health and safety because there is an extremely low risk of exposure to the contaminant of concern.

MR. POCHE:
The next speaker is Henry Irvin.
MR. IRVIN:
I am just curious because you keep talking about 1997 to 2005. What happened to 2002, 2003, 2004? You said that you were going to separate -- I use the term "separate" the mud that was going to be dug out of the Industrial Canal that which could be used as backfill. I would like to know how you are going to do that.
When a study was done in 2002 that indicated the Industrial Canal waste was higher than any level that would be allowed by EPA. And any container that was used to haul

0057

it would be contaminated without being able to use it again.
I see up on the sign you say "modify Claiborne." Back in that time frame, we are talking about a plan of replacing the Claiborne Bridge, building it, floating it in, taking three months at this time -- I couldn't help it. I lost all of my papers due to Katrina. But this was discussed then. We discussed the disposal of $35 million of mitigation money. Now it's up to $43 million. What happened to that money? It's frozen.
In 2004, there was no money put in the budget for the lock canal. It went away.
A group called Washington tore down the Galvez Street wall. I think if it would have still been there, it might have helped us when the storm can.
Everything that was replaced on Shore Coast Road was done by a company called

34 - Comprehensive sediment sampling and evaluation was conducted by Weston Solutions in the areas where dredging is proposed for the IHNC Lock Replacement project. Dredged material proposed for placement at the Mississippi River disposal site and in the mitigation site for beneficial use is suitable for open water disposal and is not expected to pose adverse effects to benthic organisms or fish. The results of the sediment sampling and the evaluation of sediment and water quality are provided in Appendix C.

35 - The estimate of 4 weeks for construction-related closure of the Claiborne Avenue Bridge does not include off-site construction time and on-site construction that does not require closing the bridge. The new towers and lift span would be prefabricated off-site and floated into position on barges. Off-site construction would have no impact on vehicle traffic.

36 - All aspects of project implementation have been stopped until the completion of the SEIS as a result of the court order; the Community Based Mitigation Plan is part of the project and can only be implemented when the project is resumed.

37 – CEMVN has no evidence to support this assumption.

Washington in Washington. A lot of people don't remember all the businesses that they had there.

Now you are talking about

putting that contaminated material close to us again. I have 57 years in this neighborhood. I am proud of them 57 years, but I can't see you just taking and doing what you are doing, and it's going to hurt us. There are a lot of elderly people back here.

38 – The Confined Disposal Facility would permanently contain all contaminated materials in a stable site located away from any residential or commercial areas. Furthermore, although some of the dredged material was deemed unsuitable for disposal in aquatic environments, it has been determined to not be a human health and safety risk.

You are talking about 45 buildings along the canal. When Sealand moved out, I thought we had eliminated a lot of that problem. How are you going to get a large ship in there? Southern Scrap is about to move because they can't get big ships in there to destroy anymore.

39 – The improved efficiency of a new lock would benefit existing businesses and provide incentive for growth of new industries served by both shallow-draft and deep-draft vessels. The cost benefit analysis of this project evaluated the cost of the deep-draft increment to exceed projected benefits. The Port of New Orleans through their independent analysis has determined that a deep-draft lock would result in net benefits exceeding those projections in the Draft SEIS.

Right now as far as I am concerned, you can throw this away. Thank you.

MR. POCHE:

Next is Sara Debacher, Holy Cross Neighborhood Association.

MS. DeBACHER:

Hello. My name is Sara DeBacher. I am a resident of Holy Cross in the Lower Ninth Ward. I am also an English teacher. And I was given these documents a few weeks ago to read. And while I am really a very careful and a good reader, I had a great deal of difficulty reading these documents. And so I wanted to bring up a few questions that I have.

Before that, I would like to express -- I am going to read here because I am nervous. I don't know why. I don't get

nervous in front of my students, but I'm nervous here.

I would like to express my support for Plan 1, the No-Build/Deauthorization Plan based first -- based first on the findings expressed in failure to hold water, Dr. Robert Starnes' independent, economic analysis of the economics of the new lock project for the Industrial Canal.

Based second on my own concerns about the quality of life and ongoing recovery efforts in the surrounding communities and based upon my concerns of the viability of previous Corps projects and their historic impacts on the lives and residents of New Orleans and across the United States.

Here are my three questions:

The first is on page 41 of the document, the SEIS document. It's mentioned that in June of 2005, and this was not mentioned in the highlights of the 2008 plan. This was a power-point presentation this evening. There were a number of things that were mentioned as highlights in the 2008 plan. And one of those highlights was work that had already been completed.

What was not mentioned is that it is mentioned here on page 41, that work that was completed in June of 2005 included soil removal below the tidewater level north of Claiborne Avenue in a grassy area with some open water areas.

Someone suggested there was a connection between the soil removal here and the breaches that occurred during Hurricane Katrina. And I would like to have some sort

40 – Dr. Stearns' economic analysis is based on a single year of vessel traffic data and does not consider trends the actual trends observed in the historical data. The cost benefit analysis conducted for the SEIS is based on an assessment of vessel traffic on the IHNC from 1992 to 2002, vessel traffic on adjoining waterways, and economic trends with consideration of the historical and future economic and regulatory factors which have affected the industries supported by waterborne traffic.

41 - CEMVN has no evidence that soil removal contributed to the breaching of floodwalls. New, T-wall designs and scour protection on existing I-walls will substantially reduce the risk of floodwall failures.

of comment. I would like to have that addressed. It is, obviously, of enormous concern to me.

My second question has to do with the Float-In-Place construction with the modules that we used. Given concerns about

0061

the viability of previous Corps projects, how can you reassure us that the basins that will be used to construct the modules, which will then be floated out, my understanding is those modules will be there for seven years and that they will be carved out of earthen levees and that there will essentially be a wall of dirt.

I imagine doing this in a sandbox. And after seven years, if there are, in fact, hurricanes with surges, that dirt gets carved out, compromising the stability of the levee behind it. And so I would like to have that addressed as well.

And, finally, I would like to know how you can reassure us that the bypass channel itself will be stable. What will a construction of the bypass channel do to the integrity of the levees on the Lower Ninth Ward side?

These are three things that are not adequately addressed in the SEIS that I would like to have addressed. But, primarily, I would like to speak in favor of the deauthorization of the plan.

Thank you.

0062

MR. POCHE:

Next is Linda Jackson from the Lower Ninth Homeowners Association.

MS. JACKSON:

Good evening. Guys, what is it

41 (continued) - See previous page.

42 – The flood risk reduction levees along the GIWW would be relocated around the back side of the off-site construction area prior to the construction of lock modules. The levee would not need to be breached nor reconstructed to float out the modules. During excavation and construction the flood risk reduction levees would remain in place.

43 - "Construction Safety" Slope stability analyses determined that both plans would meet minimum factors of safety (see Appendix D of the Draft SEIS). Soil improvements would be required for either plan. The CIP plan requires a larger construction area within the IHNC which results in a north bypass channel that is closer to the newly constructed T-walls; detailed designs would include measures to protect the integrity of the floodwalls during bypass channel construction. The H-Piles of the T-walls do not extend into the proposed excavation limits of the bypass channel. The excavation limits do not encroach up the T-Wall and pile supports. Furthermore, a stability analysis was performed which modeled the effects of the excavation on the T-Wall. The preliminary stability analysis showed that the wall meets the Factor of Safety critera for the proposed excavation limits. Because the soil parameters used in the analysis were considered conservative, the final design would confirm that the T-wall will remain stable after construction of the bypass channel.

that you guys are not understanding? We don't want you to widen the canal. Leave it alone. If it's broke, fix it. Everything else that gets broke, you fix it. Fix this. Leave us alone.

Our grandparents fought this. Our parents fought this. We are fighting this. We don't want our kids and grandkids to fight this. Let it go. Leave it alone. We don't want it. Let it go. Thank you.

MR. POCHE:

Next is Litania Banks. Litania Banks.

(No response.)

MR. POCHE:

All right. We will go to Dan Arceneaux with the Coastal Zone Advisory, St. Bernard Parish.

MS. ARCENEAUX:

My name is Dan Arceneaux. I am

0063

the Coastal Zone Chairman for the last eight years. I have been on the committee for 15 years. And I have just been promoted to Coastal Advisor from President Tafaro.

And I came here tonight, and I am not going to waste much time on it, a resolution from the council this afternoon at their meeting about we don't want tainted sediment put in Bayou Bienvenue. About the tainted sediment and about what is coming out of it, what is going to come out of the canal.

Several years ago, I can't remember when. It might have been in 2002, but I thought it was before that, the Corps told everybody that they took samples, and the samples were slightly tainted.

So the Lake Pontchartrain Basin

44 - CEMVN has conducted detailed sediment sampling in the areas where dredging is proposed for the IHNC Lock Replacement project. Dredged material proposed for placement at the Mississippi River disposal site and in the mitigation site for beneficial use is suitable for open water disposal and is not expected to pose adverse effects to benthic organisms or fish. The results of the sediment sampling and the evaluation of sediment and water quality are provided in Appendix C.

Foundation had a private company test it. And they have said what the Corps said is a 100 times more dangerous than what the Corps said.

St. Bernard does not want this put -- even though it's going to be in Orleans Parish because it's going to be north of Bayou Bienvenue. You're going to dredge out, and you are going to put a pit, and you are going

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to build a wall around it. Then you are going to pump the sludge in. The water that you get coming with the sludge is going to run over the banks into Bayou Bienvenue and pollute all of St. Bernard Parish and the Lower Ninth Ward.

They have people from the Ninth Ward fish there, from St. Bernard fish there, crab there. They have a lot of recreation fun there, and that is going to be poisoned.

45 - Extensive testing of sediments was conducted in order to determine which sediments are contaminated and the appropriate location for the contaminated sediments and the effluent discharge. Contaminated sediments would be disposed of in a CDF and effluent from the CDF would be discharged into the GIWW. Contaminated dredged material and effluent would not be discharged into Bayou Bienvenue and would not affect fish and crabs. Further information concerning contaminants in dredged material is located in Appendix C.

I got a couple of other questions. Can anybody tell me when the levee that blew out from Katrina was moved back? I am getting the same look I got about ten times already. I asked the same question. No one knows? I will move on. I am used to these answers, folks.

46 – CEMVN is not aware of which levee the commenter is referring.

The Port representative, Joe Cocchiara, I have known him for a while. I would like to know how many businesses are there now, 11/12/2008? Could he answer that first? Because I thought I heard him say 4,500 businesses were there. I bet there is not five. Hardly anybody working there anyway.

0065

And the Claiborne Bridge --

MR. POCHE:

You have 15 seconds.

47 - The Port of New Orleans reported that there are between 45 and 48 leases along the waterway serviced by the IHNC. Some of the businesses along the waterway have double leases. The total number of businesses with one or more leases equals 35 to 40. Those businesses that need deep-draft access include the following: Maersk Sealand, New Orleans Cold Storage, Bollinger Gulf Repair, Southern Scrap, Lafarge Corp., U.S. Gypsum Co., Halliburton Inc., and Holcim Inc. (Maersk Sealand vessel traffic can still be viewed on the web and direct communication with the Port indicates they are still in business.)

MS. ARCENEAUX:
I'm sorry?
MR. POCHE:
Will you wrap up, please?
MS. ARCENEAUX:
Okay. We lost a great police officer on the Claiborne Bridge because the bridge was so raggedly, none of the safety -- none of the safeties on the bridge worked.
Now, every time I go over that bridge, there are so many cracks in the upper structures of it, I am afraid it's going to fall into the canal before you-all ever get around to changing it.
The last time you-all brought up about changing the Claiborne Bridge, you said it's going to take two weeks to take it down and put the new one up. If you-all are supposed to be engineers, I am not an engineer, but I was in the Seabees for eight years, and I served in Cuba building base housing. And I bet you can't change that

0066

bridge out and put the new one up in three months.
And one more thing. If you are not going to answer me on when they moved levee back that blew out. And the Claiborne Bridge, I know I am not going to hear nothing.
I just would like to tell you that Doug Arceneaux and Betty Arceneaux are on the monument at Shell Beach. These two people are my first cousins. And I would like to thank you for your time.
MR. POCHE:
The next speaker is Reverend Willie Calhoun, Lower Ninth Ward resident, New Life Intracoastal Community Development

48 – Emergency vehicles call bridge operators to notify them of an emergency and bridges are required to remain passable when emergency vehicles are approaching (33 CFR 117.31 “Operation of draw for emergency situations”). This requirement is a part of the US Coast Guard bridge permit for these crossings. It is highly unlikely that all three bridges would be closed to traffic at the same time under any circumstance. Florida Avenue is north of the proposed new lock location and the Claiborne and St. Claude Bridges are south of the new lock location. Vessels entering and exiting the lock would only need bridges on one side or the other to open for vessel passage.

The probability of both the St. Claude and Claiborne Bridges being open at the same time is greater because they are on the same side of the new lock location, deep-draft vessels would require the opening of both bridges, because there is a distance of only 1,900 feet between the two bridges. Such circumstances of both bridges opening simultaneously can be greatly reduced. Large ocean going vessels will be traveling at 1 knot through the IHNC and can stop between the St. Claude Bridge and Claiborne Bridge on guide walls if necessary to allow for bridge closure (Captain AJ Gibbs 2008). In emergency situations, there is no need for both the St. Claude and the Claiborne Bridges to be open at the same time (Captain AJ Gibbs).

The estimate of 4 weeks for construction-related closure of the Claiborne Avenue Bridge does not include off-site construction time and on-site construction that does not require closing the bridge. The new towers and lift span would be prefabricated off-site and floated into position on barges. Off-site construction would have no impact on bridge closure times.

Corporation.

REVEREND CALHOUN:

Good afternoon. Gentlemen, I am just having some problem in following this handout.

On page seven, you says that it's the recommendation of the community-based mitigation committee to improve nearby neighborhoods, and you give a list of bullets. And one of them is property value. However,

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on page 13, you said that property values in the area could temporarily be impacted during construction activity.

So now you are telling me the property value is going to go down during the time you-all are building; right? That's right. You can't answer. Okay. If my property value is going to be impacted, how can you ensure me during the construction phase that I am going to not lose if I have to sell my home?

49 – Noise could have a very localized and temporary affect on property values. General trends in property values are more heavily influenced by regional and National trends and are not likely to be affected in the long-term by the proposed lock replacement project. Thus, once construction activities are complete and noise levels return to normal, any localized affect on property values would be alleviated. To mitigate for noise impacts during construction, CEMVN is committed to sound protecting affected residences and providing temporary housing for residences experiencing noise levels in excess of 75dBA, if they choose. To mitigate for temporary loss in property values, CEMVN has implemented a housing improvement program and vacant lot cleanup program. These are part of the larger community improvement activities that would provide long-term benefits to property values.

The other issue was jobs. I heard the Port person say that this would bring more jobs. Well, historically, jobs don't come to the local people of the area. Who gets the jobs when the jobs come in, if this project would go forth, which we know it ain't? But if this project would go forth, the jobs always goes to those that are out of state. Haliburton, ECC, those type of companies get it.

So my question would be: How would you ensure that local people get jobs here?

Thank you.

50 - CEMVN would encourage contracted construction companies to hire qualified workers from local communities through incentives contained in the contract documents. As part of the 1997 project, CEMVN successfully implemented a program to provide training to local residents which would make them qualified for jobs related to the project. If the project moves forward, a similar program could be developed through coordination with the Community Based Mitigation Committee and, if recommended, such a program would be implemented by CEMVN.

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MR. POCHE:

Next is Simon Hand, Holy Cross Neighborhood Association.

MR. HAND:

My name is Simon Hand. I am a resident of this neighborhood. I have three questions.

The first one is for the gentleman from the Port. What are the economic benefits of this project to us? You said this project is going to benefit this region. You didn't give any specifics about that.

It seems as if that that is the driving force behind this project, economic benefits or economic development or benefits to the shipping industry. I haven't seen anything specific about what the economic benefits are. Maybe I missed it. I haven't seen anything in the Times-Picayune. I haven't seen anything here tonight. I have looked at the economic breakdown panel in the back. I can't make head or tail out of it.

What are the economic benefits to this city or to this neighborhood? And if

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that is the reason for this project, why is that not been explained to us in detail? Maybe that's been in the paper sometime, and I didn't see it. I haven't seen it anywhere.

My second question is about the digging of the bypass channel to allow boats to pass by when you are building the new lock. I looked at the panel in the back that illustrates where that channel is going to be. And the digging is -- looks like it's going to be about six feet from Jordan Avenue. It's covering the whole area where the levee is and where the levee wall is right now.

51 – The deep-draft lock replacement has been authorized by the Congress through the WRDA of 1986. Lock construction activities and industries locating on the IHNC that can be serviced by deep-draft vessels could lead to related supporting businesses developing in the area. An increase in businesses would lead to job development and opportunities, as well as an incentive for local development of retail and commercial businesses to serve the increased number commuters. Both increased job opportunities and increased retail and commercial business would positively affect property values and benefit the local communities over the long-term. To mitigate for short-term impacts, CEMVN has allocated $43 million to the Community Based Mitigation plan which would be spent to improve living conditions in the local communities. Improved bridges, roads, lighting and traffic signals; long-term measures to benefit aesthetics; increased recreational opportunities; and an already implemented housing improvement program and vacant lot cleanup program, in conjunction with future community improvements coordinated through the Community Based Mitigation Committee could all positively influence living conditions and subsequently result in increased property values.

52 - "Construction Safety" Slope stability analyses determined that both plans would meet minimum factors of safety (see Appendix D of the Draft SEIS). Soil improvements would be required for either plan. The CIP plan requires a larger construction area within the IHNC which results in a north bypass channel that is closer to the newly constructed T-walls; detailed designs would include measures to protect the integrity of the floodwalls during bypass channel construction.

So according to that graphic, the entire levee is going to be dug out. I am assuming that that is not what is going to happen, but that's a scarey graphic because it seems very inaccurate for a project that's been 50 years in the making.

So where is that digging going to be? How close to the levee wall is it going to be? And can you -- how do we know that is going to be safe?

If in the next ten years we have another Gustav, how do we know that wall

0070

is going to be safe if that digging is going to be right up against that wall, which it looks as if it's going to be.

52 - See previous page.

My last question is about traffic. Earlier somebody said there is going to be specific routes for construction traffic, I guess, over ten years or so. What does that mean specific routes for construction traffic?

Aren't there just two ways to get in and out the neighborhood, over the St. Claude Bridge and the Claiborne Bridge? And so what routes are those? Aren't there just two ways to get in and out the neighborhood? And if so, won't the construction traffic all have to come over those two routes?

53 - The construction traffic routes being considered are those routes that approach from the east and west and connect the project area to I-10 and I-510. Traffic routes would be determined in close coordination with the Community Based Mitigation Committee during detailed project design.

But my biggest concern is the bypass channel and how close to the levee wall that is going to be, how long that channel is going to be there, and is it safe?

MR. POCHE:

Our next speaker is Joshua Lewis.

MR. LEWIS:

I am Joshua Lewis, a New

0071
Orleans resident.
We have been talking about tonight the old lock. It's an antique. It's a dinosaur. To me, the only thing that is antique is the way the Corps of Engineers does business and the way it thinks.
This project is a relic of the 19th and 20th Century thinking. It's a piece of the so-called Inner Harbor complex, an idea conceived around 1900.
Every component of this Inner Harbor Plan has been a failure. If we would measure it by the social cost or the environmental cost or the dollars and cents of how it's paid off, it's all been a failure.
The Industrial Canal has flooded this community three times, decimating the communities housing, stiming the economic progress and development that this neighborhood deserves.
The M.R.G.O., an environmental catastrophe and a humanitarian catastrophe, as was mentioned before, authorized by the same piece of legislation that authorized this project that we are discussing tonight.
0072
As we know, the M.R.G.O. will be closed. All our ships now use the river. The Inner Harbor experiment, the century-long experiment, is a failure. It's failed. It's cost the city hundreds of lives, destroyed homes, destroyed entire communities and cost the taxpayers across this country many millions of dollars.
This legacy will not be wiped away by a new lock. It will be a continuation of this legacy. A $1.3 billion project, a

54 - The IHNC Lock is a critical component of the Nation's inland waterway system. Although a deep-draft lock would improve opportunities for waterborne commerce locally, the lock provides the only reasonable access for shallow-draft traffic from the Mississippi River to inland ports serviced by the GIWW east of the Mississippi.

Replacement of the existing lock would not increase flood risks in the surrounding communities. In response to Hurricane Katrina, CEMVN is planning numerous projects in the Greater New Orleans area to meet the 100-year level of flood protection. For the IHNC, the 100-year level of flood protection would be provided by constructing gated structures, one to provide protection from Lake Borgne storm surges and the other to provide protection from Lake Pontchartrain storm surges. Other improvements that will protect the affected communities include higher levees, improved floodwalls, new floodgates, and modifications to the 17th Street, London Avenue, and Orleans Avenue canals.

55 - See next page.

huge allocation of federal resources, smack dab in the middle of a community that is desperate for recovery funding.

This community has borne the brunt of the unforeseen impacts of these projects, this Inner Harbor, for years. New Orleans residents have had to clean up after the mess that this Inner Harbor project has brought. We need innovative 21st Century flood control and wetlands restoration, not a continuation of an unjust and tragic legacy. Let's turn the page.

Thank you.

MR. POCHE:

0073

Tanya Harris, ACORN.

MS. HARRIS:

Good evening. Again, my name is Tanya Harris. And I am the head organizer for New Orleans ACORN. I am also a Lower Ninth resident.

And I am also very tired of this fight. We have so many -- everybody in this room has fought to recover and restore their lives, and we are sitting here fighting the Corps of Engineers, who have destroyed many, many lives through those faulty levees. We are fighting you about $1.3 billion that could actually be used in our communities to restore them. This is ridiculous. That is a horrible allocation. It's a slap in the face to this community.

But moreover, I have a couple questions. Mr. Arceneaux, you mentioned that bridge. And that was a very important piece, because a few months before that officer lost his life on that bridge, we had actually gotten in touch with the DOTD, and the DOTD

55 (continued) - Funding for Federal projections is appropriated by Congress. CEMVN is not authorized to use funds designated for the lock replacement project on recovery efforts. However, with implementation of the Lock Replacement project $43 million dollars of project funding would be spent on community improvement projects.

56 - The St. Claude and Claiborne Avenue Bridges are owned and operated by DOTD. Congress authorized funding to modify or replace the bridges in conjunction with the lock replacement project. However, DOTD remains responsible for the maintenance of these bridges.

was basically telling us that they couldn't do anything to the bridge. They couldn't repair that bridge that the officer lost his life on because it was tied up with the lock project. So there is one more life. Well, I be damn. One more life that you have taken.

The bottom line is nobody in the community does not want this project. Since 1956, the community has been saying it doesn't want the project. You all have to at some point adhere to the will of this community and just let it go. No, we don't want it. Deauthorize this piece of nothing, please. Good night.

MR. POCHE:

Next is Linda Swanner.

MR. SWANNER:

Hello. My name is Linda Swanner. I am a resident of St. Bernard Parish. It's hard for me to believe that in a time that our nation is concerned about wetlands, we are talking about putting contaminated sediments in our wetlands.

During Katrina, we had a 20-foot storm surge that came over the M.R.G.O., not too far from where you are planning on placing the sediments. How high are these dikes going to be? I don't think that they will be able to accomplish what you think it's going to accomplish.

When you talk about jobs, as they mentioned, the locals don't usually get it. But I want to put that into perspective into livelihoods and culture. You may get a few jobs in New Orleans. You may increase your shipping industry. You are losing

56 - See previous page.

57 - The conceptual plan for the CDF estimates a levee height of 17 feet. At this time, detailed plans and specifications have not been prepared for the CDF or any other component of the Lock Replacement project as this would constitute continuing with project implementation and the expenditure of funds towards its completion without NEPA analysis. Conceptually, the CDF Design report makes adequate recommendations as to the next steps for modeling and design necessary to protect the CDF from overtopping.

58 - All construction contractors would be required to hire qualified individuals from the local communities. CEMVN initiated a job training program to ensure that locals would be qualified. CEMVN recognizes the importance of the livelihood and culture of residents in the affected communities and has apportioned $43 million dollars of project funding to mitigate adverse impacts.

culture in the area because we are losing our homes because of flooding, storm surge, contaminated sediments from the river. And now we want to place it into the wetlands.

In conclusion, an overview, you said that you plan to deal with the potential contaminated sediments and placement of sediments. What are the plans? The plans, saying you have plans doesn't give us any confidence.

You planned to put levees to protect us for the storms. We saw videos on the television with levees stuffed with newspapers. So we're not very confident in your plans which have not been revealed as far as when, how and all of the exact elements

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involved.

Water quality issues, again, the wetlands, St. Bernard Parish has been bombarded by several agencies. EPA running asbestos testing, landfill issues, and now we are talking about contaminated sediments in our wetlands again. So I want to say I will support the deactivation as a resident of St. Bernard Parish.

Thank you for your time.

MR. POCHE:

Next is Bobby Banks, a resident.

MR. BANKS:

Good evening. I'm a resident of the Lower Ninth Ward. As a matter of fact, I am a resident where you all in the first place after Katrina wanted to green space. Okay. I live right near where Lawless Senior High has been torn down. We don't have a school there.

58 (continued) - Numerous ongoing projects will substantially reduce flood risks in the affected communities. CEMVN would mitigate impacts to wetlands through establishment of wetlands in the open water area south of Bayou Bienvenue.

59 - The dredged material disposal plan is summarized in section 4.3.4.1 of the Draft SEIS and detailed plans are provided in Appendix F.

60 - Contaminated sediments would be safely contained in a confined disposal facility and sediments not suitable for disposal into the estuarine environment would be discharged into the Mississippi River.

And speaking of not having a school, this plan seems like it's going to come through because of our misfortune with Katrina. Okay? Closing the M.R.G.O. sounds like a good plan. Everything sounds good. But on our backs, you want to slip this plan in for this lock, that since I have known of it, people have rejected it.

The housing at the St. Claude area, in the Holy Cross area, it was in the '90's, you wanted to just have everybody moved out from that area for this same plan. And the people rejected it.

Now, due to Katrina, with the Claiborne Bridge, which I believe, just like my friend here, was blown, and you didn't expect for anything to come back in that area. And since it did, we couldn't use that bridge. We had the Florida Avenue Bridge you have redone. But now, that is obsolete. We can't use that.

We just have no stability in our neighborhoods. And you want us to destabilize what we do have to open this lock and congest our neighborhoods even more than they are?

We need our schools back in this area.

UNIDENTIFIED SPEAKER:

Grocery stores.

MR. BANKS:

Yeah. We don't even have a supermarket. We have to go down in Chalmette. We have to go to Algiers. We have to go to Tchoupitoulas. What's going on with all of those areas that they can get and rebuild and

61 - The Community Based Mitigation Plan does not address all the needs presented by the community. While CEMVN recognizes all community needs as real and urgent, there is not always a direct means available for CEMVN to address them. However, it is anticipated that project construction would lead to an increase in businesses located in the area and increased incentive for retail and commercial businesses to move into the local communities.

constantly flow the CBD. We have families here that's gone due to Katrina and your levees.

MR. POCHE:

You have 15 seconds, ma'am. Please wrap it up.

MR. BANKS:

I want to know why. Why do we still have these problems we are going through?

UNIDENTIFIED SPEAKER:

Because you are black.

MR. BANKS:

I think so, too.

But still, we don't want your locks. Fix the levees the way they are supposed to be fixed and give us some schools down here, supermarkets. Can you do that?

0079

Thank you.

MR. POCHE:

Next is Jeanett Holmes.

MS. HOLMES:

Good evening to all. My name is Jeanett Holmes. I am a local resident of the Lower Ninth Ward. I have been here for a long period of time. My family has been here.

I would like to say one of my major concerns is the Contaminated Storage Facility. But, mostly, I want to state that I am a member of the CMBC, as well as other people that are sitting in this audience.

And I would like to state and make the record clear because I don't meet covertly. It is a public meeting that is held for anyone and is welcome for anyone to come up.

It's not that I agree or

disagree with what is going on with the Army Corps of Engineers, but it needs to be known that I have been sitting on that committee since 1997. I am glad to sit on that committee, and I am here to get the facts. I sit in those meetings to get the facts. And, basically, we can agree to disagree. And that is it. Thank you.

MR. POCHE:

Next is Linda Santi from the Holy Cross Neighborhood Association.

I would like to remind you anyone has spoken and would like to speak again is going to need to fill out another card, please.

MS. SANTI:

Good evening. I am looking at the handout. And on page 13, some of this has been commented on before. But when you are talking about the alternative -- alternate traffic flows and how local streets are going to be resurfaced prior to the whole thing starting, which is obviously going to really tear the streets up. None of that seems real logical.

The only thing logical on that page seems to be construction-related traffic would increase overall traffic delays. I think you guys hit it on the head right there.

And then I am switching back to page 11 where you talk about how you are going to coordinate pile driving for the St. Claude Bridge during the summer to avoid impacts to schools, which I think we have already pointed. We don't really have schools other than the one we're in right now down here. So

62 - The intent of the statement on page 11 is to document CEMVNs commitment to reducing noise impacts. If schools return to the area prior to pile driving, then pile driving would be restricted to summer months when children are not in school and would not be distracted by noise. It is also possible that affected structures could be modified to reduce interior noise levels. CEMVN is committed to working with the community to find means to avoid, minimize, or mitigate for adverse impacts of the project. (continued on next page)

I am not following the logic there. Although I do know it's in the summer. It is in August. We want to make sure that we can evacuate these areas, both the parish and the Lower Ninth Ward.

So in the same way that you guys were doing your spring cleaning on the lock and on the St. Claude Bridge, in that area in August, which could have truly been a disaster not only for this side but clearly this -- in Gustav, the upriver side of the levee.

So forgive us if we think you guys really aren't taking into account logic, such as don't do the heaviest stuff in the summer. Don't do the heaviest work in August. That doesn't make sense. And that makes us question the rest of the logic behind the whole plan also.

And you know, I'm sorry. One

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other thing. I just came back from being in other parts of the country. And to this day, we all know, all of us, when we travel other places, people think a hurricane hit us in August of '05. And we have to remind people, well, we really didn't get a hurricane. Mississippi had a hurricane. We had the Army Corps of Engineers.

Now, the emphasis on the engineers part, I understand engineers by their nature build. That's kind of what engineers do. But it feels like it was the Army part that we got. And we weren't on the good receiving end of that.

And it really -- when you go to other parts of the country and explain that their Army Corps of Engineers is what took

62 (continued) - Components of the lock replacement project which could affect flood risk or the ability to evacuate are limited. Furthermore, the ability to forecast storm threats has dramatically improved in recent years, and CEMVN has developed protocols to avoid and minimize vulnerabilities resulting from construction activities. Dredging of bypass channels would not compromise the stability of the floodwalls. The removal of levees along the GIWW to float modules out of the off-site construction area would not occur under the threat of an approaching storm. The construction of new floodwalls would be conducted in phases to allow adequate time to close any gaps created in response to approaching storms. The closure of the Claiborne Avenue Bridge would occur during winter months to insure evacuation is not impeded. Demolition of the St. Claude Avenue Bridge would require 10 months to complete and, thus, would occur during the hurricane season; however, a temporary bridge and detour routes to Florida Avenue would be in place. Paris Road would not be affected by the project and would continue to provide an evacuation route.

this town of multiple locations, that also makes us question the logic and the intentions behind some of the decisions here.

Thank you.

MR. POCHE:

Next is Stradford Goins from the South Flood Protection -- South Louisiana Flood Protection Authority.

MR. GOINS:

Stratford Goins. I am one of the commissioners on the Flood Protection Authority.

And the question I have -- there's actually three. One is from a flood protection standpoint. This project is bringing a bigger flood potential into the heart of this city. I want to know how has that been addressed? Has it been included in risk reduction model? And if not, then how can you go forward if it hasn't been addressed?

The second one is the constructability issue. How are you going to float these in? It's going to be a deep-draft, float-in model. And the only deep-draft channel, you are closing. So I am at loss on how the thing is going to be constructed.

And the third thing is, is there a necessity for a deep draft? All of the indications that I am getting is that the deep-draft vessels are moving from the canal to the river. So what is the point to spend that money?

My agency, we compete for state dollars. I am told that the Port is putting

63 - The new lock would not affect flood risk. Both the existing lock and the proposed replacement lock are or would be within the flood risk reduction system and do not affect flooding potential.

64 - The route lock modules would travel from the off site construction area, where construction of the lock modules would occur, to the new lock site follows a segment of the GIWW shared by the MRGO. The MRGO diverges from the GIWW east of the proposed graving site. Only the portion of the MRGO south of its confluence with the GIWW has been de-authorized. Even with the de-authorization of most of the MRGO and the planned closure structures, the path from the off site construction area to the IHNC would remain unobstructed.

65 - With the closure of the MRGO, there will be no route for deep-draft vessels to service existing and future industries on the IHNC. Based on trends in deep-draft traffic following hurricane Katrina, the cost benefit analysis assumes that the benefits of the recommended plan to deep-draft traffic would be non-existent.

up the money for the incremental cost for the shallow-draft to deep-draft lock. Well, if there are no vessels going there, my agency could use that state money for flood protection that we need for these matching funds with the federal program.

MR. POCHE:

Our next is Bill Waiter, Holy Cross Neighborhood Association.

MR. WAITER:

I guess the speaker before me, he asked the question, why? The gentlemen before me asked the question, why? Well, we understand that this is -- this project is funded by the Corps of Engineers, not by the Corps, by the Port of New Orleans because they are the driving force behind this.

Now, for what reason? Why would you need to widen the canals? There is no industry on the north side. So Sealand is gone. Sealand is gone. Now Southern Scrap is about to pack up and leave. So why?

0085

Because Katrina, the Port of New Orleans and the closing of the M.R.G.O., the Lower Ninth Ward is going to become casual damage because now they tried to move in. This is no more than a land graft, folks. They are trying to take the land here.

Because before, they wanted to make this all green space. Then that didn't work. Now they come back to widen the canal.

Our grandparents fought this project. Our parents fought this project. This generation is fighting this project. I have a daughter who is 21 years old. I have a daughter who is five years old. As soon as she's old enough to realize what I am talking

65 (continued) - Although demand for this service is currently low and does not lead to the assumption that discernable benefits would be gained, it is anticipated by the Port that demand would increase at some point in the future if a deep-draft lock is built.

66 - The IHNC canal would not be widened; instead, a large lock would be constructed within the existing footprint of the canal. The new lock would support maritime traffic on the GIWW from Naples, Florida to the Brownsville, Texas, and includes secondary support for other components of the inland waterway system such as the Tennessee-Tombigbee Waterway, and the Red, Missouri and Ohio Rivers. Over $43 million would be spent to mitigate impacts on the community resulting from the project. The beneficial effects of the project combined with the benefits of the mitigation plan would provide incentive for growth of retail and commercial businesses serving the affected communities. CEMVN believes these benefits would positively affect the Port of New Orleans and affected communities, as well as metropolitan New Orleans and the Nation.

67 - The new lock, temporary bypass channels, new bridges and levees/floodwalls would be constructed within the existing footprint of the Inner Harbor Navigation Canal. Real estate needed for the lock construction was purchased from the Port of New Orleans for 16.8 million dollars. The Confined Disposal Facility, including both the Fill Cell and the Disposal Cell, and the off-site construction area would be constructed within undeveloped lands located south of the Gulf Intracoastal Waterway and east of the Inner Harbor Navigation Canal.

about, she will fight this project, and any generation behind us will fight this project because this project is DOA.

MR. POCHE:

Darryl Malek-Wiley from the Sierra Club.

MR. WILEY:

Darryl Malek-Wiley here, Sierra Club.

Before I forgot to ask. I want to specifically request an extension of time for comments. The way the document is written, the issues that I brought up before, we would like to specifically request a 60-day comment period that would move it from a 60-day extension that would make it into January 24th, 2009.

I am also going to submit to the record a letter from the Corps Reform Network dated today that went to Colonel Lee also asking for a 60-day extension of the comment period.

68 - A 60-day extension of the public comment period was granted to allow adequate time for public review of the materials.

On this defined contamination thing that is going to be there forever and ever and ever. I have real concerns about that. I have concerns about the lack of detail in the Supplemental Environmental Impact Statement.

My understanding is there will be no geotech fabric underneath the confined disposal area. So that means that I am not seeing any kind of analysis that will talk about when you put this contaminated sediment in the constructed area, any kind of rainwater percolation down into the groundwater and then bubbling up another area contaminating the

69 – The leachate pathway was examined using screening protocols from the Upland Testing Manual and is described in Appendix E. It was determined that none of the constituents that were predicted to have pore water concentrations that exceed screening criteria would pass through the foundation soil to any laterally transmissive layer at concentrations above the screening criteria in 10,000 years.

Once the CDF is dewatered and capped, the potential for storm surge or flooding to expose contaminated sediments would not be greater than all other upland areas in the metropolitan New Orleans area. If the CDF is flooded before the contaminated dredged material is dewatered and capped, there is a potential for some of the material to escape the CDF. However, the volume of material …

bayou more.

We have real concerns about that whole contaminated sediment issue and feel that it is not proper to put that type of material in a flood plan. We feel that that material, if it is contaminated, needs to be the hell out of South Louisiana.

You don't want to put -- 20 foot of water was in that area with the hurricane, Katrina. And we are talking about 17-foot sediment is what I read in one of the places. So the stuff is going to go under water. Then where is it going to wash and impact the community?

Temporary bypass channel. I have very concern -- I got a copy. You didn't give me the geotech analysis that you had done on the stability of the bypass channel. I will make sure I have our experts look at that.

But we have concerns about the engineering there. And we have concerns about the way the Corps rebuilt the current lock, the levee, the current levee.

0088

Because when I was talking to the Corps folks about the IER on the levees that we are working with, I asked them did they do an analysis of the levees they built if there was an additional lock put beside it? They said, no, they hadn't done an analysis. That wasn't the scope of work. And so I am afraid something is going to fall in a hole here, and it might be the levee.

MR. POCHE:

You have 15 seconds, sir. Please wrap up.

MR. WILEY:

69 (continued) - … which would be exposed to mixing with floodwaters (i.e., the uppermost layer of the Confined Disposal Facility) would be minimal in relation to the volume of water and potential mixing that would occur. Although, some contaminants could escape, their concentration in the floodwaters would be very low. Furthermore, the Confined Disposal Facility would receive the same level of hurricane and storm damage risk reduction as the rest of the greater New Orleans area, and will have the 100-year level of protection upon completion of the surge barriers at the intersection of the IHNC and Lake Pontchartrain and across the Gulf Intracoastal Waterway and MRGO as described in Individual Environmental Report #11.

70 - A detailed summary of the slope stability analysis conducted by URS was provided in Appendix D of the Draft SEIS. A copy of the original URS study was provided to Mr. Wiley within 24 hours of request.

71 - "Construction Safety" Slope stability analyses determined that both construction alternatives would meet minimum factors of safety. Soil improvements would be required for either plan. The Cast-in-Place plan requires a larger construction area within the IHNC which results in a north bypass channel that is closer to the newly constructed T-walls; detailed designs would include measures to protect the integrity of the floodwalls during bypass channel construction.

And the Sierra Club is opposing this project. We will continue to be opposing this project. We will comment at the Final EIS, and we'll take whatever legal matters possible. This project needs not to go forward. It needs to be deauthorized.

Thank you.

MR. POCHE:

Our next is John Koeferl.

MR. KOEFERL:

John Koeferl from CAWIC. We have also asked Colonel Lee for an extension.

72 - The 60-day extension of the public comment period has provided ample opportunity for review and comment on these documents.

I wanted to speak briefly about the decision-making structure here and what we have a problem with.

You know, the Corps of Engineers holds all the cards here as far as we can tell. You propose a project. You hold hearings like this. And then you decide whether to go through with the project.

And it's not a real Democratic process. And because you are engineers and into big, hard structures, your natural partners are the Port, who wants locks built, and other shipping industry people that lobby Congress that tell you what to do, and you make projects to suit them.

So it's really a dominant structure. It's the army. It's a dominant structure of authoritarian society -- I mean of authoritarian society. The army shouldn't be doing this civil work stuff. It shouldn't be the army.

I will tell you, Darth Vader would be very happy being in the Corps of Engineers. This is a messed-up system. And you guys shouldn't be doing this.

0090

MR. POCHE:
Our next is Vanessa Greeringer from the -- from ACORN.
MS. GREERINGER:
Again, 10 to 15 years of traffic jams. Would any of you want to experience that?
UNIDENTIFIED SPEAKER:
They are not from here.
MS. GREERINGER:
I have a mother that is 93 years old that plans to live to a 100, until she's a 100. If she has a heart attack, she's going to die in an ambulance en route to the hospital waiting for bridges to go up.
The situation with the Claiborne Avenue Bridge, we met with you on it. To hold us hostage because you all want to do this lock with regards to this bridge, when a number of our people have died on that very bridge, is brutally wrong.
The bridge is a rust bucket. People in our community are afraid to cross it. It needs to be either rebuilt or repaired.

0091

Again, economic development. Would any of you want to locate a business here or relocate a business here? I don't think so. Okay?
What if you had a child in school here, and you are at work in the city, and something happens, and they tell you get here right away? Do you think you would be able to make it here in time?
Deauthorize this project. It is too many -- we are fighting too many

73 - The short-term adverse impacts on vehicle traffic are expected to arise during bridge replacement or modification. The most substantial short-term impacts would occur during closure of the Claiborne Avenue Bridge for modifications, which is anticipated to take 4 weeks. A detour route to Florida Avenue would be enacted during this time. Although demolition and construction of a new St. Claude Avenue Bridge would require 10 months, a temporary bridge would be in place to minimize impacts to vehicle traffic. Thus, the duration of anticipated impacts to vehicle traffic would be substantially less than 10 to 15 years required to complete the entire project. Emergency vehicles call bridge operators to notify them of an emergency and bridges are required to remain passable when emergency vehicles are approaching (33 CFR 117.31 “Operation of draw for emergency situations”). This requirement is a part of the US Coast Guard bridge permit for these crossings.

74 - The St. Claude and Claiborne Avenue Bridges are owned and operated by DOTD. Congress appropriated funding to modify or replace the bridges in conjunction with the lock replacement project. However, DOTD remains responsible for the maintenance of these bridges.

75 – Lock construction activity and the availability of deep-draft acces would result in an increase in related businesses along the IHNC and GIWW. An increase in businesses would lead to job development and opportunities, as well as an incentive for local development of retail and commercial businesses to serve the increased number commuters. Both increased job opportunities and increased retail and commercial business could positively affect property values and benefit the local communities over the long-term.

76 - CEMVN recognizes the difficulties associated with bridge operation. Without replacement of the existing lock, vessel traffic would continue in the IHNC, and would still require the operation of bridges. If the existing lock is replaced with the proposed new lock, vessels would be able to move in larger groups through the lock. The new lock could accommodate twice as many vessels as the existing lock. Thus, if vessel traffic continued at current levels, the number of times bridges must be operated could be reduced by up to 50 percent.

battles on too many fronts. And this is one of them that should not be. We don't want it. It is going to affect our recovery. We have been fighting to recover here. The City has not stepped up to the plate to help us. And you all are a thorn in our side, along with the rest of the things, that we have to fight for. Give it up. We don't want it. We are going to fight it.

MR. POCHE:

Next is Burt Lodrine (phonetical).

MR. LODRINE (phonetical):

I am back again, lady and

0092

gents, because my job is not over with. Obviously, it's not going to be over with ever, it looks like.

But I don't know what quote you want me to use, ladies and gents. If you want to -- I am sure they got a lot of religious people in here. If you want to go back to the Bible and use Proverbs 28:1, 29:1, which says, "The wicked flee when no man pursueth."

Or if you want to quote Shakespeare when he said, "Kill all the lawyers."

Or if you want to go back to Roman history when they talked about when Rome was burning, and there was a famous character there. I don't know any people in this room knew about it, but Nero. They talked about Nero fiddling while Rome was burning.

I think we have any number of those comparisons here, ladies and gents. But then again, this is New Orleans, New Orleans all over again. I traveled the entire United States, ladies and gents. And this is really,

really a laughing stock.
I think something needs to be
done. Something needs to be done immediately. Until we wake up, ladies and gents, we will never get anything accomplished.
You know, one thing I question, I have been to this meeting tonight. Last night I was a Dillard University for the master plan for the city charter revision. And then the night before that, I was at 3700 Canal Boulevard.
Tomorrow, ladies and gents, between 3:00 and 4:00, if you want to come see us up operate, I will be at 433 Bolivar Street to stop the demolition of the historical Charity Hospital in this city. That's where I will be, ladies and gents, you know.
But as I said, until we start to become serious in this community, ladies and gents, we are not going to get anything done. And as I said, we are creatures of our behavior, ladies and gents.
And I am leaving with this point. We have seen the Corps of Engineers promise us 50 years we had levee protection. And all we can go on is what someone does yesterday, today and tomorrow. So with that
in mind, we see what you have done in the past. We see what you have done right now with this neighborhood. This is not a neighborhood, ladies and gents. You know what this is, ladies and gents? This is a jungle. This is a jungle. So we know what you're going to make it into into tomorrow. A space mobile or something like that. So you know, just take that under advisement, ladies and

gents.
I question one other thing. Where are the political -- where are the political electees right now, ladies and gents? Either they are at home. Or you know where they are, the others are? They are either in jail, ladies and gents, or on their way to jail. That's where they are.
But they should be here rather than having all of these carpetbaggers and these middle men that you have to pay extra for what they are getting paid for. But that's where they are, ladies and gents.

MR. POCHE:

If you could wrap it up, sir, please.

0095

MR. LODRINE (phonetical):

Absolutely, sir.
I want you to know certainly that it's really been a bittersweet time for me to be here. But, you know, like I said, last night I was at Dillard University. Tonight I am here. And tomorrow if you want to see me in person, I will be at 433 Bolivar Avenue doing the same thing, sir, over and over and over again.
Have a nice night, sir.

MR. POCHE:

Next is Dan Arceneaux.

MS. ARCENEAUX:

My name is Dan Arceneaux. I announced before what I did for St. Bernard Parish. And I would like the people here to know that I was raised on Lesseps and Urquhart Street until I went in the Navy.
I feel like a Ninth Warder. I was raised here. I played football at Holy

Cross with the NORD program when I was ten years old. I learned how to swim in the Industrial Canal behind the locks. And I have always fought for the Lower Ninth Ward, Upper

0096

Ninth Ward. Because back then, all we called it was the Ninth Ward on both sides of the canal. And everybody got along well.

Well, let me read you the, the mercury and aquatic organisms. Tissue samples from five fish and three crabs taken from Bayou Bienvenue Wetland Triangle on July 28th and August 1st, 2007 were tested for total mercury concentrations to assist when the current population of aquatic organism pose a risk to human health. When the consumed -- when consumptive, the species were analyzed for total mercury at the sole plant and risk laboratory of the University of Louisiana Monroe. Total mercury for each piece of -- each specimen was significantly lowered than the health standards, which varies. And, generally, less than 0.7 ug/g, suggesting that mercury concentrations in the Bayou Bienvenue Wetland Triangle do not pose a human health risk. Given the dynamic nature of the population of fish and crabs in Bayou Bienvenue. The Wetland Triangle testing for mercury is warranted.

I said before. The Corps put

0097

out a statement many years ago when the Holy Cross group attacked them, and that's what held the project up for years.

And the reading the Corps had at that time and the reading that the Lake Pontchartrain Basin Foundation had taken with a private firm said that contamination is one

hundred times worse than what the Corps is telling you. So now they want to dump it in Bayou Bienvenue, and we will all be killed from it.

Thank you.

MR. POCHE:

Next is Gale Gettridge Brannon.

MS. BRANNON:

To the Corps, the earth is the Lord's and the fullness thereof.

I have been a resident of the Lower Ninth Ward since 1950. My mother and father had nine children. They fought this in the '50's. We are fighting it now. It's time for a change.

That can't be done. And if you don't know the residents of the Lower Ninth Ward, then be prepared. It won't be done. We

0098

declare it is going to end right now before December the 8th.

Many times we talk, and we don't think things through, and we don't pray things through. We just do. We don't take into consideration what happens to our generations, our children to come, this world to come. And what you are doing is you are displacing a generation of human beings. You are displacing us because you want to force something on us that we don't want.

If you are the man of your house, sir, and you don't want someone to come in to your house and tell you what to do, what is your response? I am sure you are not going to just say, "Wife, let them in."

Well, we are our brother's keepers, and we are going to let you know today, tomorrow, the next week, the next

second, the next year, the next day, this lock cannot go through.

Not only are you displacing a community, you are taking away from our livelihood. Bringing jobs, I have heard it before. You are imposing on us what you are not imposing on the rest of the United States. And that is a simple way to live comfortably. We work for what we have. Nobody gave it to us.

And we are asking you, along with the Port, to look at just more than a dollar. Look at a life. Look at our children. If it doesn't mean anything to you, then I am not talking to the right people. But bring this message back to Washington and to everyone else. What was done in '56 will be undone in 2008 and '9 going forward.

And that is all I have to say to you.

MR. POCHE:

All right. That's our final speaker for tonight. We would like to thank everyone for coming out and providing input for this. And have a good evening. Thank you.

CERTIFICATE OF REPORTER

I, Rebecca T. Fussell, Certified Court Reporter, in and for the State of Louisiana, do hereby certify that the proceedings were

hereinafter set forth in the foregoing pages;

That the proceeding was reported by me in stenographic machine shorthand by Computer Aided Transcription, transcribed by me, and is a true and correct transcript to the best of my ability and understanding.

That I am not of counsel nor related to any person participating in this cause and am in no way interested in the outcome of this event.

This certification is valid only for a transcript accompanied by my original signature and original raised seal on this page.

_____

REBECCA T. FUSSELL, CSR

CERTIFICATE OF REPORTER

I, Rebecca T. Fussell, Certified Court Reporter, in and for the State of Louisiana, do hereby certify that the proceedings were hereinafter set forth in the foregoing pages;

That the proceeding was reported by me in stenographic machine shorthand by Computer Aided Transcription, transcribed by me, and is a true and correct transcript to the best of my ability and understanding.

That I am not of counsel nor related to any person participating in this cause and am in no way interested in the outcome of this event.

This certification is valid only for a transcript accompanied by my original signature and original raised seal on this page.

REBECCA T. FUSSELL, CSR

Supplemental Environmental Impact Statement
Public Comment

Comments: Fix levees. Don't replace the lock. Repair. Use money to build cat 5 protection.

Name Linda Santi **Affiliation** resident

Street [redacted] **Phone** [redacted]

City, St Zip New Orleans, LA, 7017 **Fax**

E-mail [redacted]

Comments must be postmarked by November 25, 2008

Levee repairs and upgrades to the authorized level of flood protection are being addressed through separate projects. Maintenance (i.e., repairs) of the existing lock results in substantial delays to vessel traffic and does not improve the efficiency of the existing lock. The proposed project would reduce the amount of required maintenance and would substantially improve the efficiency of vessel movement through the canal. Lock replacement has been authorized by congress and the Corps is committed to mitigating any impacts resulting from the project. The CEMVN is not authorized to use monies appropriated for lock replacement for other projects.

Supplemental Environmental Impact Statement
Public Comment

Comments: Why not put it above Florida Avenue?
- still below turning basin
- No displacement of homes
- bridges stay open, no traffic
- less noise, and towards industrial
- levees along 9th ward would need to be strengthened for river, but less permeable to hurricanes
- bridges can be replaced without affecting lock

Name Michael Vega **Affiliation** _____

Street _____ **Phone** _____

City, St Zip _____ **Fax** _____

E-mail _____

Comments must be postmarked by November 25, 2008

- Guidewalls required to prevent damage to the lock would likely extend into the turning basin and would be an unsafe obstacle to navigation. Navigation from the GIWW into the IHNC Lock at that location would be difficult for large tows.
- No homes would be displaced as a result of the Recommended Plan.
- The opening and closing of bridges for the passage of vessels between the Mississippi River and the IHNC would still be required, regardless of where the new lock is located within the IHNC. Increased traffic delays resulting from the project are short-term, relatively minor, and occur as a result of bridge replacements.
- Noise impacts from bridge replacement activities, lock demolition and levee and floodwall construction activities would be the same as the Recommended Plan. The new lock would not be within the flood protection levees and would not be visible to the community, except when crossing the IHNC via bridges. This is true regardless of where the lock is located.
- Replacement or modification of the St. Claude and Claiborne bridges would have a similar affect on lock operation regardless of where the lock is located within the IHNC

[Bottlenecks in Indus Canal? I live 2 houses and have never (in last 20 of 30 yrs living here) seen bottlenecks @ St. Claude]

Bottlenecks in Indus Canal? I live 2 houses & have never (in last 20 of 30 yrs) living here seen bottlenecks @ St. Claude

Supplemental Environmental Impact Statement
Public Comment

[… they're …]

Comments: Re: toxic sediments. In saying they're w/i the limits. Did you average the levels like last time to get a reading of low density? Or did you keep it real this time?

[Who in their right minds would want … [… property …]

In saying the project could affect property values - You know it will - negatively. Who in their right minds would want to rent or buy in an area of construction similar to a war zone.

[… toxic waste dump …]

How dare you propose to put a toxic waste dump next to a vital wetland (Bayou Bienvenue) which is in the process of healing thru our own efforts

[… wetland …]

Name Mary Patsy Story **Affiliation** LCNA, CPNC

Street [redacted] **Phone** [redacted]

City, St Zip [redacted] **Fax**

E-mail [redacted]

Comments must be postmarked by November 25, 2008

Traffic congestion at the St. Claude Bridge occurs periodically due to bridge closures to allow vessels to pass. During emergencies, emergency vehicles call bridge operators to notify them of an emergency and bridges are required to remain passable when emergency vehicles are approaching (33 CFR 117.31 "Operation of draw for emergency situations"). This requirement is a part of the U.S. Coast Guard bridge permit for these crossings.

The assessment of impacts to property values assumes there would be a short-term (*i.e.*, duration of construction) adverse impact in areas affected by noise and decreased accessibility. This impact is similar to any large construction project (*e.g.*, road, bridge, flood protection, commercial and retail development). CEMVN is commitment to providing sound protection to affected residences that would minimize the affect of locally increased noise.

The Confined Disposal Facility is located north of Bayou Bienvenue and would not affect the area for which various groups have made wetland restoration proposals. This area is south of Bayou Bienvenue and was historically a freshwater cypress swamp but is now brackish open water. The establishment of wetlands south of Bayou Bienvenue through the beneficial use of dredged material would complement all future restoration efforts in the area. An evaluation of human health risk from the CDF was conducted (Appendix R) and it was determined that there is no threat to human health and safety due to extremely low risk of exposure.

Supplemental Environmental Impact Statement
Public Comment

Comments: EXTEND PUBLIC REVIEW [illegible] PERIOD TO 60 DAYS.

Name [illegible] **Affiliation** ACORN

Street [illegible] **Phone** [illegible]

City, St Zip [illegible] **Fax** _____

E-mail [illegible]

Comments must be postmarked by November 25, 2008

Numerous requests to extend the public comment period were made, and the CEMVN agreed to do so by a period of 60 days ending January 25, 2008.

Corps Reform Network

CORPS REFORM NETWORK
1400 16th St. NW, STE 501
Washington, DC 20036
202-797-6617
www.corpsreform.org

November 12, 2008

Col. Alvin B. Lee
District Engineer
New Orleans District, USACE
7400 Leake Avenue
PO Box 60267
New Orleans, LA 70160

Dear Col Lee,

On behalf of the members of the national Corps Reform Network (CRN), we request a 60-day extension on the public comment period on the draft Supplemental Environmental Impact Statement (Draft SEIS) for the Inner Harbor Navigation Canal Lock Replacement Project. The current deadline is Monday, November 24, and we request at least a 60-day extension, making the comments due no earlier than January 24, 2009.

Considering the draft SEIS, plus all of the Appendices, amount to nearly 2,000 pages of (sometimes very technical) materials, I'm certain that the Corps can understand that the allotted 45-day comment period is an insufficient amount of time for CRN Members, and members of the public, to read, analyze, and provide substantive comments. With insufficient time to comment, the public does not have the opportunity to engage in a meaningful way, which I am sure is not the intent of the Corps.

The Corps Reform Network consists of more than 165 member organizations from around the country that are working together to modernize the policies of the Army Corps of Engineers so it protects and enhances the environment and spends taxpayer dollars responsibly.

Many CRN members in Louisiana and in the Holy Cross Neighborhood simply do not have the resources to complete a thorough and meaningful review of the draft SEIS and all of the Appendices in the 45-day time period provided. Many of our member groups have other full-time jobs, or must raise funds to hire consultants to help review the material, which takes more time than allotted.

We urge the Corps of Engineers to ensure that the public is fully engaged in a meaningful way in this process. To achieve this, it is essential that the Corps provide a reasonable and sufficient amount of time for the public to review and comment on the extensive materials prepared by the agency. Granting a 60-day extension will greatly assist the public in its ability to meaningfully review these materials. As you can see below, the draft SEIS plus all of the appendices total 1,923 pages:

Document	# of Pages
Draft SEIS	220
Appendix A Correspondence	20
Appendix B USFWS NOAA Fisheries Correspondence	26
Appendix C Sediment Analysis Plan	454
Appendix D CIP vs FIP Letter Report	168
Appendix E CDF Conceptual Design Report	202
Appendix F Disposal Alternative Report	104
Appendix G Lock Navigability Study	204

1 - CEMVN extended the comment period on the Draft SEIS for a period of 60 days.

Appendix H 2008 Needs Assessment Report	110
Appendix I CZMA Consistency Determination	26
Appendix J Traffic Analysis Report	94
Appendix K Noise Analysis	80
Appendix L Air Quality Analysis	22
Appendix M Wetland Value Assessment	34
Appendix N FWCA Report	36
Appendix O 2008 Economic Analysis	38
Appendix P Scoping Meeting Report	8
Appendix Q 404(b)(1)	72
Appendix R Screening Level Human Health	14
Total	**1,923 Pages**

Public involvement is a cornerstone of NEPA, and the implementing regulations require agencies with various regulatory provisions to inform the public, involve the public, and provide opportunities for public input. See, e.g., 40 C.F.R. §§ 1500.2(d), 1501.4, 1506.6. While the statute and regulations do not prescribe a particular length or scope for public comment on environmental assessments, courts have found that extremely brief comment periods do not provide for meaningful public comment, in violation of NEPA, and can form the basis for injunctive relief and/or remand.

We appreciate your consideration of this request and look forward to a prompt reply. The service that Corps provides to this country is unrivaled by any other federal agency. The opportunity for meaningful public engagement during this critical phase of this project will help ensure that those affected the most by this project - the local communities - will have a voice in shaping the Corp's service to fit the needs of the community.

We look forward to your response by fax (202) 797-6697, email sorvalisg@nwf.org, or mail.

Sincerely,

Melissa Samet
Co-Chair, Corps Reform Network
Senior Director Water Resources, American River

Cynthia Sarthou
Co-Chair, Corps Reform Network
Executive Director, Gulf Restoration Network

Cc: BG Michael J. Walsh, Commander, MNRG Co-Chair, Mississippi River Valley Division, U.S. Army Corps of Engineers

Mr. Richard Boe U.S. Army Corps of Engineers (PM-RP)

United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
P. O. Office Box 26567 (MC-9)
Albuquerque, New Mexico 87125-6567

TAKE PRIDE IN AMERICA

ER 08/1059
File 9043.1

November 14, 2008

Richard Boe
New Orleans District
U.S. Army Corps of Engineers (PM-RP)
PO Box 60267
New Orleans, Louisiana 70160-0267

Subject: NO COMMENT – Draft Supplemental Environmental Impact Statement (DSEIS) for the Inner Harbor Navigation Canal (IHNC) Lock Replacement Project, Orleans Parish, LA

Dear Mr. Boe:

The U.S. Department of the Interior has reviewed the subject DSEIS. In this regard, we have NO COMMENT.

Thank you for the opportunity to review this document.

Sincerely,

Stephen R. Spencer
Regional Environmental Officer

1 - Your comment has been noted, and CEMVN is committed to continuing coordination with the Department of Interior. You will be notified if any cultural or historical sites are discovered during the implementation of the project.

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PORT OF NEW ORLEANS

Gary P. LaGrange, PPM
President and Chief
Executive Officer

November 14, 2008

Mr. Richard Boe
U. S. Army Corps of Engineers (PM-RP)
P.O. Box 60267
New Orleans, Louisiana 70160-0267

Subject: Comment on the Draft Supplemental Environmental Impact Statement
For the Inner Harbor Navigation Canal Lock Replacement Project
Orleans Parish, Louisiana

Dear Mr. Boe:

The Board of Commissioners of the Port of New Orleans welcomes the opportunity to provide its comments on the Draft SEIS for the IHNC Lock Replacement Project.

The IHNC Lock was constructed in 1923, 85 years ago. It was a worthy project for its time, but the lock was designed to serve vessels of a previous era and to have a useful life of 40 years. The existing lock is obsolete, inefficient and living on borrowed time, as is manifested in the long and costly delays that routinely happen when tows have to be broken to transit the lock or when the lock breaks down or requires maintenance. The lock replacement project was authorized in 1956. It's taken a very long time to get this project moving.

The IHNC lock is a vital part of the Nation's transportation system. Why else would 20 million tons of industrial cargo move through such a deficient facility each year if it wasn't necessary? The lock is essential both to the Nation's transportation and to the viability of the City's only substantial industrial acreage. The lock generates national jobs and local jobs.

Modernizing the lock gives us the opportunity to improve waterborne access and economic prospects, not just for the Port of New Orleans, but for the City of New Orleans and for the industries that move goods along the Gulf Coast. We all pay the price of outdated transportation infrastructure. Everything we buy has transportation costs built into the price. Bottlenecks such as the IHNC lock make transportation cost more, and therefore make goods cost more.

The maritime transportation sector is one of the vital industries that the local economy is built upon. Even after the impacts of Hurricane Katrina, the port industry remains one of this city's most reliable sources of jobs.

More than 45 companies are located along the Inner Harbor Navigation Canal. These include port terminal operators, ship building and repair companies, warehouse and distribution companies,

1 - Your comment has been noted.

coffee roasters, truck depots, basic materials, cement and oil field equipment firms and steel distributors. These companies employ thousands of workers. We must make sure they have reliable transportation access, which is the reason they located here in the first place.

The lock replacement project also gives us an opportunity to upgrade the infrastructure around the lock. The project would replace the St. Claude Avenue bridge, which was built in the 1920s. The project would also make improvements to the Claiborne Avenue Bridge.

Since this project was authorized in 1956, it has been refined many times in order to reduce the negative impacts on the surrounding neighborhoods and to accentuate the positive benefits to the community. The original plan called for the displacement of 223 homes. With citizen input, the project was redesigned so that no homes will be displaced.

The lock was designed to be built offsite and floated into position to reduce the impact of construction noise on the adjacent community. A temporary bridge will be built to eliminate traffic disruption during the reconstruction of the St. Claude Avenue Bridge. And an unprecedented $43 million community mitigation program was put into place to offset the impacts of the project.

The Corps has taken historic steps to work with the community to ensure that this project is mutually beneficial for the community and for navigation interests. But there are a handful of people who will continue to fight the lock no matter what accommodations are made. Everyone cannot be satisfied, but we hope that a few people aren't allowed to derail the many positive aspects of this project for our City.

The Port of New Orleans is committed to sustainable development, and we have been pleased to work with the Corps as the project's local sponsor to engage the community and improve the project. We are New Orleanians, and we want to be a positive force for change in our region. We can't afford to keep delaying a project that has been on the books since 1956.

It's time to build a new lock on the Inner Harbor Navigation Canal.

Sincerely,

Gary P. LaGrange, PPM

GPL/crp

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

NOV

Mr. Richard Boe
U.S. Army Corps of Engineers
New Orleans District
P.O. Box 60267
New Orleans, Louisiana 70160-0267

Dear Mr. Boe:

In accordance with our responsibilities under Section 309 of the Clean Air Act, 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 (DEIS) for the Inner Harbor Navigation Canal (lHNC) Lock Replacement project. This environmental document supplements the environmental impacts assessment information as it appeared in the original Final EIS for this project that was prepared in 1997 and was entitled Mississippi River-Gulf Outlet, New Lock and Connecting Channels.

EPA rates the DEIS as "**EC-2.**" i e., EPA has "**Environmental Concerns and Requests Additional Information in the Final Supplemental EIS (FSEIS).**" EPA has identified environmental concerns and informational needs to be included in the FSEIS to complement and to more fully insure compliance with the requirements of NEPA and the CEQ regulations and the Clean Water Act. Areas requiring additional information or clarification include: information needed to demonstrate compliance with applicable laws and regulations pertaining to mitigation

Our classification will be published in the Federal Register according to our responsibility under Section 309 of the Clean Air Act to inform the public of our views on proposed Federal actions. Detailed comments are enclosed with this letter, which more clearly identify our concerns and the informational needs requested for incorporation into the FSEIS.

EPA appreciates the opportunity to review the DSEIS. If you have any questions, please contact Mike Jansky of my staff at 214-665-7451 or e-mail him at jansky.michael@epa.gov for assistance. Please send our office five copies of the FSEIS when it is sent to the Office of Federal Activities, EPA (Mail Code 2252A), Ariel Rios Building, 1200 Pennsylvania Ave, N.W., Washington, D.C. 20460

Sincerely yours,

Cathy Gilmore, Chief
Office of Planning and
Coordination (6EN-XP)

Enclosure

DETAILED COMMENTS
ON THE
DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT
FOR THE
INNER HARBOR NAVIGATION CANNAL LOCK REPLACEMENT PROJECT

Additional Information Needed to Demonstrate Compliance with Applicable Laws and Regulations Pertaining to Mitigation:

The Inner Harbor Navigation Canal Lock Replacement Project Draft SEIS (DSEIS) does not contain sufficient information to support a determination of compliance with the Clean Water Act (CWA) Section 404(b)(1) Guidelines and Section 2036 of the Water Resources Development Act (WRDA) of 2007, specifically with respect to compensatory mitigation for wetland impacts. The DSEIS provides only a conceptual discussion of a tentative plan to compensate for wetland impacts:

"Wetland impacts would be mitigated by using dredged material suitable for estuarine disposal to create 85 acres of wetlands between Bayou Bienvenue and Florida Avenue. However, available dilution in the mitigation site and Bayou Bienvenue is insufficient to meet applicable water quality criteria and a waiver would be required for discharge to Bayou Bienvenue. If a waiver could not be obtained either effluent would be handled differently or an alternative mitigation site would be chosen for wetland restoration." (DSEIS, Table 1-1)

1 - A wetland mitigation plan has been developed and included in the Final SEIS. The plan, located in Appendix M, includes a detailed conceptual design for the establishment of a salt marsh community. The Draft SEIS reiterates CEMVN's commitment to identify suitable means for handling effluent or using alternative sites for mitigation in the discussion of impacts to coastal wetlands (Section 5.3.1.8). Alternative means for handling effluent include discharge to the GIWW or Mississippi River. If an alternative site is required, mitigation for this project could be combined with ongoing efforts to create large mitigation sites with greater ecological and economic benefits.

Section 2036 of the Water Resources Development Act (WRDA) of 2007 requires that water resources projects comply "…with the mitigation standards and policies established pursuant to the regulatory programs administered by the Secretary." However, the DSEIS does not address the joint Environmental Protection Agency/Department of the Army final rule on compensatory mitigation for losses of aquatic resources, issued April 10, 2008. This rule amends the CWA Section 404(b)(1) Guidelines to include a range of requirements pertaining to compensatory mitigation. The rule requires, for example, the development of a mitigation plan, which includes information pertaining objectives, site selection, site protection, the work plan, performance standards, monitoring, and other key components of a successful mitigation effort. WRDA Section 2036 also requires development of a mitigation plan with similar components.

2 - A wetland mitigation plan has been developed and included in the Final SEIS. The plan, located in Appendix M, includes a detailed conceptual design for the establishment of a salt marsh community and provides the information necessary for compliance with WRDA.

Moreover, both the final rule and WRDA 07 contain potentially applicable provisions regarding the consideration of compensatory mitigation banks. As noted above, the DSEIS provides only limited and conceptual information on the proposed compensatory mitigation. There is no indication in the DSEIS that the Corps of Engineers intends to comply with the aforementioned mitigation rule and the associated provisions in WRDA 07.

3 - The CEMVN is committed to mitigating impacts to wetlands resulting from the project. The need for mitigation and a conceptual discussion of the location and methods for mitigation are provided in the Draft SEIS. A more detailed mitigation plan has been developed and included in the Final SEIS.

These concerns and information requirements must be addressed and incorporated into the Final SEIS. For assistance in addressing these concerns or questions pertaining to the above, please contact Mr. John Ettinger of the EPA by phone at (504) 862 1119 or by e-mail at ettinger.john@epa.gov.

BOBBY JINDAL
GOVERNOR

State of Louisiana
DEPARTMENT OF WILDLIFE & FISHERIES

ROBERT J. BARHAM
SECRETARY

November 17, 2008

Jim Rives, Administrator
Louisiana Department of Natural Resources
Coastal Management Division
P.O. Box 44487
Baton Rouge, LA 70804-4487

RE: *Consistency Number: C20080527*
Applicant: COE-NOD
Notice Date: October 14, 2008

Dear Mr. Rives:

The professional staff of the Louisiana Department of Wildlife and Fisheries (LDWF) has reviewed the public notice referenced above. The following recommendations have been provided by the appropriate biologist(s):

> LDWF supports the use of dredged material for creation of marsh to enhance fish and wildlife habitat at the currently proposed spoil areas. Once marsh creation areas have dewatered and vegetated, all containment features should be breached or degraded, if necessary to restore tidal connectivity. This created marsh should be monitored throughout its life, to evaluate the benefits.

> LDWF also recommends that the 1.2 million cubic yards of material being dispersed in the Mississippi River at the River Site be used beneficially to create/restore emergent marsh in the vicinity of the project. LDWF is willing to work with the COE-NOD to identify appropriate spoil placement areas.

The Louisiana Department of Wildlife and Fisheries appreciates the opportunity to review and provide recommendations to you regarding this proposed activity. Please do not hesitate to contact LDWF Permits Coordinator Dave Butler at 225-763-3595 should you need further assistance.

Sincerely,

for

Philip E. Bowman
Biologist Division Administrator

cd/hf

c: Chris Davis: Biologist
Heather Finley, Biologist Program Manager

1 - A wetland mitigation plan has been developed and included in the Final SEIS. The plan, located in Appendix M, includes the details of a conceptual design for the establishment of a salt marsh community, including the restoration of tidal connectivity and a monitoring plan.

2 - CEMVN recognizes the potential to beneficially create wetlands with the material proposed for disposal in the Mississippi River. However, chemical and biological tests performed on sediments proposed for discharge into the Mississippi River suggest that this material is not suitable for placement at the mitigation site or other areas of emergent marsh in the vicinity of the project. A marsh creation or beneficial use alternative for sediments proposed for discharge in the Mississippi River would not be compliant with the Clean Water Act without approval by the LA Department of Environmental Quality and Environmental Protection Agency.

BOBBY JINDAL
GOVERNOR

STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
P.O. Box 94245
Baton Rouge, Louisiana 70804-9245
www.dotd.la.gov

WILLIAM D. ANKNER, Ph.D.
SECRETARY

November 18, 2008

Mr. Richard Boe
U.S. Army Corps of Engineers (PM-RP)
P.O. Box 60267
New Orleans, Louisiana 70160-0267

Re: Supplemental Environmental Impact Statement
Inner Harbor Navigation Canal Lock Replacement Project
Orleans Parish, Louisiana

Dear Mr. Boe:

The Louisiana Department of Transportation and Development, Office of Public Works, Hurricane Flood Protection and Intermodal Transportation, supports the replacement of the Inner Harbor Navigation Canal Lock Project. This lock is over 80 years old and in desperate need of replacement. Parts for the existing lock cannot be obtained and need to be manufactured. The New Orleans District Corps of Engineers has done a remarkable job in keeping the lock functioning all these years.

With the imminent closure of the Mississippi River Gulf Outlet, the barge industry will no longer have an alternate route around the Inner Harbor Navigation Canal Lock when it is out of commission for scheduled repairs or break downs. This will impact the nation as the traffic along the Gulf Intracoastal Waterway is over 122.6 million tons per year.

The Inner Harbor Navigation Canal Lock needs replacing as soon as possible and we support going forward to construction at the full capability of the Corps.

Thank you for offering us the opportunity to comment.

Sincerely,

Edmond J. Preau, Jr., P.E.
Acting Secretary
Public Works, Hurricane Flood Protection
and Intermodal Transportation

1 - Your comment has been noted, and CEMVN is committed to continuing coordination with the Louisiana Department of Transportation and Development.

STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
P.O. Box 94245
Baton Rouge, Louisiana 70804-9245
www.dotd.la.gov
225-379-1200

BOBBY JINDAL
GOVERNOR

WILLIAM D. ANKNER, Ph.D.
SECRETARY

November 18, 2008

Mr. Richard Boe
U. S. Army Corps of Engineers (PM-RP)
P.O. Box 60267
New Orleans, LA 70160-267

Subject: **Draft (SEIS) Supplemental Environmental Impact Statement Comments**

Dear Mr. Boe:

The Draft SEIS prepared for the Inner Harbor Navigational Canal (IHNC) lock replacement project has been posted for review and comment. This project directly affects DOTD facilities on Claiborne Avenue (La Highway 39) and indirectly affects a DOTD project for the proposed Florida Avenue Bridge. The following comments and recommendations are submitted in this regard.

1. The proposed Florida Avenue Bridge will not likely be constructed with its current scope due to funding constraints. The SEIS was revised to now appropriately show that the proposed Florida Avenue Bridge will not likely be constructed prior to the lock project. The Traffic Impact Analysis prepared by the Regional Planning Commission (RPC), page 38, recommends construction of the proposed Florida Avenue Bridge prior to any closures at Claiborne Avenue or St. Claude Avenue to mitigate the impact to vehicular traffic in this corridor. This inconsistency should be resolved.

1 - Regional Planning Commission's recommendation as a possible mitigation measure is not inconsistent with the findings in the SEIS. The construction of a high level bridge at Florida Avenue would be one potential measure to mitigate for impacts caused by temporary bridge closures. CEMVN understands that although the Florida Avenue bridge project is on hold, it has not been cancelled. If funding becomes available before CEMVN's bridge replacement activities, DOTD may have the opportunity to construct the Florida Avenue Bridge. Therefore, it is still one of many possible mitigation measures for temporary bridge closure impacts.

2. The SEIS indicates that closure of the Claiborne Avenue Bridge for modifications will not have a major impact on vehicular traffic due to the large decrease in traffic since 2005. Traffic was reduced due to the loss of population; however, the lock project schedule calls for closure of the Claiborne Avenue Bridge no earlier than December 2014. Do traffic projections still show significant reduced traffic volumes in 2014 to support the assumption that the existing Florida Avenue (two lanes) and the St. Claude Avenue Bridge (four lanes) can satisfactorily handle all traffic in this corridor? It should be noted that both the existing Florida Avenue and the St. Claude Avenue Bridges are low-level movable bridges which must open for all navigation traffic in the IHNC.

2 - Yes; Regional Planning Commission modeled the bridge closures in the year 2014 and found that with the appropriate detours as mitigation, that the existing St. Claude Avenue and Florida Avenue Bridges can satisfactorily handle traffic in this corridor.

3. The SEIS states that the post-lock water level under the Claiborne Avenue Bridge will increase by as much as 10 feet due to fluctuations in the level of the Mississippi River. As the SEIS indicated that the profile grade line of the new Claiborne Avenue lift span will be unchanged, it can be anticipated that the number of navigation openings for the Claiborne Avenue Bridge will be increased. The increased openings will result in additional delays to vehicular traffic on Claiborne Avenue which is the main highway between St. Bernard Parish and New Orleans. This will amplify what is now the single-most significant vehicular traffic problem in the area – namely, the incessant delays resulting from frequent openings of all of the movable bridges across the canal. The SEIS further indicates an increase in post-lock navigation; however, no data is provided which would indicate the number of additional openings anticipated for the Claiborne Avenue Bridge. It is the position of DOTD that COE is, at a minimum, responsible for providing at least the same navigation clearance under the post-lock Claiborne Avenue Bridge as exist pre-lock. This would require raising the bridge by at least 10 feet, including the approach bridge, instead of simply replacing the lift span only.

3 - CEMVN recognizes that the Claiborne Avenue Bridge in the closed position will be influenced by Mississippi River stages as compared to Lake Pontchartrain stages with the replacement lock located north of Claiborne Avenue. Design refinements to the replacement Claiborne Avenue Bridge (variable depth Warren Truss and an orthotropic deck) have been proposed that provide an additional 4 feet of clearance. River design stages are rarely encountered and river levels are typically low enough that the net effect is a negligible loss of vertical clearance (2.5 feet or less) for 70 percent of the year. Furthermore, the new lock would be capable of accepting larger and more tows in a single lockage, reducing the frequency of waterborne traffic passing beneath the Claiborne Avenue Bridge to enter the lock. Design considerations and fewer lockages because of the larger lock size would result in fewer bridge openings.

4. The three existing bridges over the IHNC are Florida Avenue, Claiborne Avenue and St. Claude Avenue. All three bridges are movable bridges with two of the three being low-level bridges. The Claiborne Avenue Bridge, which is on a State route serving a major traffic corridor, is a mid-level movable bridge providing 40 feet of vertical clearance in the closed position. Bridge openings are a major detriment to efficient movement of vehicular in this corridor. Given the extremely high cost of infrastructure improvements of this nature, it is recommended that COE and DOTD perform a joint study to determine the most beneficial and economical bridge crossing that will meet the needs of both the community and the lock project, including the option of a fixed high-level bridge along Claiborne Avenue.

4 - CEMVN has conducted several studies of bridge alternatives at both the Claiborne and St. Claude Avenue Bridges. A fixed high-rise bridge along Claiborne Avenue was evaluated and it was determined to have significant impacts to residences, businesses and aesthetics along the Claiborne Avenue corridor, would disrupt community cohesion and have right-of-way expansion implications. CEMVN did not believe that these significant impacts to the community were warranted because vehicular traffic would not be substantially changed by a replacement movable mid-level bridge and a larger lock which is able to accommodate more vessels in each lockage.

If you have further questions on our comments, please contact Mr. Paul Fossier at (225) 379-1323 for further assistance.

Sincerely,

Williams D. Ankner, Ph. D.
Secretary

c: Mr. Walter R. Brooks
New Orleans Regional Planning Commission

ALABAMA-COUSHATTA TRIBE OF TEXAS
571 State Park Rd 56 • Livingston, Texas 77351 • (936) 563-1100

November 19, 2008

Mr. Richard Boe
U.S. Department of the Army
New Orleans District, Corps of Engineers
P.O. Box 60267
New Orleans, LA 70160-0267

Dear Mr. Boe:

On behalf of Chief Oscola Clayton Sylestine and the Alabama-Coushatta Tribe, our appreciation is expressed on your agencies efforts to consult us concerning the draft supplemental environmental statement (EIS) for the Inner Harbor Navigation Canal.

Our Tribe maintains ancestral associations within the state of Louisiana despite the absence of written records to completely identify Tribal activities, villages, trails, or grave sites. Nevertheless, it is our objective to ensure any significances of Native American ancestry including the Alabama-Coushatta Tribe are administered with the utmost attention.

Upon reviewing your October 6, 2008 information summary and draft EIS submitted to this office, we have no objections to the proceeding of this proposal. Impacts to religious, cultural, or historic properties of the Alabama-Coushatta Tribe appear to be minimal if at all despite the location being in proximity to migratory routes utilized by the Alabamas and Coushattas in the late 1700s and early 1800s.

In the event of inadvertent discovery of human remains and/or archaeological artifacts, activity in proximity to the location must cease and appropriate authorities, including this office, notified without delay. Should you be in need of additional assistance, please do not hesitate to contact us.

Respectfully submitted,

Bryant J. Celestine
Historic Preservation Officer

[illegible] 1181 celestine.bryant@actribe.org Fax: 936 563 1183

1 - Your comment has been noted, and CEMVN is committed to continuing coordination with the Alabama-Coushatta Tribe of Texas. The Tribe will be notified if any cultural or historical sites are discovered during the implementation of the project.

LAFAYETTE COLLEGE

Department of Civil & Environmental Engineering
Acopian Engineering Center
Easton, Pennsylvania 18042-1775

Telephone: 610-330-5437
E-Mail: civileng@lafayette.edu
FAX: 610-330-5059

December 16, 2008

District Engineer
U.S. Army Corps of Engineers
Box 60267
New Orleans, LA 70160-0267

To the Engineer:

Having worked on numerous port projects and co-authored the port planning chapter in the American Society of Civil Engineers' *Urban Planning Guide*, I was disappointed by the lack of serious analysis in the draft Supplemental Environmental Impact Statement for the Inner Harbor Navigation Canal Lock Replacement Project. The draft EIS provides an explicit record of the political factors which resulted in the Corps of Engineers' recommendation of the IHNC site, reflecting the lack of political and economic influence in the Lower 9th Ward. The recommended plan goes beyond the scope of the lock replacement project, does not maximize National Economic Development benefits, and would severely disrupt the L9W and continue its history of unjust treatment as an inferior neighborhood, isolated from the rest of New Orleans by the Industrial Canal.

More specifically, the recommendation to deepen the IHNC is not necessary for replacement of the lock, is not justified economically, and would have major potential adverse environmental and socio-economic impacts on the L9W community. In addition to the necessity of disturbing contaminated material during dredging and removal operations, the recommendation that such material be disposed of in Bayou Bienvenue reflects a lack of sensitivity to well-justified community concerns over the possibility of another levee failure in that area, with the potential devastating impact of contaminated material being released into the surrounding environment. During construction of the replacement lock, the L9W will be effectively isolated from the rest of New Orleans for extended periods.

In the final EIS, the Corps should reverse its recommendation to locate the lock replacement in the IHNC. Failing that, the recommendation to deepen the IHNC should be reconsidered, and significant funds should be provided to the L9W community for remediation of the likely adverse environmental and socio-economic impacts of the proposed project.

Sincerely,

David Veshosky

David Veshosky, Ph.D.
Associate Professor

1 - Environmental Justice issues have been considered since the initial planning of the IHNC Lock. Because of the potential impacts of the recommended plan on the adjacent neighborhoods, which include minority and disadvantaged people, CEMVN has implemented a large-scale community mitigation program. CEMVN has allocated $43 million to the Community Based Mitigation Program, which would be spent to improve living conditions in the local communities. Through recommendations provided by the Community Based Mitigation Committee, improved bridges, roads, lighting and traffic signals; long-term measures to benefit aesthetics; increased recreational opportunities; and an already implemented housing improvement program and vacant lot cleanup program, in conjunction with future community improvements would all positively influence living conditions and subsequently result in increased property values in the long-term.

2 - With the closure of the MRGO from mile 60 on the south bank of the GIWW to the Gulf of Mexico, there will be no route for deep-draft vessels to service existing and future industries on the IHNC. Based on trends in deep-draft traffic following Hurricane Katrina, the cost benefit analysis assumes that the benefits of the recommended plan to deep-draft traffic would be non-existent. Although demand for this service is currently low and does not lead to the assumption that discernable benefits would be gained in an economic analysis, it is anticipated by the Port that demand would increase at some point in the future if a deep-draft lock is built. Prior to Hurricane Katrina, deep-draft vessels utilized the MRGO to reach Port facilities in the IHNC; with the closure of the MRGO, the Port anticipates those deep-draft vessels would instead utilize the new lock to reach those same Port facilities. Replacement of the lock with a shallow-draft only lock would result in environmental and socioeconomic impacts similar to those resulting from the proposed deep-draft lock. The disposal of contaminated sediments, replacement and modification of bridges, and increased noise would occur regardless of the size of the replacement lock. Further, the deep-draft lock is authorized by the Congress as described in the WRDA of 1986.

3 - All dredged material disposal plans are subject to review by the U.S. Environmental Protection Agency and the Louisiana Department of Environmental Quality. No dredged material placement is proposed for Bayou Bienvenue. All dredged material determined to be unsuitable for open water disposal would be placed into a confined disposal facility north of Bayou Bienvenue. Additionally, no effluent from the confined disposal facility would be discharged into Bayou Bienvenue.

Once the CDF is dewatered and capped, the potential for storm surge or flooding to expose contaminated sediments would not be greater than all other upland areas in the metropolitan New Orleans area. If the CDF is flooded before the contaminated dredged material is dewatered and capped, there is a potential for some of the material to escape the CDF. However, the volume of material which would be exposed to mixing with floodwaters (i.e., the uppermost layer of the CDF) would be minimal in relation to the volume of water and potential mixing that would occur. The concentration of contaminants in eroded CDF material is expected to be lower than in situ concentrations due to dilution and therefore lower than conservative levels considered safe for human exposure (RECAP Screening Standards non-industrial) once into consolidates and dries outside the CDF. Furthermore, the CDF would receive the same level of hurricane and storm damage risk reduction as the rest of the greater New Orleans area, and will have the 100-year level of risk reduction upon completion of the surge barriers at the intersection of the IHNC and Lake Pontchartrain and across the GIWW and MRGO as described in Individual Environmental Report #11.

Effluent from the wetland mitigation restoration in the triangular-shaped area south of Bayou Bienvenue would ultimately be discharged into Bayou Bienvenue. The results from the elutriate toxicity tests presented in Appendix C indicate lack of adverse effects to water column organisms. Therefore, the waiver for WQS is warranted.

4 - The most substantial short-term impacts would occur during closure of the Claiborne Avenue Bridge for modifications, which is anticipated to take 4 weeks. A detour route to Florida Avenue would be enacted during this time. Appendix J of the SEIS on pages 19 to 28 discusses the options being considered for detours and construction routes. Although demolition and construction of a new St. Claude Avenue Bridge would require 10 months, a temporary bridge would be in place to minimize impacts to vehicle traffic.

During emergencies, emergency vehicles call bridge operators to notify them of an emergency and bridges are required to remain passable when emergency vehicles are approaching (33 CFR 117.31 "Operation of draw for emergency situations"). This requirement is a part of the U.S. Coast Guard bridge permit for these crossings.

It is highly unlikely that all three bridges would be open at the same time under any circumstance. Florida Avenue is north of the proposed new lock location and the Claiborne and St. Claude Avenue Bridges are south of the new lock location. Vessels entering and exiting the lock would only need bridges on one side or the other to be open for passage at any one time.

January 9, 2009

Colonel Alvin Lee:

Since the date for public comment regarding the Corps intention to widen then Industrial Canal has been extended, we would like to take advantage of this opportunity to do so.

We are residents of the Lower 9th Ward and share the sentiments of practically ALL the residents here regarding this project. Those would be: DON'T DO IT.

I'm including a copy of remarks contributed by Joshua Lewis made before a community meeting with the Corps on November 12, 2008. These words echo our thoughts completely. Don't subject our neighborhood to these perils again, or take away our historic pride, nor use our taxpayer's dollars to such a wasteful, dangerous and ill-advised project.

Respectfully submitted,

Marna David

J.W. Tatum Jr.

Marna David

JW Tatum Jr.

THE CORPS OF ENGINEERS IS INSISTING THAT THE INDUSTRIAL CANAL LOCK NEEDS REPLACING BECAUSE IT'S AN ANTIQUE. THE REAL ANTIQUE HOWEVER, IS THE CORPS' WAY OF THINKING AND DOING BUSINESS. THE LOCK PROJECT IS A RELIC OF 19TH AND 20TH CENTURY THINKING. IT IS A PIECE OF THE SO-CALLED "INNER HARBOR" COMPLEX - A PROJECT CONCEIVED AROUND 1900 TO MOVE PORT FACILITIES OFF THE RIVERFRONT AND INTO INLAND CANALS WHERE PRIVATE INDUSTRY COULD LEASE SPACE. THE INDUSTRIAL CANAL WAS THE FIRST COMPONENT OF THIS PROJECT. OTHER COMPONENTS OF THIS EXPANSIVE PLAN INCLUDED THE FRUITLESS INDUSTRIAL DEVELOPMENT IN NEW ORLEANS EAST, THE FAILED VIOLET CANAL AND LOCK IN ST. BERNARD PARISH, AND THE INFAMOUS MISSISSIPPI RIVER-GULF OUTLET.

THE INNER HARBOR PLAN HAS BEEN A COMPLETE FAILURE. IN TERMS OF SOCIAL, ECONOMIC, AND ENVIRONMENTAL COSTS, THE RECORD IS CLEAR: THE INNER HARBOR HAS BROUGHT NOTHING BUT HARDSHIP FOR THE AREAS BELOW THE INDUSTRIAL CANAL. THE INDUSTRIAL CANAL AND MR-GO HAVE FLOODED THE LOWER NINTH WARD AND ST. BERNARD MULTIPLE TIMES, DECIMATING THE COMMUNITY'S HOUSING STOCK, KILLING ITS RESIDENTS, DESTROYING ITS NATURAL ECOSYSTEMS, AND STYMIEING THE ECONOMIC DEVELOPMENT THIS AREA HAS LONG SOUGHT. THE MR-GO IS RECOGNIZED ACROSS THE NATION AS A GRIEVOUS ALLOCATION OF FEDERAL RESOURCES AND AN ENVIRONMENTAL AND HUMANITARIAN DISASTER. THE NEW LOCK WILL NOT ERASE THIS TRAGIC LEGACY; IT MERELY REPRESENTS A CONTINUATION OF IT.

THE NEW LOCK WAS AUTHORIZED BY THE SAME PIECE OF LEGISLATION THAT BROUGHT US THE MR-GO, BACK IN 1956. DUE TO ITS ECONOMIC SHORTCOMINGS AND ITS THREAT TO THE WETLANDS, CONGRESS HAS DEAUTHORIZED THE MR-GO. THE FLOW OF COMMERCE IS SHIFTING BACK TO THE RIVERFRONT. IN FACT, THE PORT OF NEW ORLEANS ABANDONED ITS MASTER PLAN FOR THE INNER HARBOR, CALLED CENTROPORT, IN THE 1980S. THE CLOSURE OF THE MR-GO IS THE NAIL IN THE COFFIN OF THE INNER HARBOR EXPERIMENT. ASKING FOR $1.3 BILLION IN TAXPAYER MONEY IN A DEVELOPMENT SCHEME THAT HAS PROVED DEVASTATING IS ABSOLUTELY DISGRACEFUL. IT IS TIME TO TURN THE PAGE AND INVEST IN INNOVATIVE TECHNOLOGIES THAT CAN MAKE OUR RIVERFRONT FACILITIES THE BEST IN THE WORLD. THIS TREND IS CLEAR TO MOST OBSERVERS, BUT THE CORPS REFUSES TO READ THE WRITING ON THE WALL.

NEW ORLEANIANS HAVE LONG BORNE THE BRUNT OF THE "UNFORESEEN IMPACTS" OF THE INNER HARBOR DEVELOPMENT. FOR YEARS, WE'VE BEEN CLEANING UP MESSES THAT THE CORPS HAS CREATED. NOW, THE CORPS DEMANDS THAT THE COMMUNITY SUFFER THESE IMPACTS AGAIN: TRAFFIC JAMS, BRIDGE CLOSINGS, CLAMOROUS NOISE, TOXIC SEDIMENTS IN OUR FRAGILE WETLANDS, POTENTIAL LEVEE PROBLEMS, AND ANY NUMBER OF HAZARDS THAT

1 - Impacts on vehicular transportation from the action alternatives were provided in Section 5.3.12 of the Draft SEIS. The Claiborne Avenue Bridge would be closed for 28 days to replace the lift span and raise the bridge towers. A temporary bridge would allow for normal traffic flow during the St. Claude Avenue Bridge replacement. Numerous mitigation measures have been included to reduce the level of impacts on vehicular transportation. These include: 1) Specific routes designated for construction-related traffic; 2) Appropriate detour signs and signals to maintain access to local streets. Intersections where detours would be required would be improved, such as at Florida Avenue and Alvar Street; 3) Offsite parking areas for construction workers would be provided on the east and west sides of the IHNC. Shuttle vans would transport workers to and from construction areas; 4) Traffic signals would be synchronized in the vicinity of the IHNC and no less than four computerized message boards would be provided to direct traffic flow; 5) An incident management plan would provide for a police detail and two tow trucks to stand-by during rush hours (7 am to 9 am and 4 pm to 6 pm) for accident and vehicle breakdown response during bridge construction activities. During emergencies, emergency vehicles call bridge operators to notify them of an emergency and bridges are required to remain passable when emergency vehicles are approaching (33 CFR 117.31 "Operation of draw for emergency situations"). ; 6) A rail line would be included on the new St. Claude Avenue Bridge and approach ramps to be compatible with the Regional Transit Authority's (RTA) long-term plan to implement streetcar service along the Desire route; 7) a program of street resurfacing and drainage improvements would be implemented on both sides of the IHNC; and, 8) Detours would be provided during the St. Claude Avenue and Claiborne Avenue bridge construction. Detours connecting Patricia Street to Florida Avenue via Angela Street and to Florida Avenue via Tupelo Street and Caffin Avenue would be provided.

2 - Noise impacts from the action alternatives were described in Section 5.3.15. Noise impacts would be short-term and would be a result of increased vehicular traffic, including construction vehicles, and pile driving. The affected portions of the community would be limited to areas adjacent to roads experiencing increased traffic and to industrial and residential areas within a few blocks of the canal between Florida and N. Claiborne Avenues. Mitigation measures to reduce the level of noise-related impacts to the community have been developed and include: 1) Contract specifications would limit noise to certain levels at specified distances from the construction sites; 2) Contract specifications would require monitoring of noise levels to verify adherence to contract specifications; 3) Contract specifications would use pile driving equipment designed to minimize noise levels; 4) Specific routes would be designated for construction-related traffic to avoid residential areas. Staging areas would be located away from heavily populated areas; 5) Occupied residential and commercial structures located within areas exposed to unacceptable noise levels would be modified to reduce noise levels inside of structures; 6) Pile driving and heavy truck hauling would be restricted to daylight hours, not to exceed 10 hours per day; 7) Pile driving for the new St. Claude Avenue Bridge would be done during summer to avoid impacts to school children; and, 8) Residents located immediately adjacent to high noise activities, especially pile driving, would be compensated if they choose to temporarily relocate.

3 - Extensive modeling of the effects of the project on canal levees identified potential risks and methods to eliminate these risks. Construction and dredging activities would meet all safety standards and the integrity of the levees would not be compromised. The Mississippi River levees and floodwalls would be extended to the new lock location north of Claiborne Avenue to provide risk reduction from Mississippi River flooding. The new IHNC Lock would be integrated into the 100-year level of risk reduction projects for the Greater New Orleans Hurricane and Storm Damage Risk Reduction System.

4 - CEMVN has conducted extensive analysis of the dredged sediments and prepared a detailed dredged material disposal plan (Appendix F). All sediments which were determined to be unsuitable for discharge would be located within a confined disposal facility. The confined disposal facility would effectively and indefinitely contain these materials. The discharge of effluent from the confined disposal facility prior to capping would be in compliance with state and Federal regulations. Dredged material that would be used beneficially for the establishment of marsh are not expected to cause adverse effects to the benthos or to fish at the mitigation site or effluent discharge area at Bayou Bienvenue.

MOVING THIS MUCH EARTH IS BOUND TO CREATE - AND THE CORPS IS HELPLESS TO PREDICT. WE NEED 21ST CENTURY FLOOD PROTECTION AND COASTAL RESTORATION, NOT A CONTINUATION OF 20TH CENTURY INJUSTICES. FOR THESE REASONS, AND MANY MORE, THE INDUSTRIAL CANAL LOCK REPLACEMENT PROJECT SHOULD BE DEAUTHORIZED.

JOSHUA LEWIS

NEW ORLEANS

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Michael Vega

From: Michael Vega
Sent: Thursday, January 22, 2009 8:44:33 AM
To: IHNC LOCK REPLACEMENT MVN
Subject: Move the lock to north of the Florida avenue bridge, yet south of the turning basin?

I attended the meeting for the IHNC and noticed a lot of people unhappy with the plan.

Among all the rhetoric, and off-topic demands, there seem to be several genuine reasons why people don't want it, despite the generous contribution to the community that's written into the plan.

1. It would potentially cut off or clog both bridges to the rest of the city, a vital lifeline for both basic and emergency services, since any on the downriver side closed after Katrina. This would be inconvenient, and at worst, deadly in the event of an emergency.

2. It would be noisy and trafficky, right when they are trying to urge people to return.

3. No one wants to lose their houses or land. While very few people actually would in your plan, those few people will be very vocal, and less likely to be bought out. Meanwhile, everyone else thinks they'll lose theirs, too.

4.The historic lock is well-liked.

1 - Emergency vehicles call bridge operators to notify them of an emergency and bridges are required to remain passable when emergency vehicles are approaching (33 CFR 117.31 "Operation of draw for emergency situations"). This requirement is a part of the U.S. Coast Guard bridge permit for these crossings. It is highly unlikely that all three bridges would be open at the same time under any circumstance. Florida Avenue is north of the proposed new lock location and the Claiborne Avenue and St. Claude Avenue bridges are south of the new lock location. Vessels entering and exiting the lock would only need bridges on one side or the other to open for passage at any give time.

The probability of both the St. Claude Avenue and Claiborne Avenue bridges being open at the same time is greater because they are on the same side of the new lock location, deep-draft vessels would require the opening of both bridges, and there is a distance of only 1,900 feet between the two bridges. Such circumstances of both bridges opening simultaneously can be greatly reduced. Large ocean-going vessels will be traveling at 1 knot through the IHNC and can stop between the St. Claude Avenue Bridge and Claiborne Avenue Bridge on guide walls if necessary to allow for bridge closure (Captain AJ Gibbs 2008). There is no need for both the St. Claude Avenue and the Claiborne Avenue bridges to be open at the same time (Captain AJ Gibbs).

2 - CEMVN acknowledges that significant short-term noise impacts would occur within the neighborhood near the construction site, in particular those areas adjacent to the proposed new lock site. Mitigation measures would be implemented to reduce the increased noise levels to the greatest extent possible, including sound proofing affected structures, and temporary relocation of affected individuals, if they choose, during construction. Additionally, no substantial long-term noise impacts would occur as a result of the recommended plan.

The Claiborne Avenue Bridge would be closed for 28 days and would temporarily increase traffic delays and require detours to the Florida Avenue and St. Claude Avenue bridges. Vehicular traffic volumes are expected to increase slightly due to construction workers commuting to and from work and from delivery trucks transporting supplies to the jobsite. However, traffic volumes have substantially decreased in the study area since Hurricane Katrina. Traffic volumes for vehicles crossing the IHNC on Florida Avenue, North Claiborne Avenue, and St. Claude Avenue are well within acceptable operating parameters. Currently, the bridges are only carrying 30 percent of their traffic capacity (see Appendix J for more information). Construction worker and delivery truck vehicle trips would add approximately 65 vehicles daily to the study area. Given the reduction of traffic since Hurricane Katrina, traffic congestion in the area would not be significantly impacted due to construction traffic.

3 - Residences near the new lock site, along construction routes, and along Claiborne and St. Claude avenues could experience increased noise during construction. Although residents could experience a negative impact if forced to sell their home during construction, CEMVN is committed to minimizing these impacts through several mitigation measures. CEMVN is committed to providing sound protection to affected homes and temporarily relocating affected residents during construction, if they choose. Properties near the new bridges and levees would also be affected by a loss of aesthetic value. CEMVN is committed to minimizing these impacts through development of greenspace, recreational paths, landscaping, and other components of the Community Based Mitigation Plan.

The new lock, temporary bypass channels, new bridges and levees/floodwalls would be constructed within the existing footprint of the Inner Harbor Navigation Canal. Real estate needed for the lock construction was purchased from the Port of New Orleans for 16.8 million dollars. The Confined Disposal Facility, including both the Fill Cell and the Disposal Cell, and the off-site construction area would be constructed within undeveloped lands located south of the GIWW and east of IHNC. No residential or commercial properties would be lost as a result of the IHNC Lock Replacement project.

4 - The demolition of the lock has been properly coordinated with the Louisiana State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Properties (ACHP). All of the proper measures needed to record the lock have been completed in accordance with SHPO and ACHP standards including the preparation of Historic American Building Survey (HABS) and Historic American Engineering Record (HAER) documentation. This documentation, which usually consists of measured drawings, photographs and written data, provides important information on a property's significance for use by scholars, researchers, preservationists, architects, engineers and others interested in preserving and understanding historic properties. Documentation permits accurate repair or reconstruction of parts of a property, records existing conditions for easements, or may present information about a property that is to be demolished. Mitigation measures would be implemented as part of the recommended plan. The mitigation measures include saving key components of the historic lock and St. Claude Avenue Bridge for display, production of a public brochure on the history of the lock and bridge, and the erection of historic markers and displays about the historic lock and the Maritime history of New Orleans and South Louisiana.

5. The environmental sludge from the bottom needs to be better controlled than at present.

That being said, after looking at some of the arguments on both sides, I've yet to see analyses of different sites.

Is it possible to move the lock to north of the Florida avenue bridge, yet south of the turning basin?

It would:

1. Leave the St. Claude bridge clear and uninvolved, while being far enough away from the Claiborne Ave. bridge to lessen traffic there. It also frees them from this project to be renovated/expanded.

2. It would be in the industrial zone by southern scrap, keeping noise and traffic in an already noisy and trafficky area. That end of the 9th ward is less inhabited at present, and would inconvenience less people. Also, it seems more fair to inconvenience the parties that would stand to benefit from the new lock the most. These companies would be more inclined to be inconvenienced if they knew they could benefit from the future lock. In addition, companies are more inclined to take money that would be paid for their inconvenience, than homeowners standing on principles.

3. No one would lose their houses or land. The only potential losses would come from southern scrap or from whoever is on the other side of the canal, and they are large enough to scoot some things around and make things fit, especially southern scrap.. In addition, companies are more inclined to take money that would be paid for their land, than homeowners clinging to ancestral homes.

5 - CEMVN has conducted detailed sediment sampling in the areas where dredging is proposed for the IHNC Lock Replacement project. Analysis indicates that levels of some contaminants exceed criteria for discharge in the aquatic environment. The results of the sediment sampling and the evaluation of sediment and water quality are provided in Appendix C of the Final SEIS.

The conceptual design in Appendix E provides information on the suitability of the proposed CDF site; a determination of storage volume requirements; containment dike geometry and construction features; CDF operations; evaluation of CDF construction materials; consideration of hurricane protection requirements; potential contaminant impacts; regulatory requirements; and cost estimates. The CDF would contain all dredged material determined to no be suitable for open water disposal in perpetuity.

The Dredged Material Disposal Plan is discussed in detail in Section 4.3.4 of the SEIS. Based on the suitability of the material for various disposal options, dredged material would be discharged into the Mississippi River, placed in the triangular-shaped area south of Bayou Bienvenue for wetland mitigation, temporarily stored and then used as backfill, or permanently disposed of in a confined disposal facility.

6 - If the lock were constructed north of the Florida Avenue Bridge, guide walls required to prevent damage to the lock would likely extend into the turning basin and would be an unsafe obstacle to navigation. Navigation from the GIWW into the IHNC Lock at that location would be difficult for large tows. No homes would be displaced as a result of the Recommended Plan. The opening and closing of bridges for the passage of vessels between the Mississippi River and the IHNC would still be required, regardless of where the new lock is located within the IHNC. Increased traffic delays resulting from the project are short-term, relatively minor, and occur as a result of bridge replacements. The St. Claude and Claiborne bridges would be replaced regardless of where the lock is located within the canal. Noise impacts from bridge replacement activities, lock demolition and levee and floodwall construction activities would be the same as the recommended plan.

7 -The St. Claude and Claiborne Avenue bridges would be replaced regardless of where the lock is located within the canal. A temporary bridge will be put into place during the replacement of the St. Claude Avenue Bridge and there would be no disruption in service. The Claiborne Avenue Bridge would be closed for 28 days to replace the lift span and increase the height of the lift towers providing more clearance for ships on the higher Mississippi River water levels.

8 - As mentioned previously, the location of a new IHNC lock north of Florida Avenue is not viable because of navigation restrictions.

9 - As mentioned previously, the location of a new IHNC lock north of Florida Avenue is not viable because of navigation restrictions. No homes would be displaced as a result of the recommended plan.

Michael Vega

4. The historic lock would still be destroyed, unless a bypass channel is cut around it, taking people's homes. Given the choices, I think the people would choose losing the lock. I can't think of a way around it. Perhaps if this choice were given to the neighborhoods, they'd be happier with whichever choice was made. Perhaps the pieces can be reassembled somewhere else, or have a museum/park around them?

5. Find some better way to deal with the sediment. This is out of my league.

6. In addition, this would not require the construction activity, or the float-in place sections to pass under the Florida Ave. bridge, or any other bridge. (if, for example, a large, tall, sea-going crane was used for construction that could not fit under a bridge) It also has direct railroad line access to the construction site for materials.

7. This would, however, necessitate the conversion of the levees on either side to river levees, as opposed to hurricane levees, and put higher river water on the other side of them. On the bright side, this would lessen the hurricane exposure, while exposure to river flooding is already lessened by the spillways upriver.

You've said that other alternate locations were considered, and I assume this one must have been (there are only so many locations on that narrow channel) What is wrong with this location, and can the future lock be moved there?

-Michael Vega

10 – Alternatives to construct a new lock 200 feet east or 200 feet west of the existing lock were analyzed in 1991 (Section 4.1.2). The demolition of the lock has been properly coordinated with the Louisiana State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Properties (ACHP). All of the proper measures needed to record the lock have been completed in accordance with SHPO and ACHP standards including the preparation of Historic American Building Survey (HABS) and Historic American Engineering Record (HAER) documentation. Mitigation measures would be implemented as part of the recommended plan. Mitigation measures outlined in the SEIS include saving key components of the historic lock and bridge to be put on display along with the production of a public brochure on the historic features of the historic lock and St Claude Avenue Bridge, the construction of historic markers and displays on the historic lock, bridge, and surrounding neighborhoods, the collection of oral histories to preserve the history of the neighborhoods adjacent to the IHNC, and the construction of a large display on the Maritime history of New Orleans and South Louisiana.

11 - The Dredged Material Disposal Plan is discussed in detail in Section 4.3.4. Based on the suitability of the material for various disposal options, dredged material would be discharged into the Mississippi River, placed in the triangular-shaped area south of Bayou Bienvenue for wetland mitigation, temporarily stored and then used as backfill, or permanently disposed of in a confined disposal facility.

12 - The placement of the lock north of Florida Avenue is not viable because of navigation restrictions. There is no concern with construction equipment or lock modules being able to pass beneath the raised Florida Avenue Bridge. Railroad access is not necessary to bring construction materials to the site.

13 - Levee construction to the authorized grade would be completed as part of the recommended plan. All new levees and floodwalls constructed from the new IHNC Lock south to the Mississippi River would meet current USACE design criteria. Hurricane exposure cannot be lessened; however hurricane and storm damage risk reduction can be accomplished.

14 - A total of eight sites have been evaluated during various planning efforts and described by a 1975 Site Selection Report. These eight sites were described in the 1997 EIS, are shown in Figure 4-1 of the SEIS. A ninth site, the Meraux Site, was described by the original authorizing legislation but was determined early on to be unsatisfactory due to the combination of proximity of industrial development and adverse river conditions. The Scarsdale, Caernarvon, and Bohemia sites were eliminated because the routes were too circuitous and would cause massive, permanent damage to productive coastal marshes. The Saxonholm Site would have caused more severe disruption to residents of St. Bernard Parish than the two sites (Upper and Lower) evaluated in the vicinity of Violet. Finally, the Upper Site in Violet was also eliminated due to the potential disruption of residents in Violet.

Based on the 1975 Site Selection Report, the remaining sites that were carried forward for further evaluation were the IHNC Site and the Lower Violet Site. In 1977, President Carter directed USACE to conduct further studies of the lock replacement while focusing on minimizing displacement and impacts on residents. WRDA of 1986 directed USACE to evaluate only the existing IHNC Lock Site and the Lower Violet Site for the lock replacement. Further studies at the Lower Violet Site revealed that a lock and connecting channels would have major adverse impacts on the environment, specifically on extensive coastal wetlands located between the Mississippi River and the MRGO. The combination of these adverse environmental impacts and the strong opposition from residents of St. Bernard Parish led CEMVN to request higher authority from the USACE to halt any further consideration of the Lower Violet Site. The USACE, Mississippi River Valley Division, Headquarters and the Assistant Secretary of the Army for Civil Works agreed, and the Plan Formulation Section of the Main Report included as part of the 1997 EIS documents the details of this decision. Following the decision to eliminate further consideration of the Lower Violet Site, the IHNC Lock Site became the only viable alternative, and a number of alternative lock alignments at this site were evaluated.

Guide walls required to prevent damage to the lock would likely extend into the turning basin and would be an unsafe obstacle to navigation for a lock location north of Florida Avenue. Navigation from the GIWW into the IHNC Lock at that location would be difficult for large tows. No homes would be displaced as a result of the Recommended Plan. The opening and closing of bridges for the passage of vessels between the Mississippi River and the IHNC would still be required, regardless of where the new lock is located within the IHNC. Increased traffic delays resulting from the project are short-term, relatively minor, and occur as a result of bridge replacements. The St. Claude and Claiborne bridges would be replaced regardless of where the lock is located within the canal. Noise impacts from bridge replacement activities, lock demolition and levee and floodwall construction activities would be the same as the recommended plan.

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From: dean reynolds[SMTP:BDR1011@EARTHLINK.NET]
Sent: Friday, January 23, 2009 2:39:35 PM
To: IHNC LOCK REPLACEMENT MVN
Subject: lock replacement comments for inclusion Auto forwarded by a Rule

To whom it may concern

From: Dean Reynolds

23 January 2009

For Inclusion In Remarks Re Industrial Canal Lock Widening Project EIS

There is nothing in these volumes of the Supplemental Environmental Impact Statement to suggest the Corps has adequately or honestly assessed the cost/benefits of the lock widening project. One only has to read Dr. Robert Stearns' assessment of the economics in Failure to Hold Water to realize that the questions interested persons have been asking since the 1997 report remain unanswered.

1 - The benefits/costs of the lock widening project have been analyzed by the USACE in the 2008 updated economic analysis that can be found in Appendix O. The USACE recognizes the increased cost and decreased benefits identified in this analysis and the Remaining Benefits to Remaining Costs Ratio is below 1. The benefit cost analysis conducted for the 2008 SEIS conforms to the guidelines provided by the White House Office of Management and Budget.

Dr. Stearns' economic analysis is based on a single year of vessel traffic data and does not consider the actual trends observed in the historical data. The benefit cost analysis conducted for the SEIS is based on an assessment of vessel traffic on the IHNC from 1992 to 2002, vessel traffic on adjoining waterways, and economic trends with consideration of the historical and future economic and regulatory factors which have affected the industries supported by waterborne traffic.

I think Mr. Jerome Lomba, the City of New Orleans' chief economist said it well in his conclusion of the Impact Evaluation of the Inner Harbor Navigation Canal Replacement Lock Study, "The Army Corps of Engineers has not provided a full disclosure on this project. In order to do so, it must conduct a study to determine the impact of this project on Orleans Parish specifically and enlarge the scope of its Mitigation Plan to more comprehensively consider an expanded area of affected commercial activity."

2 - The SEIS evaluated the impacts to the human and natural environment in the vicinity of the IHNC Lock Replacement project, including the Holy Cross, Lower Ninth Ward, Bywater and Florida neighborhoods. The construction of the IHNC Lock would likely lead to expanded commercial activity - a benefit to both businesses and Orleans Parish. Beneficial impacts do not require mitigation and thus, none were proposed. Without specific reference to the effects of the project on Orleans Parish, CEMVN can not respond further.

Nowhere does a manifest give an accurate account of the often quoted "36 hour wait" that supposedly must be endured by vessels wishing to go through the locks. Due to this lack of "proof" I believe the numbers apocryphal.

3 - Average lock delays are provided in Section 5.3.2 of the SEIS. Table 5-1 provides a summary of average lock delays; single lock delay events can be substantially longer than the described average delays. The lock delay information is derived from the USACE's Navigation Data Center Lock Performance Monitoring

I've waited 10 years to see a safety study of the area around the Inner Harbor Navigation Canal as suggested in a May 14,1998 letter from the National Transportation Safety Board. The impact of larger vessels carrying more industrial chemicals suggests frightening scenarios to those of us living close to the canal.

4 - A lock navigability study is included in Appendix G of the SEIS. Navigation conditions were documented with the range of vessel types and sizes that frequent the area, including deep draft vessels and ships, and the vessels were subjected to numerous different wind conditions. These simulations were conducted to assess navigation safety during construction. Navigability of the IHNC would be greatly improved once construction-related obstructions are removed.

OK

There is no need for this project. The Corps has recently spent tens of millions of dollars repairing these historic locks and they are good to go for the next 50 years. The emotional argument its vital for the country just doesn't wash; maybe a more accurate assessment would be its vital so that big business CEO's can make more money.

Dean Reynolds New Orleans Louisiana 70117

5 – The deep-draft lock replacement was authorized by the Congress as described in the WRDA of 1986. The IHNC Lock is a critical component of the Nation's inland waterway system. The lock provides the only reasonable access for shallow-draft traffic from the Mississippi River to inland ports serviced by the GIWW east of the Mississippi. A new lock would be 560 feet longer, 35 feet wider, and 4.5 feet deeper than the existing lock. This increased width and length would allow a larger number of vessels to move through the lock at one time and greatly improve the efficiency of the locking process. Reduced lockage delays would improve waterborne commerce on the GIWW and reduce the costs of goods transported on vessels. The increased depth of a new lock would accommodate deep-draft vessels. Accommodating deep-draft vessels would provide a greater opportunity for development along the IHNC, especially north of the Florida Avenue Bridge. The components of the existing lock have degraded over time and, consequently, maintenance of the existing lock is more expensive, takes longer, and is required more often compared to a new lock. A new lock would reduce maintenance-related costs and delays and would provide a more dependable route to the eastern portions of the GIWW and businesses located along the IHNC.

December 22, 2008

John Koeferl
President
Citizens Against Widening the Industrial Canal

Dear John,

In accordance with your request, I have reviewed the Army Corps of Engineers' Draft Supplemental Environmental Impact Statement (SEIS), "Inner Harbor Navigation Canal Lock Replacement Project Orleans Parish, Louisiana (Oct 2008) as well as the SEIS's Economic Appendix, Appendix O. As part of this work, I have compared the information contained in these documents with two earlier Corps reports, "Mississippi River- Gulf Outlet, New Lock and Connecting Channels, Evaluation Report, Economic Analysis, Appendix E" (Mar 1997) and "Mississippi River- Gulf Outlet, New Lock and Connecting Channels (Inner Harbor Navigation Canal [IHNC] Lock Replacement) – Evaluation Report, Supplement No. 1" (Sep 20, 2000).

The 2008 SEIS falls far short of being an objective evaluation of project alternatives. Its primary purpose seems to be to justify a fundamentally flawed decision to continue to construct a replacement lock. I base this conclusion on the following observations.

- The cost of building the proposed lock is inflated by the decision to build it deeper than the traffic needs. The Corps' own analysis suggests that "even if you build it this deep, they will not come."
- The SEIS misreports the current cost-sharing arrangements and thereby distorts the amount required from the general taxpayer. The taxpayer's stake is a lot higher than the report suggests, making reconsideration of the merits of this project even more urgent.
- The Corps has not shown any interest in determining whether or not this project is still economically justified; instead it clings to the assertion that because it is an authorized project, no further economic analysis is warranted.
- The Corps believes that the current level of navigation delays is sufficient justification for building the new lock. By any standards of rigorous economic analysis, this is simply not true. In fact eliminating current delays will return at most only $0.30 for every one dollar spent.

I address each of these points separately in an attachment to this letter.

1 - The 2008 updated economic analysis (Appendix O of the SEIS) assumes there would be no benefit to deep-draft traffic as a result of the closure of the MRGO. However, the potential for growth in the number of shallow-draft vessels moving through the lock would result in substantial benefits, which justify construction of a larger lock. Without a deep-draft lock there would be no potential for growth of industries serviced by these vessels along the IHNC and portions of the eastern segment of the GIWW. Although it can not be guaranteed that a deep-draft lock will result in renewed growth of these industries along the IHNC, it is assumed that industry would relocate to take advantage of the deep-draft business opportunities.

2 - The commenter is correct and the cost share described in the draft SEIS is incorrect. The cost share description in Section 3.1 of the final SEIS has been changed to the following: "The cost sharing for this project was set forth in the WRDA of 1986 and was described in the 1997 EIS. However, the project cost share description in the 1997 EIS was determined to be in error, and the cost share description was revised in Evaluation Report Supplement Number 1, dated September 20, 2000 as approved by the Deputy Commander for Civil Works. When Congress authorized the Lock Replacement project in Section 844 of WRDA of 1986, it authorized a new lock to replace the existing deep-draft lock and specified that the cost sharing for both the shallow and deep draft increments shall be consistent with Sections 101 and 102 of WRDA of 1986. Therefore, the cost sharing has been modified to be consistent with WRDA of 1986, and the non-Federal interests must provide 25 percent of the incremental construction costs for the deep draft portion of the project during construction and an additional 10 percent share in cash over a period not to exceed 30 years after completion of construction, at an interest rate determined pursuant to Section 106 of WRDA of 1986, and amendments thereto. In accordance with applicable inland and deep draft navigation, USACE will be responsible for 100 percent of the operations, maintenance, repair, replacement, and rehabilitation costs for the replacement lock."

3 - The USACE recognizes the increased cost and decreased benefits identified in the 2008 updated economic analysis (Appendix O). The benefit cost analysis conducted for the 2008 SEIS conforms to the guidelines provided by the White House Office of Management and Budget.

However, using the OMB discount rate, as required by the OMB guidelines for benefit cost analysis, the project would result in negative net benefits.

4 - The author of the report bases their conclusions on analysis of benefits during a single year (i.e., 2004) to estimate benefits over the 50-year period of analysis. The USACE conclusions are based on expected trends in traffic. A trend is represented by a smooth line that averages the fluctuations in actual data over time. Thus, in any given year the actual data are likely to be above or below the trend. While the approach of assuming that shallow draft traffic will not deviate from levels observed in 2004 provides an analysis that is easier to understand, it does not reflect projected future trends in traffic and delays.

In addition, my research has led me to have other concerns about the Corps' approach to project evaluation and to its conclusions regarding the IHNC replacement lock. These concerns (also discussed in my attachment) are:

- By any objective standard, the Inner Harbor Navigation Canal Replacement Lock will have a hard time competing for funds in a tight Federal budget.
- The Corps' analysis continues to be based on the belief that future traffic trends through the Industrial Canal Replacement Lock would be a significant reversal of the last 20 years.
- The model and data the Corps uses for measuring delays and assigning costs to these events have never been made fully available for public evaluation. The failure to make such disclosures, severely limits the ability to evaluate the potential benefits from delay reduction or to judge the efficacy of on-going Corps efforts to minimize the impact of current delays.
- The Corps has never chosen to address the specific concerns of its critics in any systematic or scientific way; consequently, there are many remaining unresolved issues.

There is a compelling need for independent review of this project. Certainly, this review should be completed before any more money is spent. This is especially important since the Corps only presents its conclusions and limits access to all of its data and assumptions. It is my hope that common sense will prevail and that the money that would be wasted on this project (now estimated to be more than $1 billion) will be put to better use. If the "no action / deauthorization" alternative finally gets its "day in court," I am convinced it would quickly become the preferred alternative.

Sincerely,

Robert N. Stearns

Attachment

5 - CEMVN acknowledges the commenter's concern. The Inner Harbor Navigation Canal Lock Replacement project is fully authorized by the Congress and appropriations will be provided as the Congress and the Administration deem appropriate.

6 - The National Ports and Waterways Institute (NPWI) from the University of New Orleans projected a 0.8 percent annual compound growth rate in IHNC Lock traffic for the period 2002 – 2055. The patterns of IHNC Lock traffic for the period 1990-2002 were examined in detail and the underlying market dynamics responsible for these changes were analyzed. Shallow draft traffic forecasts were developed by commodity group for the entire waterway system being studied, which included the GIWW (Louisiana Portion); the GIWW (Morgan City - Port Allen Route); the IHNC, Louisiana; and the Atchafalaya River, Louisiana.

Although the actual tonnage for the most recent year of 2007 is lower than the forecasted value (in 2007 actual lock tonnage equaled 17.4 million tons while forecasted tonnage equaled 18.8 million tons), annual variations in tonnage are inherently part of any long-term forecast. These forecasts continue to represent an appropriate basis for estimating long-run future trends in traffic at the IHNC Lock.

7 - A detailed description of the model and data used by USACE to measure delays and corresponding costs to navigation is provided in Appendix E of the March 1997 Mississippi River – Gulf Outlet New Lock and Connecting Channels Evaluation Report which has been made available to the public.

8 - CEMVN respectfully disagrees. Section 6.1 of the SEIS provides a history of the public involvement program for the IHNC Lock Replacement project. CEMVN has engaged the community and the region since the first public meeting was held in 1960. This includes addressing comments and concerns raised during the SEIS public scoping process, coordination with regulatory agencies and addressing comments provided on the Draft SEIS.

9 - The IHNC Lock Replacement Project EIS and SEIS were released for public and agency review. Technical reports used in the preparation of the SEIS were included as appendices. Data used in the analysis of the Lock Replacement Project are available to the public electronically and in hard copy form, upon request. This includes the updated economic analysis presented in Appendix O.

Attachment

Unresolved Issues and Concerns Regarding the Proposed Replacement of the Inner Harbor Navigation Canal Lock

1. **The cost of building the proposed lock is inflated by the decision to build it deeper than the traffic needs. The Corps' own analysis suggests that "even if you build it this deep, they will not come."**

The SEIS claims that a larger and deeper lock is needed to accommodate deep draft traffic no longer able to use the deauthorized Mississippi River/ Gulf Outlet (MRGO) Channel:

> "It is also predicted that the number of deep-draft trips would increase in the IHNC as the deep-draft lock would provide access where access is now limited because of the lack of dredging operations and closure of the MRGO."[1]

This is in direct contradiction to the findings of the SEIS's own Economic Appendix:

> "[I]n anticipation of the MRGO's de-authorization, most companies along the MRGO section of the Port of New Orleans that required deep draft vessel support via the MRGO have either moved or are planning to move operations to the Mississippi River section of the port or to other ports along the gulf coast. The companies that choose to continue to operate along the MRGO area are those that can use the existing IHNC lock. Consequently, the deep draft activities that supported the deep draft benefits identified in the 1997 Evaluation Study and 2005 Investigative Study are no longer occurring. While future demand for deep draft lockages through the IHNC lock may arise, none appears to exist in the present aftermath of the MRGO's closure. Therefore, this SEIS assumes no deep draft benefits associated with the authorized plan over the period of analysis."[2]

If the conclusions in the Economic Appendix are correct, the Corps will be building a project that is unnecessarily expensive to accommodate traffic that **does not exist and will not exist in the future**. No decision about this lock should be made unless and until the contradictory claims of these two documents can be resolved.

[1] Corps of Engineers, 2008 SEIS, p 160
[2] Corps of Engineers, 2008 SEIS Economic Appendix O, p O-5

10 - The 2008 updated economic analysis assumes there would be no benefit to deep-draft traffic as a result of the closure of the MRGO. With the closure of the MRGO, businesses served by deep-draft vessels have or are planning on relocating. Because the need for a deep-draft lock is currently minimal, USACE has assumed that there will be no increased economic benefit to building a deep-draft lock versus building a shallow-draft lock. This approach to the deep-draft benefits in the economic analysis is supported by the commenter.

However, the potential for growth in the number of shallow-draft vessels moving through the lock would result in substantial benefits which justify construction of a larger lock. Without a deep-draft lock there would be no potential for growth of industries serviced by these vessels along the IHNC and portions of the eastern segment of the GIWW. Although it can not be guaranteed that a deep-draft lock would result in renewed growth of supported industries along the IHNC, without a deep-draft lock there will be no local opportunity for these industries and they will locate elsewhere. As noted by the commenter, the SEIS describes that a cumulative impact of a deep-draft lock would be the increased attractiveness of the IHNC and GIWW for deep-draft vessels and waterborne cargo (Section 5.4) and the expansion of potential port facilities to accommodate the deep-draft vessels.

2. **The SEIS misreports the current cost-sharing arrangements and thereby distorts the amount required from the general taxpayer. The taxpayer's stake is a lot higher than the report suggests, making reconsideration of the merits of this project even more urgent.**

The SEIS acknowledges that the Corps' recommended project is not the alternative that produces the greatest net economic benefit and claims incorrectly that the added costs of this "locally preferred plan" will be picked up by the local sponsor, the Port of New Orleans:

> "The recommended plan in the 1997 EIS would construct a new lock north of Claiborne Avenue with a usable draft depth of 36 feet, a length of 1,200 feet and a width of 110 feet. This recommended plan was a larger lock than the plan which maximized the National Economic Development (NED) benefits. The NED Plan was a lock with a usable draft depth of 22 feet instead of 36 feet, and a length of 900 feet instead of 1,200 feet. It was determined that the deeper lock would accommodate deep-draft vessels which utilize the Port of New Orleans facilities in the MRGO and IHNC. This recommended plan was also the locally preferred plan (LPP)."[3]
>
> "The cost sharing for this project was set forth in the WRDA of 1986 and described in the 1997 EIS and is incorporated herein by reference. It required that all costs for the project be allocated between shallow-draft and deep-draft navigation. The shallow-draft costs would be cost-shared 50-50 between the regular USACE appropriations and the Inland Waterway Trust Fund. The deep draft increment would be the responsibility of the local sponsor, the Port of New Orleans, since the increment is not justified on its own."[4]

The SEIS fails to mention that the cost sharing arrangements described in the 1997 report were modified in the Corps' 2000 Supplement 1:

> "The 1997 Evaluation Report in the Syllabus in the front of Volume 1, contained a statement that '… The Port of New Orleans owns the real estate required for this project and will be given credit for these lands, presently estimated at $45,200,000 towards their requirement for the project.' Using the $45.2 million figure cited in Volume I of the Report, the Port's required cash contribution toward the deep draft increment would have been $23.1 million. The Port has stated that it used that figure to prepare their financial plan to support this project. Unfortunately, that statement in the syllabus was in error….

[3] Corps of Engineers, 2008 SEIS, p 5
[4] ID, p 19

11 - The commenter is correct and the cost share described in the draft SEIS is incorrect. The cost share description in Section 3.1 of the final SEIS has been changed to the following: "The cost sharing for this project was set forth in the WRDA of 1986 and was described in the 1997 EIS. However, the project cost share description in the 1997 EIS was determined to be in error, and the cost share description was revised in Evaluation Report Supplement Number 1, dated September 20, 2000 as approved by the Deputy Commander for Civil Works. When Congress authorized the Lock Replacement project in Section 844 of WRDA of 1986, it authorized a new lock to replace the existing deep-draft lock and specified that the cost sharing for both the shallow and deep draft increments shall be consistent with Sections 101 and 102 of WRDA of 1986. Therefore, the cost sharing has been modified to be consistent with WRDA of 1986, and the non-Federal interests must provide 25 percent of the incremental construction costs for the deep draft portion of the project during construction and an additional 10 percent share in cash over a period not to exceed 30 years after completion of construction, at an interest rate determined pursuant to Section 106 of WRDA of 1986, and amendments thereto. In accordance with applicable inland and deep draft navigation, USACE will be responsible for 100 percent of the operations, maintenance, repair, replacement, and rehabilitation costs for the replacement lock."

> "The original cost-sharing premise was based on a willing and capable non-Federal government entity contributing all of the costs in excess of NED Plan costs. This analysis did not take into account the specific statutes authorizing the project, which envisioned that the costs of the project would be allocated between inland and general cargo (deep draft) navigation based on use…. [C]osts allocated to general cargo will [now] be cost shared in accordance with the requirements in Section 101 of WRDA [Water Resources Development Act] 1986.[5]

The practical consequence of this change is first, that the shallow-draft costs would continue to be shared on a 50-50 basis between the regular USACE (general taxpayer) appropriations and the Inland Waterway Trust Fund. However, 65 percent of the deep draft increment (referred to as the "general cargo (deep draft) costs" in the 2000 Supplement Report) have been shifted away from the Port of New Orleans to the general taxpayer.[6]

Unless, as the SEIS suggests, the cost-sharing arrangements of the 1997 Report have been restored, the majority of the costs of the unjustified deep draft increment are now borne by the general taxpayer. It is hardly surprising that the Port of New Orleans is unwilling to foot the bill, especially if the Economic Appendix is right and there is no need to build to this depth. But why should not this standard apply equally to the general taxpayer? Any critical evaluation of project alternatives should recognize this significant change in the cost sharing arrangement and ask whether or not this is really a wise use of Federal tax dollars.

11 - (continued) See previous page.

3. **The Corps has not shown any interest in determining whether or not this project is still economically justified; instead it clings to the assertion that because it is an authorized project, no further economic analysis is warranted.**

The SEIS never seriously considers "no action/without project" as a viable alternative. The main report simply does not make any comparison of benefits to costs, the standard measure of a project's economic value. Instead, the no action/without project alternative is summarily dismissed early in the report:

> "Since the North of Claiborne IHNC Lock Replacement Site was selected in the 1997 EIS, is the authorized plan, (sic) and components of that design have been implemented, the No Action Alternative as described in the 1997 EIS is eliminated from further evaluation."[7]

The failure to include estimated costs and benefits is a glaring omission in the report and may have been made because under the SEIS assumptions discussed in Section 4 of this attachment, this project would not be able to pass any serious economic test.

12 - The SEIS supplements the 1997 EIS, and as such, eliminates the No Action Alternative as described by the 1997 EIS. The No Action Alternative is no longer valid as described in the 1997 EIS because portions of the originally recommended plan (Plan 3f in the 1997 EIS) have been implemented. Instead, the SEIS evaluates a No-build/Deauthorization Alternative that better reflects USACE's potential decision under a no action scenario.

The SEIS fully discloses the Remaining Benefits Remaining Costs Ratio (Sections 4.3.4.1 and 4.3.4.2, and Appendix O) for both the Cast-in-place and Float-in-place Plans.

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[5] Corps 2002 "Supplement 1" Report pp 2-3
[6] ID, p 5
[7] Corps of Engineers, 2008 SEIS, p 31

4. **The Corps believes that the current level of navigation delays is sufficient justification for building the new lock. By any standards of rigorous economic analysis, this is simply not true. In fact eliminating current delays will return at most only $0.30 for every one dollar spent.**

According to the SEIS, the Corps expects navigation delays to remain at the current average of eight hours per tow so long as a replacement lock is not built:

> "Under the no-build alternative, it is anticipated that delays would be similar to those experienced in 2004 through 2007, which average approximately 8 hours, and that over 67 percent of all waterborne traffic would experience a delay at the IHNC Lock."[8]

The authors of the SEIS do not seem to understand the implications of this assumption. **If they are right, this project fails even the most basic economic test.** The savings associated with eliminating current delays come nowhere near to matching the costs of building the new lock.

The SEIS Economic Appendix concludes that at a discount rate of 4.875 percent (currently used by the Corps to evaluate new projects), the "remaining benefits remaining cost ratio" (RBRCR) is 1.57,[9] well above the 1.0 threshold that is required to establish economic viability. But this calculation depends crucially on the underlying assumptions that traffic levels and average hourly delays will increase dramatically in future years.[10] The Corps' 2008 reports do not include a RBRCR for the scenario when there is no growth in traffic or delays and the reports, by themselves, do not provide enough methodological detail to make such an estimate. However, by updating the cost of tow delays from the Corps' 1997 report and applying this information to the data of the 2008 reports it is possible to derive independently a "no-growth" RBRCR.

To calculate the benefits to barge transportation, it is necessary to estimate the probable costs of delay at the old lock and compare this to the cost of delay at a replacement lock. To simplify this analysis, it is assumed that the latter is zero (no delays at the new lock).[11] In its 1997 report the Corps estimated that the hourly delay cost per 1,000 tons moving through the existing lock ranged from $49 to $82, depending on the commodity being shipped[12] The average cost is $61, using the 2007 commodity

[8] Corps of Engineers, 2008 SEIS, p 77
[9] Corps of Engineers, 2008 SEIS Economic Appendix O, p O-14
[10] The Corps displays future traffic levels used to calculate benefits on p 6 of its 2005 "Investigative Study," included as an attachment to Appendix O. Delays are discussed extensively in the Corps' 1997 report which remains the basis of the Corps' most recent analysis: "The General Equilibrium Model (GEM) used in the 1997 analysis was also used in this updated analysis to evaluate the existing conditions, the future without-project conditions, and the future conditions with the improved IHNC Lock in place…. The model estimates the total transportation costs, including congestion costs [emphasis added], incurred by individual movements desirous of using all or portions of a navigation system".(p 11)
[11] This assumption was made for the ease of calculation. Even with a new lock, varying arrival rates and scheduled maintenance closures will make it impossible to eliminate all delays.
[12] Corps 1997 Report, p E-103

13 - The purpose and need of the proposed project is to relieve existing and anticipated delays at the existing IHNC Lock. Numerous alternatives have been analyzed since the first public meeting in 1960 to meet this purpose and need. The economic analysis, conducted by USACE, does not assume delays will remain at current levels at the existing IHNC Lock. Delays are forecasted to increase with forecasted increases in traffic.

distribution as weights.[13] The Corps described the delay cost estimates as applicable to fiscal year 1991.[14]

Delay costs can be updated to 2007 by using the Producer Price Index for Inland Waterway Transportation. The ratio of midyear 2007 costs to mid fiscal year 1991 costs is 1.905. Applying this to the average costs reported in the 1997 Report yields a 2007 cost estimate of $117 per hour of delay per 1,000 tons. This means that at 2007 traffic levels (17.412 million tons) and average delays (8 hours), the total cost of delay would be:

17,412 * 8 * $117 = $16.3 million

Assuming no change in either traffic levels or delays, this represents the annual average benefits to barge transportation under any assumed discount rate.

There are two other benefit categories in the Corps calculated RBRCR. The first ($5.0 million) is derived from the fact that once the old lock is gone, it will not require any additional Operation and Maintenance (O&M) expenditures.[15] The second category ($0.8 million) is derived from the fact that the newer lock will require fewer closures for major maintenance. These closures obviously have an adverse impact on navigation. The sum of all other average annual benefits (at a 4.875 percent discount rate) is $5.8 million.[16] Combining the navigation benefits calculated above with the other average annual benefits yields a grand total of $22.1 million (16.3 + 5.8).[17] This can now be compared to the Corps' estimate of annual average remaining costs of $82.5 million:[18]

RBRCR = 22.1 / 82.5 = 0.27

This is well below the threshold of 1.0. There are only two ways to make the RBRCR higher, first to assume that traffic will increase (reversing the trends over the last 20 years); second to assume there will be more delays in the future (contrary to the assertion of the SEIS).

This recalculation leads to an important conclusion: **if, as the SEIS suggests, the new lock is being built primarily to eliminate current delays at the lock, each additional dollar spent constructing the project should bring in no more than $0.30 in additional benefits.**

13 - (continued) See previous page.

[13] This information is available on line at: www.iwr.usace.army.mil/ndc/lpms/keylock/key107r.htm. In some cases, the commodity categories on the Corps' web site do not match the categories in the 1997 Report. Where necessary the 1997 commodity classifications with the highest cost were used as a proxy for the more broadly defined categories of the web site.

[14] Corps 1997 Report, p E-101

[15] The O&M costs for the new lock are included in the project's average annual costs; the denominator of the RBRCR.

[16] Corps of Engineers, 2008 SEIS Economic Appendix O, p O-14

[17] The Corps' 1997 report included two other benefit categories; cost savings to deep draft navigation and reductions in vehicular delays. Appendix O concludes that neither category should be included in the revised calculation.

[18] Corps of Engineers, 2008 SEIS Economic Appendix O, p O-14

Additional Concerns

1. **Budget: By any objective standard, the Inner Harbor Navigation Canal Replacement Lock will have a hard time competing for funds in a tight Federal budget.**

Even after a project has been authorized for construction, money must be appropriated by Congress before construction can begin or continue. The first step in the appropriations process is the submission of a budget proposal by the Administration. From a national perspective, the backlog of Corps projects far exceeds the likely amounts that will be made available for the Civil Works program. The Bush administration established the following position for making choices among projects:

> "Flood and storm damage reduction, commercial navigation, and hydropower projects will be ranked by their total benefits divided by their total costs (BCR), calculated at a seven percent real discount rate…. Ongoing flood and storm damage reduction, commercial navigation, and hydropower construction projects with a BCR of 1.5 or higher ... will receive at least the amount needed to pay estimated contractor earnings required under ongoing contracts and related costs."[19]

The IHNC Lock project fails this test by a wide margin. According to Appendix O, the remaining benefits to remaining costs ratio at 7 percent is only 0.92[20] even if one assumes that the Corps' unrealistically high traffic forecasts will be met. The budgetary justification for the project becomes even weaker when, as required, total benefits are compared to total costs. Total costs include all future costs plus amounts already spent on the project (referred to as "sunk costs"). Adding sunk costs to the formula mathematically must reduce the benefit cost ratio (there is no equivalent "sunk benefits" category). Using data available in Appendix O, total benefits divided by total cost (BCR) would be 0.81.[21]

The problem of prioritization is compounded by the fact that half of the money used to build the "shallow draft portion" of the lock is to come from the Inland Waterway Trust Fund (IWWTF). In its 2008 Economic Appendix, the Corps estimates remaining total project costs to be $1,112 million.[22] The amount required from the IWWTF is not given. However, according to the Corps' Supplement 1, 2000, when total project costs were estimated to be $690 million,[23] the expected payments from the IWWTF were $283.1 million.[24] It is likely therefore that required payments from the IWWTF to

[19] U.S. Office of Management and Budget, "Budget of the United States Government, Fiscal Year 2009," p 1013
[20] Corps Appendix O, p O-14
[21] Appendix O lists "total project costs" to be $1,263 million (p O-12), "total remaining project costs" at $1,112 million (p O-13) The benefit cost ratio given in the text is the Corps' remaining benefits remaining costs ratio multiplied by (1,112 / 1,263).
[22] Appendix O, p 0-13
[23] Corps 2002 "Supplement 1" Report, p 6
[24] ID p 7

14 - CEMVN concurs with the commenter that money must be appropriated by Congress for any Federal project before construction can begin, even those authorized by Congress such as the IHNC Lock Replacement project. Further CEMVN recognizes that the authorized Lock Replacement Project would be competing for funding against other highly justified Civil Works projects, many of which are in the coastal Louisiana.

support construction of the IHNC Lock will be in excess of $450 million.[25] That money is simply not available.

In its March 2007 presentation to the Inland Waterways User Board, the Corps projected that the balance in the IWWTF at the end of Fiscal Year 2008 would be $56 million, after projected outlays for FY 2008 of $207 million.[26] Clearly, the Corps cannot maintain its current level of construction activity at other inland waterway locations, let alone take on new projects such as the IHNC Lock unless and until the IWWTF "funding crisis" is resolved. In fact, the Corps explicitly identified not funding the IHNC Lock as one of the consequences of the anticipated trust fund short fall.[27]

This is a very uncertain time to predict how future budget issues will be resolved. The United State is facing its worse economic crisis in 70 years. Federal budget deficits are out of control to the point where there is almost no flexibility in discretionary spending. The Obama Administration will need to make difficult choices among Civil Works projects. Given the Corps' own estimate of the economic returns to a new IHNC Lock, it is doubtful that it will be able to meet any objective criterion for inclusion in the new President's budget requests.

14 - (continued) See previous page.

2. **Traffic forecasts: The Corps' analysis continues to be based on the belief that future traffic trends through the Industrial Canal Replacement Lock will would be a significant reversal of the last 20 years.**

With growth in traffic, if the existing lock is not replaced, it is probable that eventually not all of the additional tonnage would be shipped via the IHNC. If traffic levels grow, tows may begin to experience increasing delays while waiting to lock through. The higher costs of delays would be an incentive for some to find an alternative mode or route. This choice would be made by comparing the costs of the alternative mode or route to the costs, including delay costs, of using the IHNC. Over time, more and more traffic would be diverted. There may even be a "practical capacity" to the existing lock that defines the maximum amount that could be locked through.

The Corps' traffic forecast is an estimate of future traffic through a larger lock where there are no (or minimal) delays. This is called the "unconstrained traffic forecast." If the new lock were not built, a high rate of growth of unconstrained traffic would generate longer and longer delays at the existing lock (because it is smaller than the proposed replacement lock). Under these circumstances, the traffic would be divided into two parts:

- traffic that would be diverted from the existing lock to other modes (e.g. rail) or water routes (which would become the low cost alternatives because of the delays at the existing IHNC Lock); and

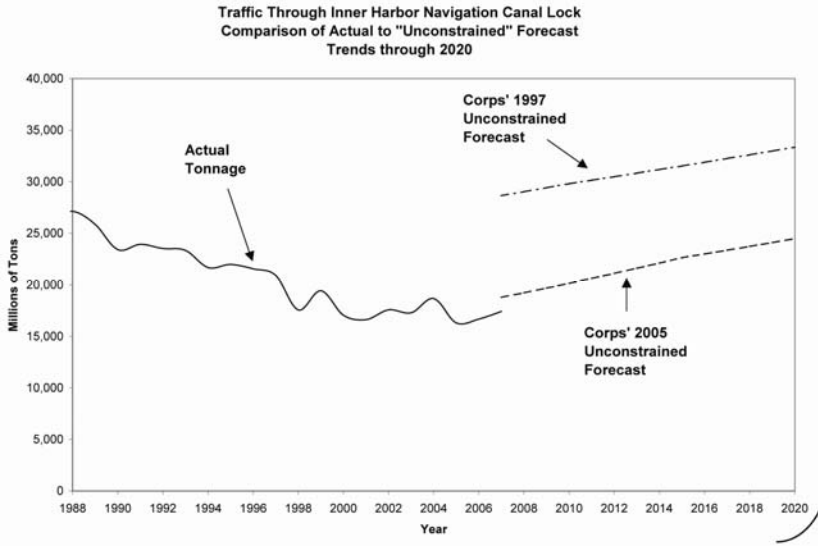
15 - The author of the report bases their conclusions on analysis of benefits during a single year (i.e., 2004) to estimate benefits over the 50-year period of analysis. The USACE conclusions are based on expected trends in traffic. A trend is represented by a smooth line that averages the fluctuations in actual data over time. Thus, in any given year the actual data are likely to be above or below the trend. While the approach of assuming that shallow draft traffic will not deviate from levels observed in 2004 provides an analysis that is easier to understand, it does not reflect projected future trends in traffic and delays. Furthermore, the historic traffic levels illustrated in the author's graphs depict actual traffic data without a new lock. The comparison of these values to the projected traffic levels with a new lock is misleading. The USACE does not dispute the fact that traffic levels have decreased. Furthermore, the USACE suggests that delays, as a result of the inadequate size and required maintenance associated with the existing lock, have lead to the declines in traffic and will likely prevent an increase, or result in continued declines, in the future. It is anticipated that a new lock would alleviate these delays and result in increased vessel traffic.

[25] This is a conservative estimate. The ratio of total project costs (TPC) in 2008 to TPC in 2001 is 1.83. Multiplying the 2001 IWWTF estimate ($283 million) by this factor yields a 2008 estimate of $518 million.
[26] The Corps' presentation may be viewed at http://www.waterways.org/GrierNWCMar07.ppt.
[27] ID

- traffic that would use the existing lock (despite delays) since this would still be the low cost alternative.

These are the sources of the shallow draft navigation benefits that are the primary justification for the new lock. Forecasts of future traffic are an essential element in the economic analysis for this project.

In 1997, the Corps predicted that by 2007, the level of unconstrained traffic would reach 28.7 million tons.[28] By 2005, the forecast for 2007 had been revised downward to 18.8 million tons.[29] The actual tonnage equaled only 17.4 million tons.[30] The 1997 forecast was certainly excessively optimistic, but even the forecast made in 2005 (the data at that time ended in 2002) was eight percent higher than actual traffic. A comparison of actual versus forecast is shown in the figures below.

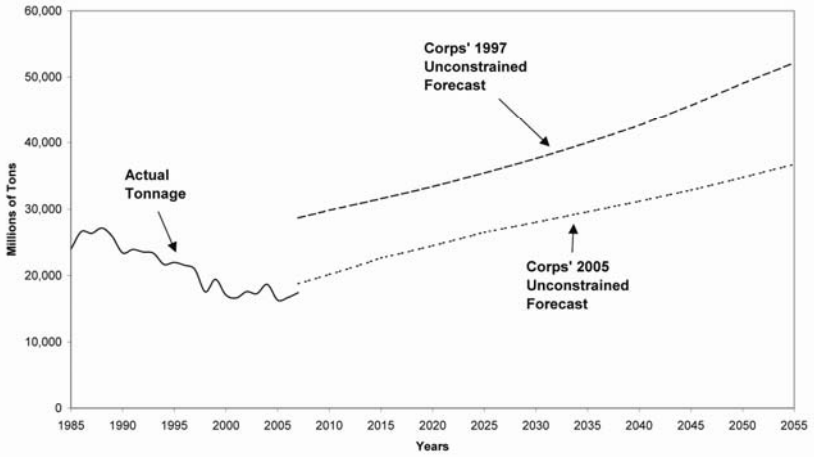


Sources: 1988- 1993 actual, Corps Report 1997, p E-17
1993- 2007 actual, Corps of Engineers, Lock Performance Monitoring System, Locks by Waterway, Tons Locked by Commodity Group Calendar years 1993-2007
Corps 1997 Forecast, Corps 2005 Investigative Study, Table 4, p 8

15 - (continued) See previous page.

[28] The traffic forecasts from the 1997 study are reproduced in the Corps' 2005 Investigative Study (Table 4, p 8). The table gives only the amount for 1900, 2000, and for each additional ten year increment. The estimated forecast presented in the text for 2007 is derived by interpolating the 2000 and 2010 forecasts (assuming a constant percentage growth between these years).
[29] Corps of Engineers, Appendix O, p O-3. This revised estimated forecast may have been derived by interpolating the Corps' 2005 and 2015 forecasts for total traffic (assuming a constant percentage growth between these years) - see the Corps' 2005 Investigative Study (Table 2, p 6). When the individual commodities of table 2 are interpolated separately, the forecast falls to 18.5 million tons. The revised forecast is well below traffic of 15 years ago and thus below any theoretical limitation of the throughput capacity of the existing lock.
[30] Corps of Engineers, Appendix O, p O-3

Corps 2005 Forecast, Corps 2005 Investigative Study, Table 2, p 6



Sources: 1988- 1993 actual, Corps Report 1997, p E-17
1993- 2007 actual, Corps of Engineers, Lock Performance Monitoring System, Locks by Waterway, Tons Locked by Commodity Group Calendar years 1993-2007
Corps 1997 Forecast, Corps 2005 Investigative Study, Table 4, p 8
Corps 2005 Forecast, Corps 2005 Investigative Study, Table 2, p 6

According to the Corps, somehow the 20-year downward trend in traffic is going to be reversed.[31] This claim is based on analyses reported in the 2005 Investigative Study. The Investigative Study is derived primarily from studies by the National Ports and Waterways Institute (NPWI) also in 2005.[32] The basic findings are these:

- Coal traffic will rebound slightly growing at an annual rate of 1-2 percent.
- Crude petroleum is expected to decline through 2025 and rebound thereafter.
- Petroleum products are expected to decline throughout the entire period through 2055.
- The big "winners" will be chemicals and non-metallic minerals both expected to more than triple in amounts from 2002 to 2055.[33]

[31] The most recent (2005-2007) "up tick" in the data results from the effect of Hurricane Katrina in 2005.
[32] National Ports and Waterways Institute, "Traffic Projections on the Shallow-Draft Inland Waterways System in Louisiana" 2005 and "Inner Harbor Navigation Canal (IHNC) Lock Investigative Study" 2005
[33] Corps 2005 Investigative Study, Table 2, p 6. Table 2 gives separate estimates for industrial and agricultural chemicals, but the NPWI Inner Harbor Navigation Canal Study does not make this distinction. It appears that a single forecast was made for all chemicals; the shares for industrial and agricultural chemicals are identical in all years in Table 2.

15 - (continued) See previous page.

- Other commodities, including Metallic Ores and Products, Farm Products, and Forest Products will grow at rates based on a 1999 study by the Corps' Institute of Water Resources

The forecasts for chemicals and non-metallic minerals were based on observed traffic trends from 1992-2002. The historic traffic flows are available in NWPI's Inner Harbor Navigation Canal Lock Investigative Study, Table 2.2.[34] The data shows that the projected growth rate depends critically on the starting date for the analysis since the trends for 1992-97 (substantial growth) are very different from the trends for 1997-2002 (relatively flat).

The forecasts for other commodities were based on projections made by IWR in 1999. Obviously, these forecasts could not have reflected the relatively flat period from 1997 through 2002.

How close did the Corps come in matching forecasts of individual commodities to actual shipments through the Inner Harbor Navigation Canal Lock? As mentioned above, in the aggregate, the actual shipments were eight percent below the forecasts. Since the Corps reports actual lock shipments on its web site using a different set of commodity definitions, an exact match of individual commodities is difficult.[35] The table below compares the forecast and actual amounts for 2007.

Commodity	2007 Forecast (thousand tons)	2007 Actual (thousand tons)	Actual – Forecast (thousand tons)
Coal	2,276	497	-1,779
Crude Petroleum and Petroleum Products	4,932	5,983	1,051
Chemicals	5,623	4,248	-1,375
Farm Products	270	279	9
All Other	5,436	6,404	970
Total	18,538	17,411	-1,124

Sources:
Forecast: 1995 Investigative Study, Table 2, P 6 (interpolated value)
Actual Corps Lock Performance Monitoring System, Key Lock Report
All other (forecast) includes metallic ores, non-metallic minerals, forest products and "all other"
All other (actual) includes crude materials, processed materials, manufactured equipment, waste material and "other"
Numbers may not add to total due to rounding

The table shows that there are wide variations in the "success" of the forecasts. Coal has not recovered, in fact it has continued to decline. The commodity most above its forecast is crude petroleum and products. This is the one commodity where negative

15 - (continued) See previous page.

[34] National Ports and Waterways Institute, "Inner Harbor Navigation Canal (IHNC) Lock Investigative Study" 2005, p II-3
[35] For example, Table 2 (p 6) of the Investigative Study includes "non-metallic minerals." These can be either "crude materials" or "processed materials" (for example, cement), two of the categories used on the Corps web site for tonnage through individual locks.

growth was anticipated. The "all other" category is too broad to draw any conclusions about more specific commodity groups.

The Corps continues to use these forecasts despite the facts; that traffic in 2007 was actually below the (revised) forecast amount; and that the composition of the traffic was substantially different from what was expected. Here is the Corps' full explanation:

> "Although the actual tonnage for the most recent year of 2007 is lower than the forecasted value, … small annual variations in tonnage were anticipated in the 2005 Investigative Study traffic forecast. Since no discernable new trend can be identified that might call into question the assumptions of the forecast, it remains the best available empirical model for estimating long-run future trends in traffic at the IHNC Lock. Consequently, no major reanalysis is warranted to update this category of benefits."[36]

There are in fact, large variations in the amount of traffic when specific commodities are identified. In addition, the shortfalls in forecasts for 2007 appear to be minor compared to what is likely for 2008. Through October, lock tonnage is down by 4.2 million tons compared to 2007.[37] This reflects both the current state of the U.S. economy and a major lock closure period in the fall of 2008. It is nonetheless further confirmation that the 20-year decline in traffic has not been reversed despite the "trends" the Corps had predicted. Given these facts, it is hard to see how any objective evaluation could possibly support the Corps' conclusion that no major reanalysis is warranted.

15 - (continued) See previous page.

3. **Delays: The model and data the Corps uses for measuring delays and assigning costs to these events has never been made fully available for public evaluation. The failure to make such disclosures, severely limits the ability to evaluate the potential benefits from delay reduction or to judge the efficacy of on-going Corps efforts to minimize the impact of current delays.**

Traffic delays are an inevitable by-product of any transportation system, whether it is by land, air or water. These delays are caused by bottlenecks. When too many vehicles/ planes/ tows show up at the same time, each must wait their turn and the delays that result to each user represent a loss of economic value. As explained above, the mere presence of delays does not by itself justify any level of expenditures to "fix the problem." Instead, the value regained by reducing delays must be compared to the cost of any proposed solution.

The Corps' explanation of delays at the IHNC Lock is limited to a simple exposition of the most basic facts: vessels, on average, experience an eight-hour delay and 2/3 of all vessels experience at least some delay. Mathematically, this means that the vessels that are delayed must experience an average of 12 hours (8 hour average = (0+12+12)/3). How do these delays occur? Here are two possible explanations:

16 - A detailed description of the model and data used by USACE to measure delays and corresponding costs to navigation is provided in Appendix E of the March 1997 Mississippi River – Gulf Outlet New Lock and Connecting Channels Evaluation Report which has been made available to the public.

[36] Corps of Engineers, Appendix O, p O-3.
[37] Lock Performance Monitoring System, Key Lock Report, available at http://www.iwr.usace.army.mil/ndc/lpms/lpms.htm

- Vessels show up at random times, but the level of traffic is so large that even with random arrivals (not necessarily uniformly spaced) they cannot all be served at the time of arrival.

- Most vessel operators prefer traveling during the same time of each day and/or week. Weekdays may be preferred to weekends; mid afternoon to late night or early morning.

In an independent analysis completed last year,[38] a third hypothesis was offered:

- Data from the Corps' website showed that for most of the time, delays were well below the eight-hour average, but peaked significantly higher when the lock was closed for a day or two either by weather or most often for pre-scheduled minor repairs.

Since the lock closures are announced and therefore known well in advance, what happens during this time? Do tows simply show up anyway knowing that they will have to wait, but wanting to assure their place in line? When the Corps reports that there are 10 or more vessels "waiting to lock through" does this mean they are all tied up at mooring sites close to the lock? What are the Corps and the water transportation industry currently doing (for example with regard to scheduling) that may help to reduce the economic impact of current delays?

There is clear evidence of present coordination between the Corps and the industry regarding the availability of the lock on a day-to-day basis. The Corps provides information via its lock status report (the report is updated two or three times a day).[39] The Gulf Intracoastal Canal Association also maintains information about the lock, including any scheduled maintenance, and the names and phone numbers for the IHNC Lock Master and the Corps' New Orleans District point of contact.[40]

The definition and measurement of delays is a critical element in the decision regarding construction of a new lock. As part of its effort to achieve analytical transparency, the Corps should make the definition of delay, the data on existing delays, and their methodological assumptions of measuring the economic cost of delay fully available to the public. By sharing this information, the Corps would be able to make a better case that it is doing everything possible to minimize delay impacts at the current lock. This would also give a clearer picture of what benefits might be gained by building the larger lock.

17 - A detailed description of the model and data used by USACE to measure delays and corresponding costs to navigation is provided in Appendix E of the March 1997 Mississippi River – Gulf Outlet New Lock and Connecting Channels Evaluation Report which has been made available to the public.

[38] Citizens Against Widening the Industrial Canal, "Failure to Hold Water, Economics of the New Lock Project for the Industrial Canal, New Orleans," December 2007, pp 10-14.
[39] Available at http://www.mvn.usace.army.mil/od/lockupdates/lockstatus.asp?lockid=3
[40] Available at http://www.gicaonline.com/pages/news/traffic.htm

4. **Criticism: The Corps has never chosen to address the specific concerns of its critics in any systematic or scientific way; consequently, there are many remaining unresolved issues.**

If one does not agree with the Corps' conclusions regarding a project of this magnitude, it is very hard to get the Corps' attention and even harder to get the Corps to respond publicly to what many would consider legitimate criticism. Instead, the Corps appears to prefer to take the position that all controversial economic issues have already been resolved in favor of the project.

In this response as well as in analysis completed last year,[41] all assumptions and source material have been laid out in excruciating detail. This was intended to give the Corps every opportunity to find weaknesses in the arguments presented and to criticize the conclusions. Given the full menu of concerns discussed in this paper, it is likely that the Corps would fail in this effort and perhaps that is why it chooses to act as if this analysis simply does not exist.

The public deserves better treatment. If some disagree with the Corps' conclusions, the Corps should make this disagreement part of the public record. This is one reason why independent reviews of controversial projects should always be included in their overall evaluation. The Corps needs to answer the specific concerns raised by its critics, not ignore them.

17 – (continued) CEMVN respectfully disagrees. Section 6.1 of the SEIS provides a history of the public involvement program for the IHNC Lock Replacement project. CEMVN has engaged the community and the region since the first public meeting was held in 1960. This includes addressing comments and concerns raised during the SEIS public scoping process, coordination with regulatory agencies and addressing comments provided on the Draft SEIS.

[41] Citizens Against Widening the Industrial Canal, "Failure to Hold Water, Economics of the New Lock Project for the Industrial Canal, New Orleans," December 2007

Attachment Page 14

Appendix A

Example Derivation of Corps Navigation Benefits

As explained above, the Corps' traffic forecast is an estimate of future traffic through a larger lock where there are no (or minimal) delays. This is called the "unconstrained traffic forecast." If the new lock were not built, a high rate of growth of unconstrained traffic would generate longer and longer delays at the existing lock (because it is smaller than the proposed replacement lock). Under these circumstances, the traffic would be divided into two parts:

- traffic that would be diverted from the existing lock to other modes (e.g. rail) or water routes (which would become the low cost alternatives because of the delays at the existing IHNC Lock); and

- traffic that would use the existing lock (despite delays) since this would still be the low cost alternative.

To illustrate these points it is possible to make a calculation of navigation benefits for 2045 using the data presented in Appendix O and the 2005 Investigative Study.[42] Table 6 of the Investigative Study[43] gives a distribution of gross cost savings (dollars per ton) when traffic moves through an unconstrained IHNC lock instead of another mode or route.[44] The analysis outlined in this Appendix uses the midpoint of the range of costs savings as the amount saved for every ton in that category. For example, the Corps estimates that in 2002, 1.8 million tons going through the IHNC Lock had gross cost savings between $1.50 per ton and $4.00 per ton. In the table below, this tonnage is called "Commodity C." It is assumed that the savings to each ton of Commodity C is $2.75.

It is further assumed that unconstrained traffic in all commodity groups will grow at the same rate through 2045. Since the unconstrained forecast (32.9 million tons) is 1.91 times the observed 2002 tonnage (17.3 million tons), this means for Commodity C, the unconstrained tonnage in 2045 would be 3.4 million tons.

Finally, based on the Corps' 1997 report, it is assumed that there is a practical capacity of the existing lock of 27 million tons.[45] When unconstrained traffic equals 32.9 million tons, this means that 5.9 million tons will be diverted to another mode or route. The mechanism that leads to diversion is the increase in delay costs at the existing lock. If for example, the costs of delay are $5.50 per ton, all of Commodity C (with a cost saving of $2.75) will be diverted.

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[42] It is not possible to match the Corps' benefit estimate precisely, because the Corps reports do not contain all the necessary data and assumptions.
[43] Corps Investigative Study, 2008, p 12
[44] Suppose, for example, that traffic could be shipped via the IHNC for $7.50 per ton, while the cheapest alternative, an all rail route, would cost $11.00 per ton. In this case, the "gross cost savings" derived from using the IHNC would be $3.50 per ton ($11.00 - $7.50).
[45] See Corps' 1997 report. In its Table 7-5, p E-175, the Corps' projected traffic through the existing lock never exceeds 26.7 million tons

17 – (continued) We concur with the commenter that the future level of traffic is critical to project justification. Without an increase in traffic over current levels, the Remaining Benefit/Remaining Cost ratio would be less than 1.0 for all discount rates evaluated. However, it is believed that the forecasted traffic used in this analysis is an appropriate and reasonable estimate of future traffic.

Total cost savings (and therefore project benefits) for all commodity groups are listed in the table below. In order to divert enough traffic, average delay costs at the existing lock must reach $5.50 per ton by 2045. Some of the savings from a new lock accrues to traffic that has been diverted because of the delays (11 percent of total benefits). Most of the savings accrues to traffic that would use the old lock if it were not replaced despite the costs of delay (89 percent of total benefits).

	2002 Lock Tonnage (1,000 tons) (a)	2045 New Lock Tonnage (1,000 tons) (b)	2045 Old Lock Tonnage (1,000 tons) (c)	Diverted Tons (1,000 tons) (d)	Gross Cost Savings ($ per ton) (e)	Benefits from Diverted Tons ($1,000) (f)	Benefits from Tons not Diverted ($1,000) (g)
Commodity A	307	585	0	585	0.00	0	0
Commodity B	167	318	0	318	0.75	239	0
Commodity C	1,797	3,425	0	3,425	2.75	9,419	0
Commodity D	3,336	6,359	4,804	1,554	5.50	8,549	26,423
Commodity E	5,915	11,274	11,274	0	9.00	0	62,008
Commodity F	2,789	5,316	5,316	0	13.50	0	29,238
Commodity G	1,719	3,276	3,276	0	20.00	0	18,021
Commodity H	731	1,393	1,393	0	27.50	0	7,663
Commodity I	245	467	467	0	33.50	0	2,568
Commodity J	130	248	248	0	39.00	0	1,363
Commodity K	109	208	208	0	46.00	0	1,143
Commodity L	7	13	13	0	55.00	0	73
Total	17,252	32,883	27,000	5,883		18,207	148,500

a- 2005 Investigative Report, Table 6, p 12, in thousands of tons
b- Column a times ratio of forecast 2045 total traffic to 2002 traffic, in thousands of tons
c- Old lock capacity = 27million tons (see total)
d- Diverted tons when delay cost at old lock = $5.50 (some but not all of Commodity D is diverted)
e- Gross cost saving = cost of cheapest alternative mode or route less cost of using IHNC with unconstrained new lock
f- With new lock these tons would not be diverted, benefits = gross cost saving * diverted tons = (d) * (e); benefits expressed in thousands of dollars.
g- Even with no replacement, these tons would move via IHNC, as costs of diverting to another mode exceed delay costs at IHNC old lock. Benefits = $5.50 (assumed cost per ton of delay) * tonnage = $5.50 * (c); benefits expressed in thousands of dollars.
Note. Columns may not add to total due to rounding.

Without fully replicating the data and methods used by the Corps, this illustration comes close to the Corps' own estimate of navigation benefits in 2045. There is only a 12 percent difference between the estimate presented in this Appendix, $166.7 million ($18.2 + $148.5 million- see table above) and the amount reported by the Corps, $189 million.[46] Much of this difference may be explained by the fact that the future mix of

[46] Corps Appendix O, Table 2, p O-11

17 - (continued) See previous page.

traffic contains more commodities where the cost savings is high (chemicals, non-metallic minerals) and less where the cost saving is low (coal, petroleum products).

In the analysis presented in this attachment, it was estimated that current delays (average of eight hours) cost $936 (8*$117) per 1,000 tons, or $0.94 per ton. The "cut off" cost savings (point where tonnage is diverted) in the table in this appendix is $5.50 per ton (column e). To reach this point, delays would have to exceed the current level by a factor of five or 40 hours per tow, illustrating yet again how justification for this project depends critically on traffic growth that represents a significant departure from current trends.

17 - (continued) See previous page.

Appendix B

References:

Citizens Against Widening the Industrial Canal, "Failure to Hold Water, Economics of the New Lock Project for the Industrial Canal, New Orleans," December 2007

National Ports and Waterways Institute, "Inner Harbor Navigation Canal (IHNC) Lock Investigative Study" 2005

National Ports and Waterways Institute, "Traffic Projections on the Shallow-Draft Inland Waterways System in Louisiana" 2005

U.S. Army Cops of Engineers' Draft Supplemental Environmental Impact Statement (SEIS), "Inner Harbor Navigation Canal Lock Replacement Project Orleans Parish, Louisiana (Oct 2008)

U.S. Army Corps of Engineers' Draft Supplemental Environmental Impact Statement (SEIS), "Inner Harbor Navigation Canal Lock Replacement Project Orleans Parish, Louisiana (Oct 2008), Economic Appendix, Appendix O

U.S. Army Corps of Engineers, "Investigative Study" 2005, included as an attachment to Appendix O

U.S. Army Corps of Engineers, "Mississippi River- Gulf Outlet, New Lock and Connecting Channels, Evaluation Report, Economic Analysis, Appendix E" (Mar 1997)

U.S. Army Corps of Engineers, "Mississippi River- Gulf Outlet, New Lock and Connecting Channels (Inner Harbor Navigation Canal Lock Replacement) – Evaluation Report, Supplement No. 1" (Sep 20, 2000).

U.S. Army Corps of Engineers, Lock Performance Monitoring System, available at http://www.iwr.usace.army.mil/ndc/lpms/lpms.htm

U.S. Army Corps of Engineers, "Analysis of the Inland Waterways Trust Fund, Revenues Needed to Support Baseline and Cap[ability Programs, Presentation for the National Waterways Conference," March 20, 2007 available at http://www.waterways.org/GrierNWCMar07.ppt

U.S. Office of Management and Budget, "Budget of the United States Government, Fiscal Year 2009"

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CAWIC

January 24, 2009.

Mr. Richard Boe
U.S. Army Corps of Engineers (PM-RP)
P.O. Box 60267
New Orleans, Louisiana 70160-0267

Re: Comments on Draft Supplemental EIS for the IHNC New Lock Project, New Orleans.

Dear Mr. Boe,

Following are comments submitted for your consideration on behalf of our membership which consists of residents living in the project area, and other concerned citizens.

Scope

- The SEIS seems limited to engineering matters such as drawing out the channel, reflecting on the best method of lock fabrication, and finding a way to get rid of dredged sediments. It does not deal substantively with project aspects of most concern to us, namely, impacts on the environment and the community, and issues of public process and safety.

- Our concerns have been voiced for years from the communities surrounding the project area, and were almost the entire burden of comment during the scoping meeting held at Holy Cross School on April 4, 2007. The SEIS' characterization of this meeting is largely reduced to a graph that seems to minimize these concerns. The actual transcript, though imprecise, is much more accurate and reflective of these requests.

- Following the April 4 scoping meeting, we wrote to Col. Wagenaar and Mr. Royce Kemp on May 3, 2007 about scope of the SEIS effort, since it seemed that the Corps was intending to focus narrowly on the dredging. Mr. Kemp phoned to say the letter had been received and that the issues would be addressed in the SEIS. However, the issues have not been sufficiently addressed, which to us indicates a deficiency of the report, and is suggestive of artificial limitation of the study. That letter of 5/3/2007 is attached as part of this comment.

Public Safety

- We asked about the toxic sediments and their disposal, and the toxic layers potentially exposed on the newly scraped canal bottom but have not received sufficient answers. We

1- The replacement of the lock has been an ongoing process, which the public has been heavily involved with since February 1, 1960. See Section 6.0 of the SEIS for information regarding public involvement, review, and consultation of the lock project. Information provided to the public through the NEPA process has resulted in numerous revisions to avoid, minimize, and mitigate impacts to resources expressed by the public. Section 6.1, Public Involvement Program and Study History; Section 6.4, Public Views and Responses; and Appendix P – Scoping Meeting Report of the Draft SEIS provide a record of the public's involvement with the project and specifically address the April 4, 2007 scoping meeting. Appendix P provides a complete listing of categorized comments and directs the reader to those sections of the SEIS where the comments or concerns are addressed. This information is followed by a textual summary of the comments and a concluding paragraph explaining the USACE process for addressing these comments.

2 - Only those areas where dredging is required to enlarge the canal would be exposed to water in the canal after completion of construction. Table 4-1 in the Draft SEIS identifies these dredged material management units. Tables 4-5 and 4-6 identify those dredged material management units which would be placed in the confined disposal facility (the only sediments determined to be unsuitable for open water disposal). Because these units would not be excavated down to native sediments (which contain relatively few contaminants) it is reasonable to assume that the sediment left newly exposed in the canal would have similar concentrations of contaminants as the sediments removed and contained. Due to limited flow in the IHNC and lack of scouring, these contaminated sediments are likely to remain in place, similar to the sediments that were located above them. Backfill around the lock would cover these sediments after completion of lock construction. Because the after construction condition would be much the same as the before construction condition, there would be no additional effect on the environment. Although some dispersal of sediments can be expected during dredging, the effects of this dispersal were assessed in Appendix A of Appendix C (Water Quality and Sediment Evaluation) and were determined to be acceptable.

2 - (continued) See previous page.

2 CAWIC

wanted to know what was there and how it would be dealt with to avoid spreading contaminants in the ecosystem. The SEIS gives insufficient detail in this matter.

- The failure to do appropriate risk assessment for the project is nothing new. Since 1993 the National Transportation Safety Board has been asking the Corps to do a broad safety study of the harbor. The NTSB request was triggered by an incident in the project area. The Corps declared it would do a study of its own but never has.
- The 1996 draft EIS for the lock project declared that the project included no safety issues since it was already a canal and included a lock. When this statement was challenged it was not answered but instead omitted from the final 1997 EIS. We believe there are many outstanding safety issues that need to be fully addressed beyond terse disclaimers.
- Questions about longer and wider tows and big ships entering and leaving the busiest stretch of the River were dismissed as outside the project area.
- Questions about the continued industrialization of the canal, and further deepening of the channel in later 50-year intervals were said to be outside purview of the project.
- Questions about prudence & safety in raising towers twenty more feet on the dangerous and non-redundantly designed Claiborne Avenue (Judge Seber) bridge.
- Questions of prudence and safety of bringing in the Mississippi River levels further into the City were downplayed.
- The wisdom and safety of allowing larger ships and cargoes of things too dangerous to travel by road or rail to transit through thickly settled (now recovering) urban neighborhoods was questioned but pushed aside.
- The lack of emergency access to medical services because both bridges would be up at the same time and for longer periods than before. We asked how we would get to our families should something happen when we weren't there, or when the area flooded or toxic chemicals were in the air, or there was a train wreck and chemical spill, with less access to the area. Answered first with "Florida High Bridge", then answer dropped when bridge postponed.
- The lack of subsurface studies, in the light of earlier geological disturbances of quicksand and methane holes and sudden cofferdam shifting. The answer was to omit the reference in 1997 report. Concerns about subsidence, erosion, salt water intrusion were dismissed, just like they were when the MRGO was built, before its collapse largely from geological forces.
- We asked about dynamiting the old lock and about the dust, noise, construction traffic, lack of bridge access, delays for traffic, inconvenience. We asked about the impacts of pollution from idling lines of vehicles during long waits for bridges to lower, and this adding to already increase air disturbances. The SEIS did not answer this sufficiently.

3 - A lock navigability study was conducted for the SEIS and is provided in Appendix G. This study addresses navigability of the canal during construction. Once construction is complete, the appropriate safety features, such as guides and bumpers, would be installed as provided in the project description in the SEIS. The canal presents little challenge to navigation as it is a straight path, flows are minimal, and wind is largely obstructed by surrounding levees and floodwalls.

4 - The 2008 SEIS provides only a summary of the 1997 EIS and is focused on the significant issues associated with the project. Because it was determined that safety was not a factor in 1997, this issue was not carried forward as there have been no changes which would affect navigation safety. A lock navigability study was conducted for the SEIS and is provided in Appendix G. Without specific safety concerns about safety, CEMVN cannot respond further to this comment.

5 - Because tows and big ships currently use this section of the River, there would be little change in operations. Currently, tows that are longer and wider than the existing IHNC Lock are dismantled in the River or in the IHNC before entering the lock. These tows are then rebuilt after passing through the lock. These activities are occurring in one of the busiest waterways in the U.S. A larger and longer lock would reduce the breaking apart of tows before entering the lock and reduce hazards associated with these activities. The U.S. Coast Guard is responsible for navigation safety and would be responsible for upgrading River facilities to provide adequate safety for any increase in traffic.

6 - Industrial infrastructure supported by the shipping industry is already in place, thus, increased industrialization of the IHNC is likely to be minimal. It is anticipated that areas already zoned as industrial would be renovated to accommodate renewed industrial growth. Cumulative impacts from increased deep-draft and shallow-draft trips were considered in Section 5.4 of the SEIS.

7 - Design of Claiborne Ave bridge will meet LaDOTD standards. Improvements include raising lift towers and replacing lift span.

8 - The Mississippi River runs through the heart of the City of New Orleans and risks associated with living near the river without the new lock are the same as with the implementation of the Recommended Plan. During the Lock Replacement Project, new floodwalls and levees would be constructed that meet current CEMVN design criteria and provide protection from Mississippi River flood levels.

9 - The IHNC is currently a major shipping channel, and lock operation would continue without the project. With the project, more efficient lock operation lock would result in a more efficient operation of bridges and subsequent reduction in the only direct effect of barge traffic in the IHNC on surrounding communities.

10 - Emergency vehicles call bridge operators to notify them of an emergency and bridges are required to remain passable when emergency vehicles are approaching (33 CFR 117.31 "Operation of draw for emergency situations"). This requirement is a part of the U.S. Coast Guard bridge permit for these crossings. Electronic signage would be installed to notify drivers of bridge conditions, which would allow drivers to detour correspondingly. Paris Road to Interstate 10 would continue to provide a

11 - The MRGO did not collapse from geologic forces and extensive subsurface engineering soil tests were conducted to determine the stability of the substrate for the new lock construction (Volume 3 of 9, pages B-128 to B-140 in the 1997 EIS and Appendix D of the 2008 Draft SEIS).

12 - Above water portions of the old lock would be demolished using conventional methods, such as a wrecking ball, while under water portions of the old lock would be demolished using explosives. Limiting the use of explosives to underwater portions of the lock would eliminate the potential for suspended dust and would minimize noise and vibration. Dust and noise from construction were addressed in the SEIS in Sections 5.3.1.6 and 5.3.1.5, respectively. Detailed analyses of noise and air quality are provided in Appendices K and L, respectively. Although emissions from idling cars are extremely minimal, they were included in the assessment of impacts. Appendix J of the Draft SEIS provides a traffic analysis and makes recommendations to minimize impacts. Roads and intersections used for construction and detours would be upgraded to handle additional traffic.

- We asked about lowered property values, the inability to sell our homes, the industrialization of the area, inevitable increase of crime for poorer areas this project would make us. The SEIS answers were insufficient.

13 - Residences within a few blocks of construction, along construction and detour routes, and along Claiborne and St. Claude Ave would experience increased noise during construction (Appendix M). Although residents could experience a negative impact if forced to sell their homes during construction, CEMVN is committed to minimizing these impacts by providing sound protection to affected homes and temporarily relocating affected residents during construction, if they choose. Properties near new bridges and levees would also be affected by a loss of aesthetic value. CEMVN is committed to minimizing these impacts through development of greenspace, recreational paths, landscaping, and other components of the Community Based Mitigation Plan. Over the long-term, improved living conditions resulting from improved vehicular traffic flow, increased availability of local jobs, and benefits associated with the mitigation plan could stimulate renewal of the affected communities and potentially lead to an increasing trend in property values throughout the area. The recommended plan would not result in disproportional affects to minority or disadvantaged people.

- We did not get adequate answers to any of these persistent questions. We need to ask for an accounting for these in the SEIS, because after Katrina public safety has become a number one issue here and past answers are no longer seen as sufficient.

14 - Your comment is noted; however, all questions and comments presented by the public and resource agencies during the scoping meeting, public hearing and in response to the Draft SEIS have been addressed.

Toxic Sediments

- The SEIS does not seem to delve very deeply into issues of toxic sediment characterization and safe removal, where in our opinion, much of the project's foresight needs to be active. We didn't see much about clamshell dredging, for instance. We didn't see a methodology for sampling and dealing with actual dredged material, with standards and techniques and provisions for safe appropriate disposal. We do see, however, much space given to putting sediments of very specific volumes in the various containment and mitigation areas much as before. We were not inspired with confidence from this document that the Corps is protecting the public by working by offering the same old containment facilities with very minor adjustment.

15 - The Dredged Material Disposal Plan and sediment evaluation are discussed in detail in Section 4.3.4 and in Appendix C of the SEIS. Clam-shell dredging was considered but not evaluated further due to space and time limitations associated with implementing this method. Although, as described in Appendix C of the SEIS, it was determined that the distribution of sediments during dredging would be minimal in extent and effect from hydraulic dredging The sampling of effluent prior to discharge and methods for minimizing impacts of contaminants are also described in Appendix C.

- The proposed containment vessel site is immediately adjacent to a forty-one foot deep channel four miles long and protected along its length solely by a 12 foot high earthen levee. We believe there is a subsidence and erosion risk here in addition to the risk from flooding. The safety of this, when questioned, has been answered by the Corps IER-11 team with the assumption that this area will be absolutely protected by the erection of the proposed surge protection structure three miles away. This seems too facile an assessment of the real risk, and consequently a defect of the SEIS.

16 - At this time, detailed plans and specifications have not been prepared for the Confined Disposal Facility or any other component of the IHNC Lock Replacement project, as this would constitute continuing with project implementation and the expenditure of funds towards its completion without NEPA analysis and a Record of Decision. Conceptually, the Confined Disposal Facility Design Report (Appendix E) makes adequate recommendations as to the next steps for modeling and design necessary to protect the Confined Disposal Facility from overtopping.

- We do not think the 85 acre swamp rebuilding landfill from dredged sediments proposed for the Bayou Bienvenue area adjacent to Southern Scrap and the Pumping Station is a viable solution on the environmental side. We believe the area may be polluted already but have seen no SEIS investigation into what is there now, yet a lot of effort seems to have gone into planning the placement of dredged material. The lock project is willing to 'allow' somewhat polluted or toxic material leech into the bayou, material that may require a discharge permit. We do not see evidence this has been thought out, but we do see willingness to draw a line around the project engineering footprint without taking much forethought or responsibility for impacts on the ecosystem. The neighborhoods of the Lower Ninth have a great stake in restoration of this bayou area, and it seems the Corps intends this same area as a dump site for canal dredging. We would welcome real solutions for the bayou but do not want to have lock project sediments there.

17 - Discharge of effluent in the Mississippi River should not be an alternative. The sediment in that site has been characterized and data is provided in the Weston report and is summarized in Appendix C. Sediment and elutriate toxicity tests show that benthic invertebrates and fish from Bayou Bienvenue would be impacted from dredged material disposal and effluent discharge.

Project "Start" Activities

- The SEIS gives a brief indication of lock project start 'portions' (Vol. 1, 4.3.3). The first activity involved cleaning up an old industrial and manufacturing site on the east bank of

18 – See next page.

the canal ands removing contaminated soil, done on an open contract with the Washington Group. This soil was to be replaced with clean soil. The Corps project manager insisted that the topmost four feet excavated would not be replaced for cost reasons because it would have to be re-excavated as a bypass channel further down the critical path schedule of the lock project, after levees would be strengthened. The Holy Cross Neighborhood Association, when learning of this, requested that the soil be put back to previous levels rather than short-cutting the project, but this request was ignored.

18 - CEMVN removed the soil and disposed of it following all State and Federal regulations. CEMVN did not backfill because there was no need to do so for stability reasons and because any fill placed in this area would have just been removed later during the excavation of the bypass channel.

- In the period prior to Katrina there remained a noticeable project excavation adjacent to the east bank floodwall, exactly where the barge was to go through on August 29, 2005. It seems highly improbable that floodwall failure at this very spot was a random or coincidental event that deserves no mention in the SEIS, and we ask you to account for this matter fully in this document.

19 - CEMVN has no evidence that soil excavation contributed to the breaching of floodwalls.

- We believe the project needs to account its actions and effects on the communities under its trust. The true cost of this floodwall failure is immense, but these events did happen and need to be accounted for. It seems more than probable that some of the responsibility and cost for failure of the floodwall belongs to the lock project. Our hypothesis is that the wall was built on substandard materials and hence defective but that it broke where it did due to intrusion of the lock project in its first likely premature, risky shovelfuls at that very spot. It was not a safe thing to do. We think the project owes full public disclosure of records about this excavation before moving the least bit forward.

20 - CEMVN has no evidence that soil removal contributed to the breaching of floodwalls. New T-wall designs and scour protection on existing I-walls will substantially reduce the risk of floodwall failures.

- Similarly, the lock project's second official start activity was to demolish the Galvez Street Wharf, exposing the west floodwall of the canal where the wharf had been. This weak wall was first publicly noticed with great alarm during Hurricane Gustav in the so called "Sloshing and Lapping" incident witnessed by the world. It is clear to those of us paying attention to this project that the lock project was implicated. The public safety response to the emergency conditions in this single spot during Gustav was extremely costly even though the wall did not breech. The Corps claims the benefit of taking down the wharf but not creating conditions of public emergency and near catastrophe, two sides of the same coin. This incident needs an accounting. We believe at least some portion of this cost of emergency response, if not all, is owed by the lock project because of its neglect of public safety.

21 - CEMVN has no evidence that the demolition of the Galvez Street Wharf contributed to the breaching of floodwalls or increased their risk for failure. New, T-wall designs and scour protection on existing I-walls will substantially reduce the risk of floodwall failures.

- Further, in taking credit for the two jobs but evading responsibility for adverse effects of the above work on both east and west banks of the canal, the lock project SEIS declares the 1997 authorized project "started" and declares IT IS the project now over "no project". There is some contradiction here. Most of the movement from these two start activities has been premature and incomplete, and has set area fortunes backward. Generally, too much is unresolved about the costs and benefits of the 1997 project plan, things unresolved by the SEIS because they have not yet been considered in all their far-reaching impacts.

22 - Actions were taken prior to the injunction of the project, and this precludes the assessment of a "No Action Alternative" in the SEIS. Thus the "No-Build/Deauthorization Alternative" is assessed in the SEIS to fulfill the NEPA obligation of assessing an alternative which involves no further action. CEMVN has no evidence that the excavation of soils or demolition of the wharf caused failures of the floodwalls. The costs associated with these actions are thus, not considered part of the project.

5 CAWIC

- The "start" activities alone have flooded us neighborhoods with costs nearly beyond our ability to recover. We think we may not survive more costs of this project that are shifted to us. Since project activities seemingly have resulted in great damage and unforeseen risk to the public at the time of great environmental stress and public emergency, these project actions and their costs and risks should have been fully disclosed and included in the Supplemental Environmental Impact Statement. This has not been done, and this silence is a substantial omission in this document. We ask you to include this in the final SEIS.

- We know that projects of this type are not generally done in crowded urban areas and that precedent may not exist, but the fact is that great harm has already happened to largely minority communities in a sensitive urban environment because of project activities at this site. The parameters of the project, albeit too narrowly conceived, have been breached by the project itself. The salient result of these first actions has been unwarranted high risk to and breakdown of environmental safety because of the single-minded pursuit of navigation goals and disregard of other real consequences. This must be addressed and remedied.

- Yet a third claim to the project having "started" is the completion of this 2007 Supplement to the Environmental Impact Statement of 1997. Such claim seems premature while there remain outstanding environmental impact issues that need explanation and remedy. This project seems to be an old project type that gets funded first and the problems dealt with later. The project that would seem more valid today for start is one that is economically justified, environmentally sufficient, fully disclosed, and acceptable to the community. We believe these are accepted standards that the project must meet today and that this project meets none of them now.

- The old lock is scarcely mentioned in this pro-project SEIS but it is in fact of national and international engineering and maritime significance and potentially a great asset to the City of New Orleans, to the Port, and to the Corps. Fixation with the lock project has obscured a vision of the possibilities of this structure in a different kind of canal vision that could benefit all parties.

Risk Assessment

- Economic analysis for the project does not include risk assessment, and it is quite clear there is risk associated with this project's every aspect and action. Such assessment was not required when this project was first proposed but it is now by practical necessity, and should be incorporated into the SEIS which is considering present conditions and needs of the project after Katrina. We request that you undertake such an assessment.

- The SEIS still assumes a project benefit for deep draft shipping on the canal even though these ships are leaving and mostly gone. It has been very expensive to move these businesses back to the River. Isn't it counterproductive for the government to be moving these companies out of the canal and for the project to be inviting them back? We think

23 - The commenter does not provide information on the activities or costs to the community from activities that have been completed prior to the injunction of the project. The commitments by CEMVN to mitigate for impacts resulting from the project are summarized in Table 1-1 of the SEIS. These commitments are discussed in detail by resource in Section 5 of the SEIS.

24 - Lock projects have been implemented along inland waterways in major urban areas of the U.S. Environmental Justice issues have been considered since the initial planning of the IHNC Lock. Because of potential impacts to the community from construction activities, including affects to minority or disadvantaged people, the IHNC Lock Replacement project includes a Community Based Mitigation Plan that will provide $43 million for community based projects.

25 - The SEIS is not a project start. The SEIS has been prepared to comply with the NEPA and to provide a description of the alternative actions and no action, and the impacts of these alternatives on the human and natural environment. USACE will complete the SEIS and document the decision prior to initiating any further work.

26 - CEMVN conducted studies of the potentially significant historic properties in the area between 1987 and 1992, and a comprehensive summary of these studies was provided in the 1997 EIS and briefly summarized in the 2008 Draft SEIS. The demolition of the lock has been properly coordinated with the Louisiana State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Properties (ACHP). All of the proper measures needed to record the lock have been completed in accordance with SHPO and ACHP standards. Mitigation measures would be implemented as part of the recommended plan.

27 - CEMVN recognizes the increased cost and decreased benefits identified in the 2008 updated economic analysis. Benefit-cost analysis conducted for the 2008 SEIS conforms to guidelines provided by the White House Office of Management and Budget. While intangible costs (*i.e.*, costs which can not be quantified) to the community are not part of the benefit-cost analysis, these "costs" are considered adverse effects in the overall assessment provided by the SEIS. CEMVN is committed to avoid, minimize, and mitigate for these losses through various measures, including a $43 million Community Based Mitigation Plan. Without reference to specific risks, CEMVN cannot comment further.

28 - The SEIS does not assume a benefit related to the deep-draft increment. USACE is not involved in relocating businesses to the IHNC. The entire canal would not be deepened, only those portions necessary for construction would be excavated. Although the IHNC is connected to Lake Pontchartrain, excavation would not substantially affect the exchange of water between these two waterbodies. Furthermore, there would be no substantial increase in freshwater input to Lake Pontchartrain due to a slightly (3.5 feet) deeper lock, because freshwater is less dense than saltwater and more saline water occurs at greater depths in the IHNC. Without a more specific description of implied risks CEMVN cannot respond in more detail.

there are a lot of hidden risks and cost issues that the new lock project has not considered that Katrina has forced other parts of government and communities to consider. What, for one example, is the risk to Lake Pontchartrain for the implied deepening of the entire canal for ships? There are thousands of risk questions for an assessment that has not been done but is more necessary than ever. The stakes are high here, too high for no assessment.

28 - See previous response

- We do not think it is a benefit to be again doing an MRGO-type deep channel project for ships in a fragile, already compromised ecosystem. The SEIS needs to examine beyond short-term engineering capabilities to the extended effects of deep dredging in the canal on the long-term recovery and stability of the ecosystem. The failure to do this is a serious deficiency.

29- The IHNC is bordered by a risk reduction levee and floodwall on both sides, is located in urban New Orleans, and is in no way comparable in ecological terms to the Mississippi River Gulf Outlet. The impacts on the natural environment from operating a deep-draft lock are the same as the existing shallow draft lock; an additional 3.5 feet of depth would have no impacts to the aquatic environment of the IHNC, GIWW or Lake Pontchartrain.

- The SEIS does not consider the costs of environmental clean-up of sites like that now occupied by Southern Scrap & Materials, which has for years operated an environmentally hazardous ship-breaking operation that certainly impacts the canal but through this and other operations impact adjacent Bayou Bienvenue. This and other business/government operations, including an outfall canal from the city emptying into Bayou Bienvenue have created environmental hazards that need to be cleaned up. This is a cost of the new lock project that has not been included but is implied in further use of the channel, particularly for deep draft. Such clean-up costs would seem to fall under this project logically and by extension, as the project was once part of MRGO and now successor to it in the Inner Harbor These risks do not seem to have been considered, but need to be for a complete SEIS on this project, and we judge this to be a defect of the SEIS.

30 - Private businesses are regulated by state and Federal laws which are intended to prevent environmental pollution. When these regulations are not followed, the affecting entity is held responsible for remediation. Industrial activity in New Orleans will continue with or without the new lock, and thus was not considered an affect of the proposal to replace the lock. The City of New Orleans' outfall canal emptying into Bayou Bienvenue is not associated with the IHNC Lock.
These needs are not included as costs in the benefit-cost analysis as they do not arise as a result of the project, but are part of existing conditions that would not be affected by the lock replacement project.

- Repairs to the existing lock should also be considered a cost to the project of about $16 million or more because these have been now completed, as were repairs done in the 1998 extraordinary maintenance. Some of these repairs were touted to last 50 years, or up through the design life of the new lock project. The avoidance of these costs is no longer a benefit to the lock project but a cost.

31 - The benefits associated with lock repairs included in the benefit-cost analysis are the difference between the cost of maintaining the old lock under the No Build/Deauthorization Plan and the reduced cost of maintenance of the new lock under the Recommended Plan.

- One of the final questions at the public meeting for the 1997 EIS at Holy Cross School was never answered. It's in volume 9 of the EIS. It went something like this: "What if the project were opposed by 20,000 people in the surrounding neighborhoods?" Though 12 years have passed, people would still like to know where you have provided in the costs for the difficulties that might be encountered with an unpopular project that is considered as an injustice, even more so after Hurricane Katrina. We feel that the costs and risk assessment of this project should provide an assessment of this risk and potential costs as part of the evaluation of this project.

32 - CEMVN has actively sought and welcomed all input from the community. Any costs associated with providing comments and reviewing reports produced by Government agencies are the responsibility of those civic-minded individuals and organizations. These costs would not be reimbursed by USACE, and are largely intangible. Thus, these costs are not included in the benefit-cost analysis.

Economics

7 CAWIC

- The SEIS updates a study the Corps began in 2005 but repeats assumptions we believe to be false because we have noticed the reduction of traffic in the Industrial Canal. Fortunately we were able to engage economist Dr. Robert Stearns, and have attached his comments under separate cover. We are also including with that his earlier lock economic study presented publicly to the Corps December 4, 2007, that was ignored in the SEIS despite its relevance to matters at hand. We think that this omission is a deficiency of the SEIS that needs remedy. We also think that not using all the available data is a disservice to taxpayers and creates unnecessary obstacles to timely completion of project processes.
- .

33 - The documents and comments in reference have been responded to in this appendix. CEMVN rationale and assumptions used to assess the costs and benefits of the project are fully disclosed in the SEIS.

Study Bias

- The SEIS has failed to adequately consider comments of the public in the scoping meeting of April 4, 2007.

34 - Section 6.1, Public Involvement Program and Study History; Section 6.4, Public Views and Responses; and Appendix P – Scoping Meeting Report, of the SEIS provide a record of the public's involvement with the project and specifically address the April 4, 2007 scoping meeting. Appendix P provides a complete listing of categorized comments and directs the reader to those sections of the SEIS where these comments or concerns are addressed. This information is followed by a textual summary of the comments and a concluding paragraph explaining USACE process for addressing these comments.

- The SEIS has failed to adequately consider correspondence relating to project impacts and to changes in the project from Katrina. CAWIC's letter of May 3, 2007, already attached, offers requests for scoping that seem summarily dismissed from consideration, yet we still consider these inquiries essential for protecting emergent public interests.

35 - Information gathered during the public scoping process, as well as community plans (e.g., the Unified New Orleans Plan) and proposals were considered during the preparation of the SEIS.

- The Corps has failed to consider in its deliberations the Failure to Hold Water study submitted December 4, 2007 on the subject of lock traffic and benefit/cost analysis, using actual tonnage figures from the Corps web site over a long period to identify real trends. The Corps, in its own update has limited itself to a 2005 study relying chiefly on more speculative and project-favorable study done using projections from much earlier data. Failure to consult this pertinent report by well-respected economist Dr. Robert Stearns as well as other studies and materials critical of the project seems arbitrary and unprofessional. This leads to diminished confidence in this SEIS. The project seems protected by the Corps from strong inquiry and examination. This is certainly a problem for the public when the officials entrusted with making the decisions are also advocates for specific outcomes, as apparently in this case.

36 - Dr. Stearns study is addressed within this appendix. Substantial modification of the 2005 study resulted in a significantly reduced benefit to cost ratio.

- The SEIS refers to processes of community collaboration that have moved the project along to where it is today. But note should be made that many, perhaps most, of those who took part in those processes found them systematically biased in support of the project. This included minutes of meetings, record-keeping, reports, presentations, etc. Residents affected find themselves unable to overlook these defects, however, and request that an inquiry be made into these allegation. Community concurrence and support is an anchor of project legitimacy, but we must challenge the claim of this lock project to such. It seems that the main characteristic of many processes was presumption of the absolute necessity and need for this project that justified any means and shortcuts to success. We believe this is still the focus, but that new times and conditions require reconsideration.

37 - CAWIC is the only organization or individual to infer that CEMVN has modified public scoping documents in favor of the project. In fact, one member of the Community Based Mitigation Committee contested this assertion of coercive behavior during the November 12, 2008 public hearing. This comment is included in this appendix (Appendix S) within the transcript of the hearing which has been certified by a court reporter.

- We find that the suggestion of Corps imposed "aesthetics" to dress up project imposed but now indeterminate levee floodwalls is repugnant to residents and homeowners here.

38 - Plans to improve the aesthetic quality of levees and bridge approaches were developed in close coordination with the Community Based Mitigation Committee and are negotiable through that process of community input.

We believe the SEIS' characterization of desirable changes and community plans for Holy Cross and Lower Nine are way off the mark, indicating an unfamiliarity with community plans and aspirations.

38 - (continued) See previous page.

- Planning and design have been strictly preoccupied with the project's navigation engineering over its long years. Despite the expenditure of $150 million the project has never provided a real drawing beyond stick-figure of a new St. Claude Bridge and/or approaches. Nor have there been elevations of the proposed floodwall and levee reconfiguration, despite this being of paramount concern for those living in a local and national historic district. This lack of thorough project design and opportunity for comment from the community on these aspects of the whole project are unacceptable.

39 - The SEIS addresses the feasibility of replacing the St. Claude Bridge and associated impacts related to its construction. A detailed and final design would constitute an irretrievable commitment of resources and is precluded by NEPA regulation. The proposed floodwalls would be designed to meet the same design standards as other components of the Mississippi and Tributaries project. The current level of design and planning supports the feasibility of proposed actions and allows adequate assessment of impacts.

Environmental Justice

- The failure to come to terms with broad economic impacts of the project also fails environmental justice standards of NEPA. The WRDA report of 1991, instructed the Corps to leave the community viable and well as before to the extent feasible when a new lock would be necessary, a goal in no way achieved or even approached by a separate and exclusionary "mitigation" process divorced from impacts of the project itself, and largely unrepresentative of people or their issues with the project. These issues continue to be minimized by the Corps as noise, dust and traffic during construction, but there is much more, including permanent and far-reaching effects on the marshes and public safety and sustainability of the region, and questions about the dubious economics of the project and a learned distrust of Corps community processes. These issues are not addressed with sufficiency in the 1997 report or its 2007 SEIS.

40 - Environmental justice issues have been addressed throughout the history of the project. Specific mitigation measures have been developed to avoid, minimize, or mitigate for each impact associated with the project. In addition to these mitigation efforts, CEMVN has allocated $43 million to compensate for intangible effects of the project. All mitigation plans have been developed through coordination with the public that would not be affected by the lock replacement project.

- In our opinion the failure of the SEIS is not happenstance but yet another instance of what we call environmental injustice. This is the other face of a Corps preference for large construction projects benefiting traditional constituencies like, as here, the navigation industry. There is nothing in the SEIS that would give any hint that this is other than business as usual or that any of our requests have been honored in any way in the actual report substance.

41 - CEMVN recognizes the benefits of the project to industries dependent upon waterborne transportation. CEMVN also recognizes the benefits of a more cost effective navigation system. These benefits would be extended to the public in the form of reduced cost of energy and goods dependent upon the navigation system. CEMVN has diligently sought ways to minimize the adverse impacts of the project and is committed to implementing mitigation measures.

- "Employment is an important socioeconomic resource that affects community structure. Housing occupancy, business development and tax revenues are based on adequate employment in a community." (V 1, 5.3.5). We in Lower Ninth have always felt the injustice of the Corps offering employment to residents to participate in destroying their own community and against their own more profound needs and where their voices have not been heard.

42 - Comment noted.

- We have been treated respectfully by the Corps staff, given notice of public meetings, and given much the information we requested in a timely manner, and given the extension of time we have requested to comment on this SEIS. We are thankful for this. But it does not make up for the fact that we in the neighborhoods most impacted have not been a real part of the process except as recipients at the end after decisions have

43 - The decision is not finalized until a Record of Decision has been signed and the District Court lifts its stay on the project. The development of the project has a long history and numerous and substantial revisions have been made to address the concerns of the public.

been made. The Corps has held separate meetings for years on the lock project with various advocates and agencies of the project making plans that determine lines of the project that affect our neighborhoods. We have not been able to even view these plans or studies during this process, but at the small window of opportunity at the tail end of the process. This opportunity to comment on this document comes completely on a schedule of the Corps' discretion. So the Corps with industry and sponsors make the plan, we object as they listen, then go right on with the plan. We do not claim this is illegal, just that it is unjust. Both process and product go on without us and in spite of us, except for a statutory nod. Yet we are heavily impacted.

- The Lower Ninth Ward is a relatively less affluent, mostly minority African-American community adjacent to this project. Our area has been heavily polluted by industry, including navigation, and exposed to disproportionate dangers. We have been flooded three times by this project under its different names. We are in a struggle to rebuild what we have lost through flooding and to rebuild the wetlands used up by navigation. We see this project as unnecessary, risk-bearing, and an obstacle to coastal restoration. The SEIS doesn't acknowledge any of what we see here. Its concern seems, at all costs, for navigation. Real costs go far beyond what is enumerated in this SEIS, and this cost seems too great for us.

Conclusion

We conclude that the SEIS scope is inadequate. It addresses neither broad project impacts nor changed project conditions after Katrina. The SEIS concentrates its energies on drawings of the lock and channels, the placement of sediments, and the choices of techniques and sites for lock fabrication. It does not address important questions about this project and its real costs and effects on the ecosystem.

The SEIS demonstrates the continuation of a project bias for navigation interests, and ignores concerns about the sustainability of the environment and the communities in its midst.

The SEIS does not address significant public safety concerns that have become even more important to the community after Katrina.

The SEIS economic study is based on speculative projections of lock traffic growth despite continually declining real traffic.

The SEIS claims to legitimacy for the authorized project of 1997 seem unwarranted by the failure to resolve outstanding issues such as toxic sediments, needing resolution by approval of this SEIS. The SEIS further has failed to account for the cost and impeding liability of risky lock project "start" initiatives that have contributed to floodwall failure during and after Katrina. These project issues must be resolved, but have not even been addressed. A risk assessment does not seem to have been made, yet seems essential to a project of this magnitude and implication.

43 - (continued) See previous page.

44 - The close association of the Mississippi River with navigation and industries has been recognized for decades. The affects of this association are felt throughout much of the State and are not disproportionately directed at the communities affected by the IHNC Lock Replacement project. State and Federal regulations have been strengthened to address these issues. Furthermore, storm-related flooding has not been solely limited to those communities affected by the lock project. The SEIS acknowledges all concerns presented by the public and has been substantially revised based on this input.

45 - The SEIS provides an assessment of alternatives to achieve the project's purpose and need in a post-Katrina environment. Many aspects of the project remain unchanged from the 1997 EIS, and in these cases information is summarized in the SEIS and the reader is referred to the 1997 EIS for more detail. The Council of Environmental Quality makes recommendations to Federal agencies to incorporate by reference whenever possible during the preparation of NEPA documents. The SEIS addresses each potential impact of the alternatives with consideration of available data including: a detailed analysis of sediment handling and disposal options with consideration of potential overtopping of the HSDRRS; a detailed noise analysis with consideration of new construction techniques; a detailed traffic analysis with consideration of reduced traffic following Katrina and other issues.

46 - CEMVN respectfully disagrees. USACE is authorized to implement the Lock Replacement project by Congress; this SEIS evaluates the alternatives and their impacts to the human and natural environment of implementing the authorized project.

47 - No specific reference to the presumed risks has been provided by the commenter. However, CEMVN has evaluated all safety concerns associated with the Lock Replacement project and have adequately addressed those concerns in the SEIS.

48 - Although waterborne traffic on the IHNC increased between 2005 and 2007, the long-term trends based on historic data indicate a growth in lock traffic would occur.

49 - The SEIS cites the 1997 EIS where there was no change in the existing conditions or potential impacts. The purpose of the 2008 SEIS is to address those issues which were inadequately addressed in the 1997 EIS given the change in existing conditions following Hurricane Katrina. CEMVN has no evidence to support the claim that the actions referenced were responsible for the failure of the floodwalls.

10 CAWIC

The project is widely opposed by a community that feels with some cause that public process has been dishonest, unjust, and discriminatory. This opposition has grown after Katrina. The SEIS does not address these matters of significance to the project.

We must conclude on the basis of these considerations that this Supplemental Environmental Impact Statement falls far short of supporting continuance of this project. Accordingly, we request that the IHNC new lock project be recommended for deauthorization, that the project revert to a condition of "no project," and that funding be terminated except for addressing damages.

Thank you.

Respectfully,

John Koeferl
President
Citizens Against Widening the Industrial Canal

Attachment

50 - CAWIC is the only organization or individual to have claimed that the public involvement has been dishonest, unjust, or discriminatory; and CEMVN has no evidence to support this conclusion. CEMVN has actively sought public input and developed numerous mitigation measures to address public concerns through several methods including the Community Based Mitigation Committee, scoping meetings, and public hearings.

51 - Comment noted.

THE UNIVERSITY of WISCONSIN MADISON

January 25, 2009

New Orleans District of the Army Corps of Engineers,

We are writing to express concern over multiple aspects of the proposed Industrial Canal lock expansion project. Our research group of interdisciplinary students with backgrounds ranging from hydrology to urban planning to law has spent the past two years researching the environmental conditions and working with the neighborhood to evaluate the prospects of freshwater swamp restoration in the nearby Bayou Bienvenue wetlands area.

While we recognize the lock expansion project has the potential to positively impact the local area through additional employment opportunities, funding for community projects, and needed sediment for freshwater swamp restoration, we are concerned that the potential benefits of this project are ultimately outweighed by its adverse implications, most notably deposition of contaminant-laden sediment within an area presently used by neighborhood residents and the immense, long-lasting damage this project will inevitably bring to relations between the Corps of Engineers and the local community.

Over two years of study has given our group an understanding that large amounts of sediment are essential to any effort to restore a freshwater swamp ecosystem within this area. In fact, the data we have collected has even been used by the Army Corps of Engineers both to help support a recent CWPPRA application and to write the most recent Environmental Impact Statement for this lock expansion project. However, we believe introducing contaminated sediment from the Industrial Canal into the proposed sites has significant potential to jeopardize efforts to enhance the types of recreational uses that would improve the local quality.

We also believe the overall damage this project will bring to relations between the Corps and the Lower Ninth Ward neighborhood will be substantial and potentially irreparable, at least for the foreseeable future. Although the extended legal and political battle preceded our research group's involvement in the local area, the hundreds of hours we have interacting with the community have led us to a firm conclusion that further progression of this project will magnify already existing neighborhood sentiments of distrust and subjugation toward not only the Corps, but also other proponents of this effort.

Thank you for taking the time to consider our input.

Sincerely,

Dan Cornelius
Andrew Leaf
Amanda Perdzock
Ashleigh Ross
Michelle Scott
Hiroko Yoshida

Nelson Institute for Environmental Studies
University of Wisconsin-Madison Rm. 105 Bradley Memorial, 1225 Linden Dr. Madison, Wisconsin 53706
608/334-5057 Fax: 608/262-2273 E-mail: uwnola@gmail.com http://bringbackthebayou.rso.wisc.edu/

1 - CEMVN has conducted detailed sediment sampling in the areas where dredging is proposed for the IHNC Lock Replacement project. Dredged material proposed for placement at the Mississippi River disposal site and in the mitigation site for beneficial use is suitable for open water disposal and is not expected to pose adverse effects to benthic organisms or fish. The results of the sediment sampling and the evaluation of sediment and water quality are provided in Appendix C.

The Dredged Material Disposal Plan is discussed in detail in Section 4.3.4 of the SEIS. Based on the suitability of the material for various disposal options, dredged material would be discharged into the Mississippi River, placed in the triangular-shaped area south of Bayou Bienvenue for wetland mitigation, temporarily stored and then used as backfill, or permanently disposed of in a confined disposal facility.

The conceptual design in Appendix E provides information on the suitability of the proposed Confined Disposal Facility (CDF) site; a determination of storage volume requirements; containment dike geometry and construction features; CDF operations; evaluation of CDF construction materials; consideration of hurricane protection requirements; potential contaminant impacts; regulatory requirements; and cost estimates. The CDF would contain all dredged material determined not to be suitable for open water disposal in perpetuity.

CEMVN is committed to mitigating impacts to wetlands resulting from the project. The need for mitigation and a conceptual discussion of the location and methods for mitigation are provided in the Draft SEIS. A more detailed mitigation plan has been developed and included in the Final SEIS.

The plan, located in Appendix M, includes conceptual design for the establishment of a salt marsh community and includes a description of the method and duration of containment, timing and means of containment removal, vegetative planting intentions, and a monitoring plan.

2 - The wetland restoration is mitigation for impacts from the construction of the CDF and off-site construction area and would create active and passive recreational opportunities such as bird watching kayaking, canoeing, wildlife viewing, and fishing.

3 - Comment acknowledged. Congress has authorized the IHNC Lock Replacement project and USACE is preparing this SEIS in support of the authorized project. CEMVN has solicited input from all interested parties throughout the project planning and scoping process as part of the 1997 EIS and SEIS (see Section 6.1 in the SEIS). The public and resource agencies have been involved in the planning process for the IHNC Lock Replacement project since 1960, and their input has been instrumental in the evaluation of numerous alternative lock locations.

The commitments by CEMVN to mitigate for impacts resulting from the project are summarized in Table 1-1 of the SEIS. These commitments are discussed in detail by resource in Section 5 of the SEIS. The Community Based Mitigation Committee has held full and open public meetings in the community to gather information on community needs and provide feedback to the local community on proposed mitigation projects. The Community Based Mitigation Plan will utilize $43 million to fund mitigation projects in the local area.

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All Congregations Together * Alliance for Affordable Energy * American Rivers
Citizens Against Widening the Industrial Canal * Delta Chapter Sierra Club
Eastern St. Bernard Association * Environmental Defense Fund
Gulf Restoration Network * Holy Cross Neighborhood Association
Hope House * Levees.org * Louisiana Environmental Action Network
Louisiana ACORN * Lower 9th Ward Community Organization/ACORN
Lower 9th Ward Homeowners Association
Lower Mississippi Riverkeeper* National Wildlife Federation
New Orleans East Community Organization/ACORN * Ouachita Riverkeeper
Pax Christi New Orleans * Seabrook Area Community Organization/ACORN
St. Bernard Beautification Association
Surfrider Foundation, Central Gulf Coast Chapter
Upper Ninth Ward ACORN Group

January 26, 2009

U.S. Army Corps of Engineers (PM-RP)
c/o Richard Boe
P.O. Box 60267
New Orleans, LA 70160-0267

Re: Comments on the Draft Supplemental Environmental Impact Statement for the Inner Harbor Navigation Canal Lock Replacement Project

Dear Mr. Boe,

On behalf of our thousands of members and supporters in the Gulf States and millions of members and supporters across the nation, please accept these as official public comments on U.S. Army Corps of Engineers' Draft Supplemental Environmental Impact Statement (DSEIS) for the Inner Harbor Navigation Canal Lock Replacement Project. These comments are in addition to any comments that individual groups may be submitting separately. Based upon: 1) the environmental, social, health, cultural, economic and other impacts of the proposed expansion of the lock, 2) the failure of the Corps to comply with a 2007 ruling from U.S. District Court for the Eastern District of Louisiana (*Holy Cross v. U.S. Army Corps of Engineers*), 3) lack of economic justification for the project, and 4) the existence of much more pressing priorities for the community, including rebuilding, storm protection and environmental restoration, it is the strong conviction of the undersigned organizations and its members that the Corps should select the "no action" alternative and recommend that Congress deauthorize this project.

1 - CEMVN has developed numerous mitigation measures to avoid or minimize all of the potential impacts of the project. The Final SEIS was developed to comply with the courts ruling and includes a detailed analysis of sediments and a plan for their disposal which addresses the potential impacts to communities and the environment. CEMVN recognizes the increased costs in relation to projected benefits; however, CEMVN has been directed by Congress to assess the potential impacts and recommend a plan. Although CEMVN assumes no benefits associated with the deep-draft increment, the Port of New Orleans does assume that benefits would occur. CEMVN recognizes the priorities for the community and has included a $43 million community mitigation plan. CEMVN is in the process of implementing a comprehensive plan to improve the Greater New Orleans Hurricane and Storm Damage Risk Reduction System.

Project Background
This project seeks to replace the existing 640 ft. long / 75 ft. wide/ 31.5 ft. deep lock in the Industrial Canal (in New Orleans) with a larger 1,200 ft. long / 110 ft. wide / 36 ft. deep lock. The canal connects the Mississippi River to the Gulf Intracoastal Waterway and the now-closed Mississippi River Gulf Outlet (MRGO). The 1956 Rivers and Harbors Act authorized a lock replacement when "economically justified by obsolescence

of the existing lock." Over the course of the last 50 years, the Corps has proposed several other lock replacement locations, and has subsequently abandoned those alternatives due to similar concerns as those being put forth in these comments. In its 1997 Final Environmental Impact Statement and subsequent Record of Decision, the Corps proposed the current location for the lock replacement in the Lower 9th Ward, New Orleans, adjacent to the Holy Cross Neighborhood.

In 2003, the Gulf Restoration Network, Holy Cross Neighborhood Association, and Louisiana Environmental Action Network (represented by the Tulane Environmental Law Clinic) sued the Corps because, among other things, the 1997 Final Environmental Impact Statement failed to take a hard look at the environmental impacts of the project. The Court agreed that the Corps failed to take a hard look at the environmental impacts of the lock replacement project, suggested that the lock replacement project may no longer be in line with the Corps' post-Katrina priorities, and enjoined the Corps from going forward with the project until it complied with the law. In response to the Court's order, the Corps prepared the DSEIS, which still recommends replacing the lock, but again fails to take a hard look at the environmental impacts of the project, and thus is out of compliance with NEPA. Until such time as the Corps has adequately complied with NEPA, and all other applicable environmental laws and rules, the Corps should halt all construction of this project and not commit any further resources to project construction.

Unacceptable Public Safety and Environmental Impacts

This project will produce unacceptable public safety impacts. The DSEIS has failed to take a hard look at these impacts as the National Environmental Policy Act (NEPA) requires, and has failed to examine alternative locations for its proposed confined disposal facility. The Corps' own testing acknowledges that some of the canal sediments are "acutely toxic to benthic organisms." *See* DEIS at 135. Yet the Corps plans to put these toxic sediments in a so-called "confined disposal facility" built in wetlands bordering the South East side of the Gulf Intercoastal Waterway near the border of Orleans and St. Bernard Parishes—where the waters of Hurricane Katrina flooded the area up to 17 feet deep. The Corps also failed to determine what type of storm event the "confined disposal facility" will be built to withstand or whether the dikes of that facility would undermine the levees protecting the area.

The Corps also failed to identify the geology of the soils beneath the canal, the proposed lock replacement location, the adjacent levees and adjacent neighborhood. Without doing so, the Corps cannot know whether dredging and deepening the canal might undermine the levees by allowing water to flow underneath the levees, causing them to collapse. Additionally, the Corps has failed to state whether or not the levees along the Industrial Canal are designed to accommodate a wider, deeper canal. A wider, deeper canal would have greater water pressure and exert more force on the levees during a storm event. Without addressing the levee engineering and whether or not it takes into account this lock replacement project, the Corps could be placing the residents of the Lower 9th Ward, Holy Cross, and Bywater neighborhoods in grave danger.

In the DSEIS, the Corps acknowledges that in order to expand the lock, it will destroy 244 acres of wetlands, and classifies these wetlands as 'low-value' wetlands due to the

2 - The Supplemental Environmental Impact Statement was prepared to fully comply with NEPA and address the recommendations of the United States District Court for the Eastern District of Louisiana. Project construction was stopped at the time that the project was enjoined and no further construction will take place until NEPA and environmental regulatory compliance is met, and the requirements of the District Court are met.

3 - Material will be hydraulically dredged from the IHNC and the slurry pumped through a pipe to the Confined Disposal Facility (CDF). Alternative locations for the confined disposal facility were considered; however, because other locations would have involved the transport pipe crossing a navigable waterway such as the GIWW or an automobile road or highway, they were eliminated. Other alternative locations would have placed the CDF in already developed urban areas. The proposed location on the south bank of the GIWW has been previously used for dredged material disposal. Alternative disposal plans were also considered and are addressed in Appendix F of the SEIS.

CEMVN has prepared a dredged material disposal plan for the IHNC Lock Replacement project. All dredged material disposal plans are subject to review by the U.S. Environmental Protection Agency and the Louisiana Department of Environmental Quality. All dredged material was evaluated for the presence of contaminants and the selected disposal of dredged material was based upon this evaluation.

Upon completion of dredged material placement and dewatering, the confined disposal facility would be an upland area covered in vegetation. The confined disposal facility would permanently contain all contaminated materials in a stable site located away from any residential or commercial areas. Furthermore, although some of the dredged material was deemed unsuitable for disposal in aquatic environments, it has been determined to not be a human health and safety risk.

Once the CDF is dewatered and capped, the potential for storm surge or flooding to expose contaminated sediments would not be greater than all other upland areas in the metropolitan New Orleans area. If the CDF is flooded before the contaminated dredged material is dewatered and capped, there is a potential for some of the material to escape the CDF. However, the volume of material which would be exposed to mixing with floodwaters (i.e., the uppermost layer of the CDF) would be minimal in relation to the volume of water and potential mixing that would occur. The concentration of contaminants in eroded CDF material is expected to be lower than in situ concentrations due to dilution and therefore lower than conservative levels considered safe for human exposure (RECAP Screening Standards non-industrial) once into consolidates and dries outside the CDF. Furthermore, the CDF would receive the same level of hurricane and storm damage risk reduction as the rest of the greater New Orleans area and is isolated from residential areas. The CDF will have the 100-year level of protection upon completion of the surge barriers at the intersection of the IHNC and Lake Pontchartrain and across the Gulf Intracoastal Waterway and MRGO as described in Individual Environmental Report #11.

4 - CEMVN analyzed the subsurface geology and soils beneath the canal, proposed lock site, and adjacent levees (see Appendix D of the SEIS). Further geotechnical analysis would be conducted during the design phase of the project and preparation of detailed plans and specifications.

A stability analysis was performed which modeled the effects of the excavation on the adjacent levees. The preliminary stability analysis showed that, with deep soil mixing, the Factor of Safety criteria for the proposed excavation limits would be met. Additionally, new levees and floodwalls would be constructed along the IHNC from the location of the new lock south to the Mississippi River and these levees and floodwalls would be built to meet USACE's design criteria.

types of vegetation that the wetlands support. However, given their location and the services they provide, these wetlands are greatly undervalued, and thus the destruction is not warranted, and the mitigation that the Corps proposes is inadequate. The Corps fails to take into account the vital flood and storm mitigation services that these wetlands provide, as they are urban wetlands that protect New Orleans East, the Lower 9th Ward, and St. Bernard Parish from flooding events and hurricane storm surge. As a result of undervaluing these wetlands, the Corps' DSEIS fails to take into account the true environmental and public safety impacts and costs of the lock expansion and thus the DSEIS must be considered inadequate and insufficient in complying with NEPA.

Fails Corps Economic Justification Requirements

The Corps has not presented a convincing case that this project might be economically justified using traditional Corps methods of measuring costs and benefits. Over the last few years, as traffic has continued to decline, the case has been getting weaker and weaker. The Corps' analysis was scrutinized in a December 2007 report, ***Failure to Hold Water***, authored by Dr. Robert Stearns on behalf of Citizens Against Widening the Industrial Canal. Dr. Stearns found that the project would not be justified unless both the levels of barge traffic and average delays at the existing lock increased dramatically (and unrealistically) in the future. By applying more realistic projections based on historical trends in traffic, Dr. Stearns concluded that the project's benefit-cost ratio would be at the most 0.40, far below the level of 1.00 where project benefits are at least high enough to equal project costs.

This conclusion was made before the recommended closure of the Mississippi River Gulf Outlet (MRGO) Channel. Now even the Corps admits that traffic does not warrant a deep draft lock. The remaining justification relies even more on a significant reversal of the 20-year downward trend in barge traffic (see accompanying figure). Actual traffic levels in 2007 were significantly lower than traffic forecasts that the Corps made in 2005, and the gap between Corps traffic forecasts and actual traffic levels widened even more in 2008. Yet the Corps has been unable to identify any "discernible new trend … that might call into question the assumptions of the forecast" and has concluded that "no major reanalysis is warranted." Of course, none of this matters to the Corps by its own admission, because a replacement lock has been authorized, the so-called "No Action Alternative" has been eliminated from further evaluation.

Regrettably, the mistakes in the Corps' analysis have been compounded by a failure to provide an accurate description of the current cost-sharing arrangements for the project. The DSEIS references the cost-sharing arrangement as described in the Corps' 1997 evaluation of this project and fails to mention that the cost shares were subsequently revised to place a greater burden on the general taxpayer and less on the local sponsor (the Port of New Orleans). As the taxpayer's burden increases, the need for a reliable justification of the project becomes even more critical.

According to a more recent analysis by Dr. Stearns, unless current levels of traffic and delays increase, the benefit/cost ratio has actually fallen to 0.30 -- that is, it would only return 30 cents to every dollar invested. Dr. Stearns concludes that "the 2008 SEIS falls far short of being an objective evaluation of project alternatives. Its primary purpose

5 - The wetlands that would be impacted by the construction of the CDF are located within a portion of the HSDRRS that is surrounded by levees with water levels controlled by two tide gates; one at the confluence of Bayou Bienvenue and MRGO and the other at the confluence of Bayou Dupre and MRGO. This area is referred to as the Bayou Bienvenue Central Wetland Unit. The Bayou Bienvenue Central Wetland Unit is bounded by HSDRRS levees along the MRGO and GIWW on the north and east sides, and a local levee along the south side. The local levee on the south side of the Unit abuts Florida Avenue and the railroad tracks and is 14 feet high. This levee provides protection from tidal inundation for St. Bernard Parish, the Lower Ninth Ward and Holy Cross neighborhoods. When the tide gates are open, the wetlands in the Bayou Bienvenue Central Wetland Unit do not provide storage, because all rainwater is pumped from the neighborhoods over the 14 foot high levee/floodwall and into the Unit where the water flows out with the tides into the MRGO. However, when the floodgates are closed, such as during a severe tropical storm event, the approximately 29,000 acre Bayou Bienvenue Central Wetland Unit provides storage for discharge from forced drainage in nearby neighborhoods and storm surge that overtops the HSDRRS. The CDF would fill approximately 209 acres of the Bayou Bienvenue Central Wetland Unit, which comprises 0.7 percent of the total storage area. Further, the CDF is comprised of a fill cell, which would be used for temporary storage of dredged material, and a disposal cell, which would be used for permanent storage of dredged material. The disposal cell would permanently fill approximately 71 acres of the Bayou Bienvenue Central Wetland Unit, which comprises 0.2 percent of the total storage area. Neither the temporary or permanent impacts to storage capacity in the Bayou Bienvenue Central Wetland Unit from the construction of a CDF would be significant. The loss of these wetlands would be fully mitigated through the restoration of tidal marsh south of Bayou Bienvenue, in an area where other wetland restoration efforts have been proposed and using a restoration method (beneficial use of dredged material) also being proposed by the State of Louisiana and University of Wisconsin.

6 - Dr. Stearns' economic analysis is based on a single year of vessel traffic data and does not consider the actual trends observed in the historical data. The benefit cost analysis conducted for the SEIS (Appendix O) is based on an assessment of vessel traffic on the IHNC from 1992 to 2002, vessel traffic on adjoining waterways, and economic trends with consideration of the historical and future economic and regulatory factors which have affected the industries supported by waterborne traffic.

7 - CEMVN recognizes the increased cost and decreased benefits identified in the 2008 updated economic analysis. The benefit cost analysis conducted for the 2008 SEIS (Appendix O) conforms to the guidelines provided by the White House Office of Management and Budget. With the increased efficiency and dependability of the proposed new lock, waterborne traffic on the IHNC would likely increase and result in an increase in related businesses along the IHNC and GIWW.

CEMVN has carried forward a No-build/Deauthorization alternative that would accomplish what the commenter has suggested. Components of the 1997 EIS have been partially implemented; therefore the No Action Alternative as described in the 1997 EIS does not reflect current conditions. Instead the No-build/Deauthorization alternative is a better description of the future condition if USACE took no further action.

8 - The commenter is correct and the cost share described in the draft SEIS is incorrect. The cost share description in Section 3.1 of the final SEIS has been changed to the following: "The cost sharing for this project was set forth in the WRDA of 1986 and was described in the 1997 EIS. However, the project cost share description in the 1997 EIS was determined to be in error, and the cost share description was revised in Evaluation Report Supplement Number 1, dated September 20, 2000 as approved by the Deputy Commander for Civil Works. When Congress authorized the Lock Replacement project in Section 844 of WRDA of 1986, it authorized a new lock to replace the existing deep-draft lock and specified that the cost sharing for both the shallow and deep draft increments shall be consistent with Sections 101 and 102 of WRDA of 1986. Therefore, the cost sharing has been modified to be consistent with WRDA of 1986, and the non-Federal interests must provide 25 percent of the incremental construction costs for the deep draft portion of the project during construction and an additional 10 percent share in cash over a period not to exceed 30 years after completion of construction, at an interest rate determined pursuant to Section 106 of WRDA of 1986, and amendments thereto. In accordance with applicable inland and deep draft navigation, USACE will be responsible for 100 percent of the operations, maintenance, repair, replacement, and rehabilitation costs for the replacement lock."

9 - The 2008 updated economic analysis assumes there would be no benefit to deep-draft traffic as a result of the closure of the MRGO (Appendix O). With the closure of the MRGO, businesses served by deep-draft vessels have or are planning to relocate. Because the need for a deep-draft lock is currently minimal, USACE has assumed that there will be no increased benefit to building a deep-draft lock versus building a shallow-draft lock. However, the potential for growth in the number of shallow-draft vessels moving through the lock would result in substantial benefits which justify construction of a larger lock. Without a deep-draft lock there would be no potential for growth of industries serviced by these vessels along the IHNC and the GIWW/MRGO. Although it can not be guaranteed that a deep-draft lock will result in renewed growth of these industries along the IHNC (and is therefore not counted as an economic benefit in the economic analysis), it is likely that some deep-draft traffic will return to the Port's complex on the IHNC/GIWW/MRGO as a result of the deep-draft lock construction.

seems to be to justify a fundamentally flawed decision to continue to construct a replacement lock." Dr. Stearns' analysis has been submitted for the record in this proceeding and is incorporated by reference as part of these comments, as well.

9 - (continued) See previous page.

Unacceptable Community Health Impacts
The Ninth Ward neighborhoods that are adjacent to both sides of the Industrial Canal include New Orleans East, Seabrook, Gentilly, Upper 9th Ward/St. Claude, Bywater, Lower 9th Ward and Holy Cross. Many community organizations in these neighborhoods have been heavily involved in post-Katrina planning and rebuilding, and share a vision for the Ninth Ward of solid community residential neighborhoods, with appropriate parks, schools, hospitals, wetlands, and small businesses. More than a thousand of individuals have put all of their resources into returning and re-establishing their lives in these communities. Both private and public rebuilding projects (including projects by Global Green, ACORN, and Brad Pitt and Angelina Jolie's Make It Right Housing Project) have restored thousands of homes and could use assistance**, not the disruption** that a major expansion of the Industrial Lock would entail.

10 - While intangible costs to the community are not part of the benefit cost analysis, these costs and impacts to community cohesion are considered in the overall assessment provided by the SEIS (see Sections 5.3.8, 5.3.11, and 5.3.14). CEMVN is committed to avoid, minimize, and mitigate for these losses through various measures including a $43 million Community Based Mitigation Plan.

The Industrial Canal area is no longer the industrial outpost that it once was when it was first utilized in the 18th century as a shipping lane. This is in part due to the recent post-Katrina closure of the Mississippi River Gulf Outlet, which is steering shipping business out of the canal and onto the Mississippi River.

11 - With the closure of the MRGO, businesses served by deep-draft facilities have or are planning to relocate. As described by the commenter, some of these businesses have relocated to the Mississippi River where they can be served by deep-draft vessels.

The neighborhoods adjacent to the Industrial Canal are overwhelmingly African-American, and would be exposed to a disproportionate level of increased contaminants as a result of an Industrial Lock expansion. These citizens have already felt the brunt of environmental justice issues when the Corps' engineering failed and cost over a thousand lives when Hurricane Katrina's storm surge hit. Because of these environmental justice issues, this project should not go forward.

12 - Environmental Justice issues have been considered since the initial planning of the IHNC Lock and the potential for disproportionate affects to minority or disadvantaged people as a result of lock construction has been acknowledged. To mitigate these impacts, CEMVN has proposed the implementation of a $43 million Community Based Mitigation Plan, with projects being funded under the guidance of the community through the Community Based Mitigation Committee. As the entire city of New Orleans and numerous communities along the Gulf Coast were impacted by Hurricane Katrina, it is incorrect to assume that these effects were disproportionately associated with minority or disadvantaged populations.

Air Pollution: The dust and particulate matter that would be created from an Industrial Lock expansion would be excessive, and would impact neighborhoods from the Mississippi River to Lake Pontchartrain, for at least a decade. New Orleans residents already have among the highest asthma rates in the country, and the humid air of the Gulf Coast region exacerbate the effects of particulate matter inhalation, now found to be linked with congestive heart failure.

13 - Construction contractors would implement measures to mitigate the distribution of dust and particulate matter during construction activities. Mitigation measures include watering soils at the construction site when the moisture content of the soil gets below 75 percent. By using these mitigation measures, air emissions from the lock and confined disposal facility construction would be temporary and should not significantly impair air quality in the area.

Noise Pollution: The noise pollution from current routine industrial activities on the Industrial Canal already affects residents at night in the Ninth Ward. The noise from a lock expansion would increase from dawn till dusk, further adversely impacting local residents, including students who are within a half mile of the proposed project location. This noise will further debilitate the lives of families who are already stressed from the traumas of Hurricane Katrina.

14 - CEMVN acknowledges that significant noise impacts would occur within the neighborhood near the construction site, in particular those areas adjacent to the proposed new lock site (see Section 5.3.15 and Appendix K). Construction contractors would be required to limit noise levels at specified distances from their construction sites, monitor the noise levels and verify adherence to specifications. They would use innovative pile-driving equipment designed to minimize noise levels, such as vibratory hammers and underwater pile-driving equipment.

Mitigation measures would be implemented to reduce the effects of increased noise levels to the greatest extent possible, including sound-proofing affected structures, and temporary relocation of affected individuals if they choose, during construction. Pile driving and heavy truck hauling would be restricted to the daylight hours only and would not exceed 10 hours per day. Pile driving for the St. Claude Avenue Bridge replacement would be done during the summer to avoid impacting school children and schools. Additionally, no substantial long-term noise impacts would occur as a result of the recommended plan.

Further, the expansion of the canal will almost certainly lead to the development of more industrial businesses that will further pollute air, water and land. This will impair the redevelopment of the communities that are now working so hard to return since the aftermath of Hurricane Katrina.

15 - CEMVN acknowledges that improved navigation through the canal may lead to more industrial facilities north of the project area, primarily around the France Road Terminal; however, all of these facilities would be required to comply with state and Federal laws, and would not be permitted to pollute the air, water or land.

Community Re-building, Storm Protection and Wetlands Restoration Needs
The massive expenditures on this unnecessary and unjustified project will, practically speaking, preclude other investments that are much more critical to the future health of the region. Authorized but not-yet-funded coastal restoration projects and projects to protect coastal residents should be prioritized over spending $1.3 billion on an unnecessary lock expansion. A recent analysis by a coalition of national and local conservation organizations recommended spending $1.58 billion on several authorized, ready-to-go construction projects that would restore the health, safety, and resilience of coastal communities by rebuilding and restoring coastal wetlands and assisting communities with reducing their exposure to flood risks.

These projects include spending over the next two years: $660 million on Beneficial Use of Dredge Sediment, $300 million on Storm-Proofing & Elevating Homes, $120 million on Coastal Wetland Planning, Protection, and Restoration Act (Breaux Act), $55 million on Central Wetlands Restoration, $130 million on Mississippi River Reintroduction into B. Lafourche, and $65 million on the Myrtle Grove Sediment Diversion. All of these projects are un-met needs of the community, which the region needs to survive and flourish. The need to fund these projects is a stark contrast to the notion of spending $1.3 billion on the proposed lock expansion.

16 - Funding for the IHNC Lock Replacement project as well as other Federal projects such as the Hurricane Storm and Damage Risk Reduction System projects, are appropriated by Congress. CEMVN is not authorized to use funds designated for the IHNC Lock Replacement project on recovery or Hurricane Storm and Damage Risk Reduction System efforts. However, with implementation of the IHNC Lock Replacement project, $43 million would be spent on community improvement projects through the Community Based Mitigation Plan.

Conclusion
The Inner Harbor Navigation Canal Lock Replacement Project proposal does not meet the needs of the Greater New Orleans and South Louisiana coastal community, fails the most basic economic tests, and takes away vital federal resources that are needed to address fundamental safety issues of the region. Our organizations, whose members live, work, go to school and play in the communities that would be impacted by this construction, oppose the Industrial Lock Expansion, recommend the "no action" alternative and recommend that Congress deauthorize the project.

17 - The IHNC Lock Replacement project meets the needs of the Port of New Orleans and provides opportunities for additional construction-related jobs in the community in the short-term, and the potential for commercial and industrial growth of the Port in the long-term. The commenter's recommendation is acknowledged.

Thank you for taking these comments into consideration.

Sincerely,

Charles Allen III
President
Holy Cross Neighborhood Association

Theresa Billeaud & Paul Troyano
Co-chairs
Pax Christi New Orleans

David Conrad
Senior Water Resources Specialist
National Wildlife Federation

Cheryl Diggens
Chairperson
New Orleans East Community Organization/ACORN

Don Everard
Director
Hope House

Annie Falls
Chairperson
Upper Ninth Ward ACORN Group

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January 26, 2009

Mr. Richard Boe
U.S. Army Corps of Engineers
P.O. Box 60267
New Orleans, LA 70160-0267

RE: Supplemental Environmental Impact Statement (SEIS) for the Inner Harbor Navigation Canal (IHNC) Lock Replacement Project, New Orleans, LA

Dear Mr. Boe,

The Lake Pontchartrain Basin Foundation (LPBF), the Louisiana Wildlife Federation (LWF), and the Coalition to Restore Coastal Louisiana (CRCL) would like to submit the following comments into the public record regarding the above referenced document.

The LPBF, LWF, and CRCL are concerned about the potential short and long term environmental impacts of the IHNC Lock Replacement Project on water quality, vulnerable coastal habitats, and flood protection for the New Orleans area. The LPBF, LWF, and CRCL are concerned about the exposure of contaminated sediments with the dredging and construction activities and with the long-term disposal and storage of contaminated sediments. Analyses of sediment cores performed throughout the history of this project and data in the current SEIS indicate that some of sediments to be removed from the IHNC exceed standards for several contaminants of concern and are considered not suitable for disposal into an open water or estuarine environment.

Disposal of Sediments
Appendix C of the SEIS, entitled "Water Quality and Sediment Evaluation", details the results of sediment core analyses and disposal recommendations for sediments removed from the project site. According to the document, sediments have the potential to be disposed of in four ways:

- dilution with water and discharge into the Mississippi River,
- dilution with water and discharge into a wetland mitigation area for dewatering,
- use as post-construction backfill at the project site,
- and, for sediments determined to be too contaminated for open water disposal, dilution with water and discharge into a confined disposal facility (CDF) for dewatering.

In Appendix C, aquatic and benthic toxicity analyses determined that sediments from DMMUs 1 (non-native soil), 2 (non-native soil), 5 (non-native soil), and 7 (non-native soil) were considered to be not suitable for disposal through freshwater and estuarine open water placement and, therefore, must be disposed in the CDF.

Appendix C states that, for disposal purposes, the sediments will be compared to water quality standards for contaminants of concern. The appendix goes on to detail the water dilutions required for the disposal slurries to meet water quality standards for the four different disposal scenarios. While a dilution calculation is applicable for the sediments to be disposed of in the Mississippi River (a large, swiftly flowing waterbody), it is questionable if the same dilution calculation techniques can be utilized for the CDF, wetland mitigation, and site backfill disposal options. These three disposal areas represent confined spaces where the sediment is intended to settle out of the water column and be deposited in a confined location. The sites are to then be dewatered.

We have the following questions in relation to the disposal of sediments:

- Will the sediments accumulated in the wetland mitigation area, the construction site backfill area, and the CDF be analyzed for contaminants of concern after deposition? The measurement of the sediments suspended in a slurry does not seem to be a good indicator of the final, settled state of the sediments. This settled state is what will be exposed to the environment for the long term.
- Does the plan account for the potential of future movement of the sediments in the surrounding environment? Specifically, the CDF is located in wetlands that flooded in Katrina and are very likely to flood again in another tropical event.
- In the CDF, besides drying and vegetating the filled site, what measures will be taken to ensure that the contaminated sediment is not exposed to the environment (including surface water, groundwater, air, and adjacent soil) over the long term? Will there be a cap on the CDF?
- Will there be long term water quality and sediment monitoring of the CDF and backfill sites?

Impacts on Metro New Orleans Hurricane Protection System

The project will involve dredging and deepening existing waterways. These are bordered by levees and floodwalls; which provide storm surge protection for portions of Orleans and St. Bernard Parishes. Dredging and deepening could adversely impact the stability of adjacent floodwalls and levees. Floodwalls failed in this area during Hurricane Katrina. Please notify us if these potential impacts have been considered and, if so, the findings.

1 - Once the Confined Disposal Facility has been capped and vegetated, the contaminated sediments would be effectively and indefinitely contained in an upland hill so further analysis would not be necessary. Dredged material proposed for placement at the CDF and mitigation area was fully characterized using chemical analyses of cored material (Appendix C). Dredged material proposed for placement in the mitigation site is suitable for open water disposal and is not expected to pose adverse effects to benthic organisms or fish. Monitoring (water sampling and analysis) would be conducted during disposal of dredged material with potential to cause exceedance of WQS outside the mixing zone of the GIWW to ensure that such exceedances do not occur. Treatment options will be implemented if results from monitoring efforts demonstrate unacceptable exceedances are occurring.

2 - The Confined Disposal Facility would be constructed within the Greater New Orleans Hurricane Storm Damage and Risk Reduction System, which will provide the 100-year level of risk reduction. Flooding of the area surrounding the Confined Disposal Facility may occur in a greater than a 100-year storm event, but because the levees and floodwalls are designed to not breach during overtopping, the full depth of the storm surge and wave energy would not be experienced at the Confined Disposal Facility.

Once the Confined Disposal Facility is dewatered and capped, the potential for storm surge or flooding to expose contaminated sediments would not be greater than all other upland areas (such as bridge abutments) in the metropolitan New Orleans area. If the Confined Disposal Facility is flooded before the dredged material is dewatered and capped, there is a potential for some of the material to escape the Confined Disposal Facility. However, the volume of material which would be exposed to mixing with floodwaters (i.e., the uppermost layer of the Confined Disposal Facility) would be minimal in relation to the volume of water and potential mixing that would occur. The concentration of contaminants in eroded CDF material is expected to be lower than in situ concentrations due to dilution and therefore lower than conservative levels considered safe for human exposure (RECAP Screening Standards non-industrial).

3 – Following dewatering, clean cover material would be placed over the CDF and vegetation allowed to grow on the clean cover material. However, prior to placement of clean cover material and vegetation growth there would be an opportunity for volatilizations of contaminants. Appendix E presents the preliminary pathway evaluation for the proposed CDF, including inhalation and groundwater transport. The appendix states "A preliminary evaluation of impacts associated with contaminant transport from the facility indicates that mixing zones will be required to achieve dilution of dissolved contaminants in effluent and runoff. Limited effluent treatment may be required to reduce dilution requirements when some areas are dredged. Exposures associated with volatilization and leachate pathways are not expected to be unacceptable."

4 – Some level of monitoring of dissolved concentration in effluent or edge of mixing zone at GIWW will be necessary because of potential peak exceedances of acceptable concentrations. A long-term monitoring plan would be developed as part of the operation and maintenance plan for the new lock. The long-term monitoring plan cannot be developed at this time since the detailed designs for all project components, as well as the “as-built” details, upon which operation and maintenance plans must be based cannot be prepared at this time.

5 -"Construction Safety” Slope stability analyses determined that both the Cast-in-Place and Float-in-Place plans would meet minimum factors of safety. Soil improvements would be required for either plan. Detailed designs would include additional measures to protect the integrity of the floodwalls during construction where necessary. These findings were provided in Appendix D of the Draft SEIS.

Containment of Sediment During Construction
Please notify the LPBF of what specific measures will be taken to ensure the sediments suspended through dredging and construction will remain near the construction site and not travel to Lake Pontchartrain, the IHNC, and adjacent waters.

6 - During dredging activities suspended sediment concentrations would temporarily increase in the immediate area of dredging and disposal. Based on evaluation of the dredged elutriate results and anticipated dilution in the IHNC, water column impacts associated with dredging should not be unacceptable from an environmental or regulatory perspective (See Appendix A of Appendix C of the Draft SEIS). Any material re-suspended during normal dredging operations is considered "de-minimis" and is not regulated under Section 404 as a dredged material discharge.

Closure of MRGO
Please ensure that all verbiage in regard to the Mississippi River Gulf Outlet (MRGO) represents the closed status.

7 - Comment noted. All references to the MRGO in the SEIS will represent the closed status from mile 60 on the south bank of the GIWW to the Gulf of Mexico.

Impairment Status of Lake Pontchartrain
Table 5-17 in the body of the SEIS lists Lake Pontchartrain as not meeting primary contact recreation standards. As of the Louisiana Department of Environmental Quality's 2006 Impaired Waterbodies List, Lake Pontchartrain meets primary contact recreation limits with the exception of a ¼ mile sliver along the Lake's south shore.

8 - Table 5-17 will be corrected to state "Lake Pontchartrain South Shore Beaches" since this is how it is listed in LDEQ's 2006 303(d) Impaired Waterbodies List.

LPBF, LWF, and CRCL appreciate the opportunity to comment on this project.

Sincerely,

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Tulane University

Tulane Environmental Law Clinic

January 26, 2009

Via U.S. Mail, Fax (504)862-2088 and e-mail to richard.e.boe@usace.army.mil.
Mr. Richard Boe
U.S. Army Corps of Engineers
P.O. Box 60267
New Orleans, LA 70160-0267

Re: **Comments on the Draft Supplemental Environmental Impact Statement for the Inner Harbor Navigation Canal Lock Replacement Project on behalf of Holy Cross Neighborhood Association, Gulf Restoration Network and Louisiana Environmental Action Network.**

Dear Mr. Boe:

On behalf of the Holy Cross Neighborhood Association,[1] the Gulf Restoration Network,[2] and the Louisiana Environmental Action Network,[3] please consider the following comments on the Draft Supplemental Environmental Impact Statement ("DSEIS") for the Inner Harbor Navigation Canal Lock Replacement Project. For the reasons set forth below, Holy Cross, Gulf Restoration Network, and Louisiana Environmental Action Network oppose the lock replacement project and urge the Corps to select the "No Action" alternative and recommend that Congress de-authorize the project. Holy Cross, Gulf Restoration Network, and Louisiana Environmental Action Network request written notification if the Corps issues a Final

1 - Comment noted; CEMVN will issue a notice to Holy Cross Neighborhood Association, Gulf Restoration Network and Louisiana Environmental Action Network upon issuance of a Final Supplemental Environmental Impact Statement.

[1] The Holy Cross Neighborhood Association is a non-profit corporation composed of residents of the Holy Cross neighborhood. Holy Cross Neighborhood Association is dedicated to making their community the best place in the city to live and raise a family.
[2] The Gulf Restoration Network is a non-profit corporation committed to uniting and empowering people to protect and restore the valuable resources of the Gulf of Mexico. The Gulf Restoration Network has members in the five Gulf States of Texas, Louisiana, Mississippi, Alabama and Florida.
[3] Louisiana Environmental Action Network ("LEAN") is a non-profit corporation organized under the laws of the State of Louisiana. LEAN serves as an umbrella organization for environmental and citizen groups. LEAN's purpose is to preserve and protect the state's land, air, water, and other natural resources, and to protect its members and other residents of the state from the threats of pollution. LEAN has members statewide, including members who live, work, or recreate in the project area.

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Supplemental Environmental Impact Statement or Record of Decision and reserve the right to rely on all public comments submitted.

1 – (continued) See previous page.

BACKGROUND

The existing Inner Harbor Navigation Canal, locally known as the Industrial Canal, was constructed in 1923 between two historic neighborhoods, Holy Cross and Bywater. The Industrial Canal connects the Gulf Intercoastal Waterway and the Mississippi River-Gulf Outlet with the Mississippi River and Lake Pontchartrain in southeast Louisiana.

The 1956 Rivers and Harbors Act authorized the construction of a new lock and channel when "economically justified by obsolescence of the existing industrial canal lock, or by increased traffic, replacement of the exiting lock or an additional lock with suitable connections…"[4] The Corps issued a draft environmental impact statement about a new lock in 1983, and issued the Final Environmental Impact Statement in 1997. A year later, the Corps issued a Record of Decision, committing to go forward with the project.

A. The Corps' 1997 Final Environmental Impact Statement Failed to take a Hard Look at the Environmental Impacts of the Lock Replacement Project.

Holy Cross Neighborhood Association, Gulf Restoration Network and Louisiana Environmental Action Network sued the Corps over the 1997 Final Environmental Impact Statement because the Corps failed to comply with the National Environmental Policy Act's ("NEPA"), requirement that the Corps take a hard look at the environmental impacts of the lock replacement project. Some of the shortcomings of the 1997 Environmental Impact Statement included that the Corps:

1) failed to determine scope (nature and extent) of contamination or canal sediments and soils that are to be dredged;

2) failed to assess risks to public health, welfare, and the environment of dredging, stirring up, and disposing of contaminated sediments and soils;

3) failed to consider alternatives for safely dredging and managing contaminated soils;

4) failed to identify standards to govern sediment disposal;

5) failed to identify standards to govern discharges from disposal facility;

2 - Comment noted; CEMVN acknowledges that the history of the lawsuit concerning the 1997 EIS described by the Tulane Environmental Law Clinic is accurate, and that the Supplemental Environmental Impact Statement was prepared to fully comply with NEPA and address the recommendations of the United States District Court for the Eastern District of Louisiana.

[4] Congress amended and supplemented the authorization for the lock modernization project several times. *See* Water Resources Development Act of 1976, Pub. L No. 94-587, § 186, 90 Stat. 2917, 2941-41; Water Resources Development Act of 1986, Pub. L. No. 99-662, § 844, 100 Stat. 4082, 4177; Water Resources Development Act of 1996, Pub. L. No. 104-303, § 326, 110 Stat. 3658, 3717.

6) failed to assess short term and long-term impacts of constructing an engineered disposal facility in a sensitive ecosystem;

7) failed to analyze how long engineered disposal facility will last; and

8) failed to analyze what types of storm events the facility can/will withstand.

In 2007, the United States District Court for the Eastern District of Louisiana enjoined the Corps from continuing with the project until it complied with NEPA. Specifically, the Court directed the Corps to take a "'hard look' at the environmental impacts and consequences of dredging and disposing…of contaminated sediment…in light of recent catastrophic events [like Hurricane Katrina]." *Holy Cross v. U.S. Army Corps of Engineers*, 455 F.Supp.2d 532, 540 (E.D. La 2006). The Court found the Corps failed to consider the "reasonable dredging and disposal alternatives that the Corps has recently adopted for maintenance dredging of the same area." Id. Those alternatives include using an "environmental bucket clamshell dredge designed to minimize re-suspension of sediment during the dredging operation" and disposing the sediments in a Type I landfill. *See* Public Notice of Proposed Maintenance Dredging of the Gulf Intracoastal Waterway (GIWW), Inner Harbor Navigation Canal, New Orleans, LA, dated May 16, 2006.

2 – (continued) See previous page.

B. The Corps Issued a Draft Supplemental Environmental Impact Statement in an Attempt to Comply with the Court's Order.

In October 2008, the Corps issued its Draft Supplemental Environmental Impact Statement recommending the Float-in-Place lock replacement plan. The plan would replace the 640 feet long, 75 feet wide and 31.5 feet deep lock with a new 1,200-foot long, 110 foot wide and 36-foot deep lock. The Float-in-Place plan requires construction at two separate sites, a graving site and new lock site. After construction of the lock module is completed at the graving site, the modules will be floated to the new lock location.

3 - Comment noted and CEMVN concurs with the summary description of the Float-in-Place Plan.

I. THE CORPS' SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT IS INSUFFICIENT TO COMPLY WITH THE COURT'S RULING.

The Corps cannot comply with the court's order that the Corps comply with NEPA by merely supplementing its prior insufficient 1997 Final Environmental Impact Statement. Federal regulations specify that supplemental environmental impact statements are appropriate where "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c). Here, the court found that the Corps "failed to take a 'hard look' at the environmental impacts and consequences of dredging and disposing of the canal's contaminated sediment" and the post-Katrina evidence submitted "merely shed light on this fact." *See Holy Cross v. U.S. Army Corps of Engineers,* 455 F.Supp.2d 532, 540 (E.D. La 2006). In fact, the court declined to address claims raised pre-Katrina that the Corps needed to prepare a supplemental environmental impact statement. *See id.* at 540 n.4.

4 - A Supplemental EIS was prepared because the United States District Court for the Eastern District of Louisiana required CEMVN to address the significant new circumstances related to post-Hurricane Katrina conditions and to more completely evaluate the environmental concerns associated with disposing of dredged material from the IHNC Lock Replacement project. The 1997 EIS and Record of Decision were prepared by CEMVN to fully document the decision associated with the IHNC Lock Replacement project; the Court's finding that the document contained insufficiencies associated with dredged material handling and disposal, and that existing conditions had changed due to Hurricane Katrina does not invalidate the decision-making process under NEPA. Further, the 1997 EIS concerns an ongoing program to replace the IHNC Lock, and as such meets the recommendations for preparation of a supplemental document under CEQ's 40-most Frequently Asked Questions.

Further, by relying on and incorporating its 1997 Final Environmental Impact Statement, the Corps again, fails to meet its legal obligation to take a hard look at the lock replacement project. Simply adding more material to an already insufficient environmental impact statement does nothing to correct the original insufficiencies of the environmental impact statement, particularly when the Corps fails to address the same questions it left unanswered from the 1997 Final Environmental Impact Statement. The court specifically stated, "[i]n light of Hurricane Katrina, the underlying purpose of NEPA will not served if the Corps moves forward with the Industrial Canal Project according to a plan devised almost a decade ago. Without further study and planning, the project cannot be considered 'environmentally conscious.'" *Holy Cross*, 455 F.Supp.2d at 545.

4 – (continued) See previous page.

II. THE CORPS FAILED TO TAKE A HARD LOOK AT THE ENVIRONMENTAL IMPACTS OF THE LOCK REPLACEMENT PROJECT.

A. The Corps Failed to Assess Risks to Public Health, Welfare, and the Environment of Dredging, Stirring Up, and Disposing of Contaminated Sediments and Soils.

1. The Corps Failed to Discuss Engineering Controls to Reduce the Risk of Harm the Project Poses.

The Corps does not discuss or take into account any "engineering controls that might be employed at the site to minimize exposure in human, wildlife, or aquatic receptors." *See generally* DSEIS, App. R Screening Level Human Health Evaluation. The Corps failed to take a hard look at the environmental impacts to fish and wildlife during the dredging process. It states that during dredging activities the short-term impacts on aquatic habitats "related to increased concentrations of ammonia, cooper, manganese, zinc, increased suspended sediments and a decrease in dissolved oxygen" will result in "some loss of less motile aquatic organisms," without qualifying that loss. DSEIS, vol. 1, at 136.

5 - Construction contractors are responsible for site control during construction activities and are required through CEMVN contracts to implement Best Management Practices to protect the public and the environment. CEMVN has construction inspectors on-site during contracted construction activities to ensure that its contractors are following the required construction management plans.

During dredging activities suspended sediment concentrations would temporarily increase in the immediate area of dredging and disposal. Based on evaluation of the dredged elutriate results and anticipated dilution in the IHNC, water column impacts associated with dredging should not be unacceptable from an environmental or regulatory perspective (See Appendix A of Appendix C of the Draft SEIS). Any material re-suspended during normal dredging operations is considered "de-minimis" and is not regulated under Section 404 as a dredged material discharge.

Site restrictions, such as signage or fencing, would be put in place at the Confined Disposal Facility (CDF) to stop trespassers from entering the CDF (Section 5.3.25 of the SEIS). The CDF and graving site locations are relatively inaccessible. The CDF would be constructed with containment dikes engineered to provide adequate containment for dredged material, according to established USACE guidance and practice. After dewatering activities are completed, the CDF would be capped and allowed to revegetate. The capped CDF would pose no threat to human health and safety as described in Appendix R of the SEIS.

2. The Corps Failed to Discuss the Risk of Harm the Confined Disposal Facility Poses if it Leaks.

Additionally, the Corps dismisses the idea that the confined disposal facility will leak and become a danger to the public health and welfare of the environment. The Corps states simply that, "[t]he CDF will be designed to fully contain IHNC dredged material." DSEIS, App. R at 5. The Corps follows this statement by stating that "human exposure to material stored in the CDF is only expected to occur within the perimeter of the facility…[and] no health effects are expected to occur." Id. The Corps fails to provide any evidence to support its contention that exposure to the toxic sediments will have "no health effects."

6 - Once the dredged material has been dewatered and the CDF capped, the dredged material contained within the CDF will pose no threat to human health and safety. Details of these analyses and comparison to RECAP standards are provided in Appendix R of the SEIS.

CEMVN does not contend that contact with or ingestion of the contaminated sediment could result in adverse health effect. It is CEMVN's assertion that the relative inaccessibility of the site, signage, fencing, and common sense would be adequate deterrence to prevent humans from direct contact with or ingestion of the contaminated sediment.

3. The Corps Failed to Determine Whether the Dredged Sediments Will Exhibit Chronic Toxicity.

The Corps admits that some of the sediments it will be dredging are "predicted to be acutely toxic to freshwater benthic organisms" and others are "predicted to be acutely toxic to estuarine benthic invertebrates." DSEIS, vol. 1 at 138. However, the Corps also failed to examine whether the discharges will be chronically toxic to freshwater or estuarine benthic organisms. *See* Kohl Decl. ¶ 16.

4. The Corps Failed To Examine the Impacts of the Confined Disposal Facility on Groundwater and Aquatic Environment.

Further, the Corps failed to consider the impacts to the aquatic environment and groundwater from placing contaminated sediments in a confined disposal facility built in wetlands. *See* Declaration of Barry Sulkin ¶ 20, attached hereto as Exhibit 1. The Corps only analyzed the human health impacts of placing the contaminated sediments in the confined disposal facility, failing to examine the impacts to the aquatic environment. *See* Sulkin Decl. ¶ 21. To fulfill its legal duty to take a "hard look" at the project's impact on the environment, the Corps must consider impacts to the aquatic environment.

The Corps also failed to consider the impacts on the storage of the contaminated sediments on groundwater. "The Corps' 'Human Health Evaluation for Confined Disposal Placement of IHNC Dredged Materials' only used toxicity-based values and ignored groundwater protection values. Given the fact that the Corps plans to build a confined disposal facility in wetlands, the Corps should have examined the potential impacts of the contaminated sediment on groundwater." *See* Sulkin Decl. ¶ 22.

The Corps asserts, again without any proof, that "[m]igration of material from the CDF in the unlikely event of a catastrophic breach…would result in…dilution of the dredged material…before it would be transported to neighboring areas." DSEIS, App. R at 5. However, the Corps has offered no factual evidence to support this assertion. In fact, the expert declaration provided by Dr. Barry Kohl directly refutes this assertion, stating that "[d]eposits of contaminated sediments placed into the proposed disposal areas will be prone to inundation [and] erosion and contaminated sediments will wash into receiving water bodies." *See* Declaration of Dr. Barry Kohl ¶ 8, attached as Exhibit 2.

5. The Corps Failed To Explain How it Plans to Treat the Effluent Contaminated with Toxic Chemicals such as Tributylin, Total PCBS, Arochlor 1016, and Dieldrin.

The Corps admits that it will not be able to achieve safe levels of tributylin, total PCBS, Arochlor 1016, and dieldrin when dredging the Industrial Canal. *See* DSEIS, vol. 1 at 137 ("Adequate dilution would be attainable within a mixing zone complying with State of Louisiana requirements for all constituents except of tributylin, total PCBS, Arochlor 1016, and dieldrin."). It explains that "[e]ffluent treatment may be required when dredging areas of the IHNC with elevated concentrations of these constituents." *See* DSEIS, vol. 1 at 137. But the Corps never

7 - Potential impacts of dredged material disposal to the aquatic environment were evaluated in Appendix C (impacts from effluent discharge) and Appendix D (impacts from transport to groundwater). There are no pathways for chronic exposure of freshwater or estuarine benthic invertebrates to contaminants of concern All material discharged into the Mississippi River reaches dilution levels that would not allow chronic exposure. Material placed in the CDF would be contained, dewatered and covered with clean material preventing movement of benthic invertebrates into the dredged material.

8 - A comprehensive engineering analysis of foundation strength and available construction materials will be required in order to develop a final dike design and eliminate potential seepage issues. Construction guidance for the dikes, including number of lifts, compaction, grading, and other considerations, can be found in the USACE guide specifications for embankment construction (Engineering and Design, Confined Disposal of Dredged material, EM 1110-2-5027).

The potential effects of discharge from the confined disposal facility are assessed in Appendix C of the SEIS. Freshwater and estuarine biological evaluations of water column and benthic impacts were conducted. Sediments and soils were used for the preparation of elutriates used in freshwater and estuarine suspended phase toxicity tests and for conducting freshwater and estuarine solid phase toxicity and bioaccumulation tests. All discharges from the CDF would have to meet water quality criteria under Sections 404 and 401 of the Clean Water Act.

9 - A preliminary leachate evaluation of potential impacts to groundwater was conducted as part of the CDF conceptual design effort. The results of that evaluation are summarized in APPENDIX E Confined Disposal Facility Conceptual Design Report Section 3.7.2 Page 34. A more extensive evaluation of the leachate pathway is planned after soil sampling is conducted at the disposal site, which will provide site specific information regarding the geotechnical and chemical characteristics of the foundation materials and the underlying aquifer. Groundwater in the area is saline and not used as part of the potable water supply for the region. No human consumption of the groundwater would occur. Potential surface water impacts associated with groundwater discharge would therefore be of principal concern, however, as stated in Appendix E "none of the constituents was predicted to pass through the foundation soil to any laterally transmissive layer at concentrations above the screening criteria in 10,000 years."

10 - Once the CDF is dewatered and capped, the potential for storm surge or flooding to expose contaminated sediments would not be greater than all other upland areas in the metropolitan New Orleans area. If the CDF is flooded before the contaminated dredged material is dewatered and capped, there is a potential for some of the material to escape the CDF. However, the volume of material which would be exposed to mixing with floodwaters (i.e., the uppermost layer of the CDF) would be minimal in relation to the volume of water and potential mixing that would occur. The concentration of contaminants in eroded CDF material is expected to be lower than in situ concentrations due to dilution and therefore lower than conservative levels considered safe for human exposure (RECAP Screening Standards non-industrial) once it consolidates and dries outside the CDF. Armoring to protect the CDF dikes from erosion in the event of levee overtopping has been considered and would be evaluated further. Furthermore, the CDF would receive the same level of hurricane and storm damage risk reduction as the rest of the greater New Orleans area. It will have the 100-year level of risk reduction upon completion of the surge barriers at the intersection of the IHNC and Lake Pontchartrain and across the Gulf Intracoastal Waterway and MRGO as described in Individual Environmental Report #11.

11 – See next page

explains how it plans to treat the effluent to protect water quality and aquatic organisms. And the Corps intends to rely on sucking up large volumes of water in a hydraulic dredge to somehow dilute the toxic pollutants. *See* DSEIS, vol. 1 at 137. The Corps must devise a plan to safely dredge and dispose of the contaminated sediments. It has yet to do so.

B. The Corps Failed to Identify Standards to Govern Sediment Disposal and Standards to Govern Discharges from the Disposal Facility.

The Corps was ordered by the Court to identify standards to govern the toxic sediment disposal. The Corps still has not done this. The Corps must give information about their standards for the management of contaminated soil, such as, the frequency of sediment testing and monitoring. Additionally, the Corps offers no standards to determine which sediments are "contaminated" and thus, disposed of in the confined disposal facility and which are "essentially uncontaminated" and suitable for open water disposal. The Corps simply states it will distinguish between "industrial waste" and "other contaminated soils" that are suitable for disposal in MRGO disposal areas. However, the Corps offers no concrete method for making this or any other determination on soil toxicity. The Corps does not even explain the difference between "industrial waste", "contaminated soils" and "uncontaminated soils". The Corps fails to complete a valid and useful exposure assessment citing only that "human exposure is only expected to occur at the perimeter of the facility" with "no adverse health effects." DSEIS, App. R, p. 5; *See also* Kohl Decl. at Ex. B ¶ 4

Finally, the U.S. Fish and Wildlife Service notified the Corps of standards that the National Oceanic and Atmospheric Administration promulgated (EIS, vol. 6 § 11 at 9.) to address the potential harmful effect of contaminated material on the environment, including aquatic organisms.[5] Environmental professionals approach problems such as management of contaminated sediments by adopting standards to guide disposal decisions. Without knowing what standards will determine the fate of dredged materials, or be met by discharges from the engineered disposal facility, it is impossible to assess risks to the public and environment from exposure to contaminates from these materials. *See* Kohl Decl. at Ex. B ¶ 5. EPA has explained, "[t]he four steps of the risk assessment process include hazard identification, dose-response, exposure assessment, and risk characterization." 66 Fed. Reg. 66,228, 66,229 (Dec. 21, 2001). The holes in the Corps' Draft Supplemental Environmental Impact Statement, render it impossible to credibly assess the environmental impacts of disposing and discharging the dredged material. See Neighbors of Cuddy Mountain v. U.S. Forest Serv., 137 F.3d 1372, 1379 (9th Cir 1998).

C. The Corps Failed to Assess Short Term and Long-Term Impacts of Constructing an Engineered Disposal Facility in a Sensitive Ecosystem.

[5] NOAA Sediment Guidelines, available at: http://response.restoration.noaa.gov/topic_subtopic_entry.php?RECORD_KEY%28entry_subtopic_topic%29=entry_id,subtopic_id,topic_id&entry_id(entry_subtopic_topic)=88&subtopic_id(entry_subtopic_topic)=5&topic_id(entry_subtopic_topic)=2 (last visited Nov. 19, 2008) ("These guidelines, based on different evaluation methods, help us decide whether a certain amount of toxic chemicals (level of toxicity) is likely to harm the ecosystem.")

11 – (continued) Appendix C Water Quality and Sediment Evaluation Section 4.2 Page 89 states: "Assuming maximum copper and lead dilution requirements are revised as previously discussed, adequate dilution will be attainable within the mixing zone for all constituents except tributyltin (dilution ratio 3179 chronic), total PCBs (dilution ratio 404 chronic), Aroclor 1016 (dilution ratio 321 chronic) and dieldrin (dilution ratio 128 chronic). Effluent treatment may be required to address elevated levels of these constituents when dredging certain areas of the IHNC. However, the mixing that is inherent in dredging will likely flatten peak concentrations somewhat. Based on the geometric mean elutriate concentrations (Table 4.2.5), all dilution requirements can be met within the prescribed mixing zone in the GIWW. If treatment is required, it is anticipated that simple broadcasting of activated carbon around the weir of the CDF will be effective in reducing effluent concentrations of organic compounds sufficiently to permit discharge. The use of activated carbon has been evaluated for another project to reduce volatile emissions from ponded water in a CDF. Bench testing will be required to establish dosage and contact time requirements to meet treatment objectives for the IHNC effluent."

Based on the geometric mean elutriate concentrations (Appendix C, Table 4.2.5), all dilution requirements can be met within the prescribed mixing zone in the GIWW. If treatment is required, it is anticipated that simple broadcasting of activated carbon around the weir of the CDF will be effective in reducing effluent concentrations of organic compounds sufficiently to permit discharge. The use of activated carbon has been evaluated for another project to reduce volatile emissions from ponded water in a CDF. Bench testing will be required to establish dosage and contact time requirements to meet treatment objectives for the IHNC effluent."

As indicated, we expect that observed contaminant concentrations in the effluent will be nearer the geometric mean values than the maximums. Maximum dilution requirements were calculated as a conservative measure and to identify areas that might be problematic. Monitoring concentrations at the edge of the mixing zone would ensure that effluent concentrations do not exceed those that can be adequately diluted within the mixing zone. If exceedances occur, engineering controls would be employed to retain the water temporarily and effect treatment. Because the contaminants requiring high dilution are organic in nature, it is expected that broadcasting of activated carbon within the pond will be effective in reducing dissolved concentrations sufficiently to meet water quality criteria either before discharge or within the mixing zone. Bench scale testing is planned to determine effective carbon dosages and contact times.

12 - The evaluation of dredged material suitability for open water disposal followed regulations described in the Section 404 of the Clean Water Act Regulations. The evaluation, conducted using guidelines from "E*valuation of Dredged Material Proposed for Discharge in Waters of the U.S. – Inland Testing Manual"* (USEPA/USACE 1998), was described in detail in Appendix C.

13 - A comprehensive evaluation of potential surface water impacts was conducted based on the modified elutriate testing results. The analysis and results are fully detailed in Appendix C Water Quality and Sediment Evaluation.

The Corps still fails to answer many questions it was ordered to answer by the Court. Among these questions are the following: the effectiveness of disposal facility; how the facility will be maintained; whether the facility will contain settling ponds and water quality treatment; who will maintain the facility; who will monitor the facility; and how often will the facility be monitored? Without this information the Corps Supplemental Environmental Impact Statement fails to take a hard look at the environmental consequences. *See* Kohl Decl. ¶ 13.

Furthermore, Dr. Kohl notes in his declaration that the Corps' use of suction dredging "will create a water/sediment slurry" which will "increase the probability that a significant amount of adsorbed contaminants will be discharged with the water into adjacent marshes and bayous during the dewatering phase of the confined disposal facility." *See* Kohl Decl. ¶ 15. Yet, the Corps did not examine the chronic affects to benthic organisms by contaminated, fine particles of sediment suspended in this discharge water accumulating as toxic bottom sediment in nearby wetlands. *See* Kohl Decl. ¶ 16.

D. The Corps Failed to Analyze How Long Engineered Confined Disposal Facility Will Last.

The Corps stated that the dredged material that is "unsuitable" for discharge into either the open water disposal area in the Mississippi River or the mitigation wetland creation site will be stored in a Confined Disposal Facility ("CDF"). DSEIS, at 41. The contaminated material housed in the CDF will be held "permanently" or "in perpetuity." DSEIS at 136. However, it is a legal and reality construct, that *all* engineered structures eventually fail.[6] *See* Sulkin Decl. ¶ 23. In fact, in the deposition of Linda Mathies, the Chief of the Environmental Function and Operations Division for the Army Corps stated, "[d]ikes fail." *See* Deposition of Linda Glenboski Mathies, at 197, ln. 17. The current project proposes two dikes in close proximity to the flood control levee. Despite the known fact that "dikes fail" the Corps has not considered this fact in their Draft Supplemental Environmental Impact Statement.

Additionally, the Corps fails to consider two issues beyond dike failure: *1)* rain accumulation between the dikes because of the flat topography and proximity of the structures and *2)* the potential catastrophic impact of the dike loading on the levee wall foundation. *See* Kohl Decl. ¶ 11. The Corps states that "further consideration should be given…to the potential for rain to accumulate between the two dikes…and…the potential impact of dike loading on the foundation underlying the flood control levee." DSEIS, App. E, at 21. The Corps acknowledges that the confined disposal facility and its dikes may undermine the levee or accumulate water, but fails to examine or quantify these dangers. The Corps failed to take a "hard look" at the environmental impacts associated with dike failures and the impacts of rain accumulation on the flood control levee.

[6] Cf. Nuclear Energy Inst., Inc. v. EPA, 372 F.3d 1251, 1298 (D.C. Cir 2004) (vacating a governmental decisions to only consider risks from a nuclear waste "repository's performance during the 10,000 years following waste placement.").

14 - 1) Confined disposal facilities are commonly used for disposal of dredged material throughout the U.S. The SEIS presents the disposal volumes of dredged material, the contaminants of concern and their concentrations, the conceptual design for the confined disposal facility, and the maintenance of effluent discharged from the facility. 2) Appendix E provides a conceptual plan for the confined disposal facility, including maintenance of effluent and dredged material until such time as the facility is a capped and contained upland environment, covered by vegetation. 3) The confined disposal facility, as described in Appendix E, will include surface water management to allow for water clarification prior to its discharge into the GIWW. 4) As described in Appendix E, CEMVN will design, construct and maintain the confined disposal facility. 5) A long-term monitoring plan would be developed as part of the operation and maintenance plan for the new lock. The long-term monitoring plan cannot be developed at this time since the detailed designs for all project components, as well as the "as-built" details, upon which operation and maintenance plans must be based cannot be prepared at this time.

15 - As described in Appendix E (Conceptual Plan for the Confined Disposal Facility), the design of the facility takes into account the need to pond water following the hydraulic placement of dredged material. The ponding area must be large enough to allow for water clarification before discharging into the GIWW. No discharges of effluent from the confined disposal facility to Bayou Bienvenue are proposed.

16 - Although engineered structures are potentially subject to failure for a variety of reasons, that does not stop society from planning, designing and implementing engineered structures. The daily lives of all U.S. citizens are bettered because of civil engineered structures, such as bridges, highways, water and sewer systems and flood protection. The confined disposal facility has been designed to require maintenance during the dredged material placement and dewatering phases. Following complete dewatering, the facility becomes a consolidated upland hill, covered with vegetation and no longer susceptible to failure.

17 - Both concerns (rain accumulation and dike loading on the hurricane and storm damage risk reduction levee) were conceptually addressed on page 20 in Appendix E (Confined Disposal Facility Conceptual Design Report). The facility would be constructed to allow rainwater to flow around the base of the dikes and into Bayou Bienvenue. Suitable distance between the dike and the levee would be included in final designs to ensure that loading on the levee foundation is not a problem.

E. The Corps Failed to Analyze What Types of Storm Events the Confined Disposal Facility Will Be Designed to Withstand.

In direct violation of the Court's order to take a "hard look" at the environmental impacts of this project, the Corps refused to analyze or discuss the dangers associated with the confined disposal facility and large storm events. In fact, the Corps states that the issues of "potential overtopping of the dike in the event of flooding around the confined disposal facility" and "erosion of the confined disposal facility dikes as a result of failure of the adjacent flood control levee" are "beyond the scope of this effort." DSEIS, App. E at 25. The Court ordered the Corps to consider the effects of storms on the confined disposal facility, making it clear that these considerations are within the scope of this environmental impact statement. Despite this mandate, the Corps refused to analyze these issues.

The Court noted that the Post-Katrina landscape is vastly different—"the future of the MR-GO is in doubt; the location, height, and significance of the levees are being re-evaluated; and priorities are shifting from the transportation needs of the community to the restoration of basic infrastructure." *Holy Cross,* 455 F.Supp.2d at 539. The Court further held that, "[t]o ignore these facts is to ignore reality…and [f]or the law to have any credibility or respect, it must be grounded in reality." *Id.*

The Corps admits that during Katrina, there were two locations on the *north* bank of the MRGO/GIWW that suffered storm induced failures. DSEIS, App. E, p. 23. Despite the fact that these failures did not occur at the portion of the levee directly adjacent to the confined disposal facility site, significant flooding occurred throughout the area, including the proposed confined disposal facility site. *Id.* In fact, expert Dr. Barry Kohl cites that there were "17 post-Katrina breaches along the levee which borders the MRGO." *See* Kohl Decl. ¶ 6. Hurricane Katrina revealed the vulnerability of the Corps plan to dispose of contaminated sediments in a "confined disposal facility" next to the MRGO. Further the Corps admits that modeling the potential for overtopping and impacts of high velocity flows from levee failure should be undertaken, "to help in determining what protection the CDF may require." DSEIS, App. E, p. 25. Yet, the Corps failed to reevaluate their disposal plans in light of the Hurricane Katrina damage to the MRGO levee system. *See* Kohl Decl. ¶ 10.

Additionally, the Corps has not examined the interaction between the rebuilding of Corps' GIWW hurricane levee and construction of the confined disposal facility. The Corps failed to address whether the confined disposal facility will be built or used before the levees are finished, and how flood protection will be maintained while work on the lock is being completed. *See* Kohl Decl. ¶ 12. The Corps has not examined the increased risk of flooding while the eastbank bypass channel is built, or whether the use of the road parallel to the eastbank floodwall will affect the structural integrity of the floodwall. *See* Kohl Decl. ¶ 14. The Corps has failed to specify any additional flood protections that may need to be implemented protect adjacent neighborhoods in light of these affects. *See* Kohl Decl. ¶ 14. The Corps also failed to address how the confined disposal facility will be maintained and how often it will be monitored over the life of the project. *See* Kohl Decl. ¶ 13.

18 - Once the CDF is dewatered and capped, the potential for storm surge or flooding to expose contaminated sediments would not be greater than all other upland areas in the metropolitan New Orleans area. If the CDF is flooded before the contaminated dredged material is dewatered and capped, there is a potential for some of the material to escape the CDF. However, the volume of material which would be exposed to mixing with floodwaters (i.e., the uppermost layer of the CDF) would be minimal in relation to the volume of water and potential mixing that would occur. the concentration of contaminants in eroded CDF material is expected to be lower than in situ concentrations due to dilution and therefore lower than conservative levels considered safe for human exposure (RECAP Screening Standards non-industrial) once into consolidates and dries outside the CDF. Furthermore, the CDF would receive the same level of hurricane and storm damage risk reduction as the rest of the greater New Orleans area, and will have the 100-year level of protection upon completion of the surge barriers at the intersection of the IHNC and Lake Pontchartrain and across the GIWW and MRGO as described in Individual Environmental Report #11. These structures are under construction and will be completed by June 2011.

19 - CEMVN concurs and has written the Supplemental EIS using existing (post-Katrina) conditions. This includes the deauthorization of the MRGO south of its confluence of the GIWW and placement of a closure structure at Bayou LaLoutre; the status of the HSDRRS was included in the Supplemental EIS and the implementation of the 100-year level of risk reduction was included in the analyses of impacts on resources; and Regional Planning Commission provided a transportation study that described existing transportation conditions and needs, and impacts on transportation from the evaluated alternatives.

20 - CEMVN acknowledges that the CDF could be subject to flooding during storm events that exceed the height of the 100-year level of risk reduction. The conceptual design presented in Appendix E notes that future detailed designs will need to take into consideration flooding of the facility during its active phases. With placement of the HSDRRS gated structure in the MRGO and GIWW as well as in the IHNC at Seabrook, vulnerability of GIWW levees would be substantially reduced in comparison to the pre-Katrina environment. Further, all levees and floodwalls are being rebuilt to new design standards that will prevent breaching in the case of overtopping. Without a catastrophic breach, storm surge cannot reach the CDF.

21 - No further construction to the GIWW levee is proposed by CEMVN at this time, and 100-year level of risk reduction for the project area is being provided by closure structures located in the IHNC at Seabrook and in the GIWW and MRGO east of the project area.

22 - A slope stability analysis was performed which modeled the effects of excavation on the T-Wall. Preliminary stability analysis of subsurface geology showed that deep soil mixing would be required to meet minimum Factor of Safety criteria for proposed excavation limits. Because soil parameters used in the analysis were considered conservative, the final design would confirm that the T-wall will remain stable after construction of the by-pass channel. There is no increased risk of flooding to nearby neighborhoods on the protected side of the floodwall from excavating the bypass channel

23 - As part of improvements to the HSDRRS, CEMVN is providing the entire project area with 100-year level of risk reduction. These measures are under construction and will be in place by June 2011. Excavation associated with the replacement project would not affect flood risk.

24 – See next page

In fact, the Corps left for some indefinite time in the future the following tasks: "quantifying the actual risk of flooding and overtopping of the CDF dikes;" "quantify[ing the] potential for material losses from the CDF, and evaluat[ing] potential environmental impacts based on plant and animal uptake data;" "determining the setback requirements from the flood control levee;" and "armoring requirements to protect the CDF dikes in the event of levee failure." *See* DSEIS, App. E at 48. Without looking at the risks that hurricanes pose to the confined disposal facility, the Corps could not take a hard look at the environmental impacts of the project. And without examining the setback and armoring requirements of the confined disposal facility, the Corps could not get an accurate picture of the costs of the project to weigh the costs and benefits of the lock replacement project. Until the Corps answers these questions about the confined disposal facility, it cannot meet its requirement to take a hard look at the environmental impact of the lock replacement project.

F. The Corps Did Not Take A Hard Look at the Project's Impact on Safety Issues Related to Hurricane Protection Levees and Floodwalls.

The Corps failed to take a hard look at safety and levee stability issues relating to the lock replacement project. *See* Declaration of Dr. Alexander Kolker, at ¶ 7 & 8, attached as Exhibit 3. One particular concern is the subsurface geology in and around the area where it proposes to construct the new lock and dredge the canal. *See* Kolker Decl. ¶ 7. Numerous organic rich and water permeable clay deposits have been found to exist underneath the levees in the Lower Ninth Ward. *See* Kolker Decl. ¶ 7. Water flow through these layers has the potential to undermine the structural stability of the floodwalls, and may have contributed to their collapse during Hurricane Katrina. *See* Kolker Decl. ¶ 7. The Corps has not adequately searched for or identified these layers, nor have they devised a plan for dealing with them during construction. *See* Kolker Decl. ¶ 7.

Furthermore, as the canal depth is increased through dredging, it is possible that more permeable strata will be exposed, thereby increasing the potential to undermine the levees and floodwalls. *See* Kolker Decl. ¶ 8. It is important for the Corps to examine subsurface geology to ensure that it will not be dredging down into soils that would permit water to flow beneath the levees and floodwalls, undermining the levees and floodwalls and compromising hurricane protection. *See* Kolker Decl. ¶ 8. Dr. Kolker urges the Corps to consult with an independent, professional engineer to critically evaluate all safety concerns surrounding this construction. *See* Kolker Decl. ¶ 8 Because the Corps has not examined the subsurface geology in and around the area of the lock replacement project and failed to examine the potential to undermine the levees and the floodwalls, it failed to take a hard look at the environmental impacts of the lock replacement project.

G. The Corps Failed to Examine All the Costs of this Project, Rendering Its Cost-Benefit Analysis Insufficient and the Obscuring the Fact that the Lock Replacement Project is Not Economically Justified.

24 – Section 4.3 of the Confined Disposal Facility Conceptual Design Report (Appendix E) describes maintenance of the CDF during its active phase. The CDF will be a consolidated upland covered in vegetation and protected by the HSDRRS from 100-year levels of storm surge following completion of dewatering activities.

25 - The Confined Disposal Facility Conceptual Design Report provides engineers the basic plan in which to generate detailed plans and specifications for construction. Page 48 of this report (Appendix E) provides a list of data that need to be collected in order to complete final design, and demonstrates the commitment of CEMVN to fulfilling this design in a sustainable and responsible manner. The cost of setbacks and armoring would not substantially affect the cost-based justification of the project.

26 - During lock replacement, the levees and floodwalls adjacent to the new lock and old lock on both sides of the IHNC would be replaced with levees and floodwalls that meet CEMVN design criteria. Levee and floodwall design extending from the new lock south to the IHNC's confluence with the Mississippi River will be based on geotechnical studies and take into account the subsurface geology as is required by CEMVN's design criteria.

27 - Subsurface geology was considered in the analysis of slope stability during excavation of the IHNC in Appendix D of the SEIS. The IHNC Lock Replacement project will replace all levees and floodwalls along the IHNC south of the new lock to the IHNC's confluence with the Mississippi River. These structures will be designed to meet CEMVN's criteria and take into account the subsurface geology of the area.

28 - CEMVN will construct all levees and floodwalls to Mississippi River and Tributaries design criteria. CEMVN's design process includes independent technical reviewers.

29 - An assessment of subsurface geology was conducted and is presented in Appendix D of the SEIS.

The Corps must demonstrate that with regard to this specific project, they made a "good faith consideration" of the environmental impact of the project. *Environmental Defense Fund, Inc. v. Corps of Engineers*, *supra,* 470 F.2d at 300. Additionally, the Corps must consider modifying or dropping the project if the environmental costs are sufficient to outweigh the benefits. *Id.* To meet the "good faith consideration" test, the agency must show that it has adequately weighed the relevant environmental factors in deciding whether and how to go forward with the project. *Id.*

30 - CEMVN evaluated the environmental impacts of the lock replacement alternatives and fully considered the direct, indirect and cumulative impacts of these alternatives and measures to mitigate adverse impacts. CEMVN documented methodologies used for analyses, provided detailed discussions of analyses in appendices and referenced all information appropriately. CEMVN coordinated with Federal and state agencies throughout the impact analysis process. Where information was unavailable, CEMVN fully documented the condition and provided a statement of relevance of the unavailable information and CEMVN's approach to a determination of impacts.

1. The Decision to Deepen the Canal Locks Economic Justification.

The Corps' original plan was to construct an approximately 22-foot deep lock to accommodate barge traffic. DSEIS, vol. 1 at 3. The Corps identified this plan as the most economically efficient option, explaining that a "larger lock was not incrementally justified (the additional benefits attributed to the increased size did not offset the additional costs to build the increased size)." *Id.* Nonetheless, the Port of New Orleans sought a deeper lock and channel for deep-draft ships. *Id.* The Corps agreed to install the deeper lock and deepen the channel to 36 feet increasing the environmental impacts of dredging and stirring up potentially toxic sediments. DSEIS, vol. 1§ 2 at 2.

31 - The statement by the commenter is correct and CEMVN selected the Locally Preferred Plan, which is to construct a 36-foot deep lock and channel. The deep-draft lock was authorized by the Congress in the WRDA of 1986. Although material re-suspended during normal dredging is considered de minimus and may be exempted from State criteria, an assessment of water quality impacts associated with release of contaminants during dredging at the dredging site is provided on pages 48 through 51 of Appendix A of Appendix C in the SEIS. It was determined that water column impacts would not be unacceptable from an

However, the Corps admits that since Hurricane Katrina, there has been a reduction in not only large barge traffic, but a reduction in lockages and total vessels using the lock for passage. DSEIS, vol 1 § 5 at 77. The reduction in both small and large vessel traffic negates the benefits of a deeper lock. First the Corps states that "because shallow draft benefits comprised about 80 percent of the total project benefits, [the benefits should be] determined by focusing on the shallow draft benefit category." DSEIS, App. O at 3. Then, the Corps states "deep draft benefits represent a small portion of the total project benefits, such that only a large increase in deep draft activity could influence the project justification." DSEIS, App. O at 7. Yet there is no large increase in deep draft vessels, and data shows a decrease in overall traffic. Therefore, the project is not economically justified.

32 - The 2008 updated economic analysis assumes there would be no benefit to deep-draft traffic as a result of the closure of the MRGO. However, the potential for growth in the number of shallow-draft vessels moving through the lock would result in substantial benefits which justify construction of a larger lock. Without a deep-draft lock there would be no potential for growth of industries serviced by these vessels along the IHNC and portions of the eastern segment of the GIWW.

Additionally, the Corps' cost-benefit analysis shows that in four out of the six cost-benefit scenarios, the costs outweigh the benefits. DSEIS, App. O at 14. Only in two of the six cost-benefit scenarios is there a ratio greater than 1-to-1. Id. Further, the 1.56 and 1.63 benefit costs ratios are only attainable at a Federal Discount Rate of 4.875 percent. *Id.* The Federal Discount Rate is the short-term interest rate that the federal government charges to commercial banks on loans they receive from the Federal Reserve Bank's lenders.[7] This interest rate is unrealistically low given the current economic climate and recent bank bailouts. Further, Executive Order 12893 and OMB Circular A-94 require that benefits, costs, and benefit-to-cost ratios for new infrastructure investments of all federal agencies be evaluated at a discount rate of

33 - CEMVN concurs; this is documented in Appendix O as the commenter indicates.

[7] *See* http://www.federalreserve.gov/monetarypolicy/discountrate.htm.

7.0 percent to facilitate comparison and decision making.[8] Using the 7.0 percent interest rate, the project would fail to meet a benefit-cost ratio of 1-to-1.[9]

33 – (continued) See previous page.

2. The Corps Failed to Consider the Benefits of Functioning Wetlands.

Wetlands serve many economic and environmental functions that the Corps has not considered. "The habitat value assessment was not an appropriate measure for the value of the wetlands the Corps plans to destroy in order to build the graving site and the confined disposal facility." *See* Sulkin Decl. ¶ 33. Wetlands act as flood barriers, water filters and provide an important wildlife habitat. Foremost is the availability of wetlands to absorb flood waters. Wetlands have the ability to mitigate storm surge and flood waters much like those which ravaged our coast in 2005. A wetland one acre in size will store 330,000 gallons of water when inundated to a depth of one foot.[10] Further, a ten acre wetland will hold 1.5 million gallons with a six-inch rise in water level.[11] The Corps has previously studied the link between wetland loss and storm damage and estimated that "a loss of 8,423 acres of wetlands within the basin would result in annual flood damages of over $17,000,000."[12]

34 - The storage capacity of wetlands is greatest along floodplains where wetland soils are saturated in response to seasonal rainfall events and either 1) store rainfall and release it slowly into a river or 2) absorb floodwaters which exceed the rivers banks or a levee. Coastal wetlands provide relatively little storage capacity as the soils are typically saturated throughout the year and typically can not absorb additional water from rainfall or flooding. The wetlands that would be impacted by the construction of the CDF are located within a portion of the HSDRRS referred to as the Bayou Bienvenue Central Wetland Unit. The wetlands within this Unit are surrounded by levees, and water levels within the Unit are controlled by two tide gates; one at the confluence of Bayou Bienvenue and MRGO and the other at the confluence of Bayou Dupre and MRGO. The HSDRRS levees bound the north and east sides of the Unit along the MRGO and GIWW, and a local levee bounds the Unit along its south side. The 14-foot high local levee abuts Florida Avenue and the railroad tracks and provides protection from tidal inundation for St. Bernard Parish, the Lower Ninth Ward and Holy Cross neighborhoods. When the floodgates are closed, the Unit stores water pumped from the surrounding neighborhoods during rain events, or floodwaters overtopping the HSDRRS. However, this storage only occurs as a result of containment within the Unit when the floodgates are closed and not because the wetlands within the Unit absorb water. Wetlands within the Unit are typically saturated and provide very little capacity to store additional water. The storage capacity of the Unit is greatest in the open water areas where land mass (such as wetlands) does not displace water. Of the approximately 29,000 acres within the Unit, the CDF would fill approximately 209 acres of wetlands which comprise approximately 0.7 percent of the total storage area. Further, the loss of storage capacity resulting from the fill cell would be temporary and only the disposal cell would permanently reduce storage capacity. The disposal cell would permanently fill approximately 71 acres of the Bayou Bienvenue Central Wetland Unit, which comprises 0.2 percent of the total storage area. Neither the temporary or permanent impacts to storage capacity in the Bayou Bienvenue Central Wetland Unit from the construction of a CDF would be substantial.

A recent study published by the Royal Swedish Academy of Sciences examined the correlation between monetary damage caused by a windstorm or hurricane and the local wetlands in order to attempt to quantify wetlands' flood and storm surge protection values.[13] The study valued coastal wetlands in Louisiana an average $4,200 per acre, per year.[14] The study suggests that wetlands in and around New Orleans are worth even more as storm protection on an annual basis.[15] Adding in the value of additional ecosystem services, the total value of each acre of wetlands is approximately $33,000 per acre, per year.[16] The study also acknowledged that coastal wetlands act as "horizontal levees" that are maintained by nature and are "far more cost-effective than constructed levees."[17]

35 - See previous comment.

The Corps failed to consider these values when it analyzed its plan to destroy wetlands and evaluated the possibility of placing contaminated sediments in landfills. To put the wetland values in perspective, using recent valuation data, the 244 acres of wetlands the Corps plans to destroy would have the value of $8,052,000 per year. The proposed mitigation of 37 acres would

36 - See previous comment.

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[8] *See* Circular A-94, "Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs," *available at* http://www.whitehouse.gov/omb/circulars/a094/a094.pdf.
[9] *Id.*
[10] *See* FEMA TRAINING DOCUMENT, CH. 8 FLOODPLAIN NATURAL RESOURCES AND FUNCTIONS, p. 3. Available at http://training.fema.gov/EMIWeb/edu/docs/fmc/Chapter%208%20-%20Floodplain%20Natural%20Resources%20and%20Functions.pdf
[11] W. Niering, THE LIFE OF THE MARSH: THE NORTH AMERICAN WETLANDS 191 (1966).
[12] Sather, J. H.; Smith, R. D, AN OVERVIEW OF MAJOR WETLAND FUNCTIONS AND VALUES FWSOBS 84/18 (1984).
[13] Costanza, R. et. Al. THE VALUE OF COASTAL WETLANDS FOR HURRICANE PROTECTION, AMBIO Vol. 37, No. 4 JUNE 2008.
[14] *Id.* tbl. 3.
[15] *Id.* fig. 4.
[16] *See id.* at 247
[17] *See id.*

be $1,221,000. Assuming that the destruction proposed would be finished and completely undone (which is highly suspect) within 7 years, and the mitigation would be completed after year 7, it would take 46 years to replace the lost benefits of the proposed destruction, which is completely unacceptable and does not coincide with the concept of "no net loss."

Given the location of the wetlands as a buffer between the Mississippi River Gulf Outlet—which acted as a funnel during Hurricane Katrina to bring floodwaters into New Orleans—and residential neighborhoods, the Corps should have considered the wetlands' flood protection value. *See* Sulkin Decl. ¶ 33. "The focus on habitat value rather than flood protection for wetlands in an urban area ignores the true value of the wetlands the Corps plans to destroy." *Id.* Further, the Corps' plan to compensate for wetland losses by creating new habitat instead of additional flood storage capacity, places human health at risk from severe flooding during hurricanes and other flooding events. *Id.*

In addition to lowering storm surge, wetlands fill an important economic role by functioning as a vital fisheries habitat. Wetlands provide an essential link of the life cycle of 75 percent of the fish and shellfish commercially harvested in the United States.[18] Further, in 2004 landings of crab, salmon, and shrimp (all animals that make their homes in wetlands for all or at least part of their lives) were valued at $1,167 billion.[19] The act of filling in wetlands decreases the habitat area for dependant fish and shellfish and will impact not only the Louisiana fishing industry, but the nation's fishing industry.

3. The Corps Failed to Consider the Costs of Downstream Dredging.

By dumping dredged sediment into the Mississippi River, the Corps plans to increase the river's sediment load by 6%. *See* Declaration of Dr. Alexander Kolker, attached as Exhibit 3 ¶ 7. This increase in sediment in the river will lead to downstream shoaling, which will increase dredging costs downstream. *See* Kolker Decl. ¶ 7. The Corps ignored these costs when it calculated the benefit/cost ratio of the lock replacement project. Because the Corps failed to consider these costs, the benefit/cost ratio is actually lower than the Corps has calculated.

In addition, by adding more sediment to the Mississippi River without considering downstream dredging costs, the Corps could be jeopardizing crucial coastal restoration projects. For example, the West Bay Sediment Diversion project, downstream from where the Corps wants to dump dredged spoil into the Mississippi River, may be discontinued because sediment from the project has caused shoaling and money has not been set aside for dredging.[20] Adding even more sediment could increase dredging costs even further, potentially stopping the diversion project.

[18] U. S. Fish and Wildlife Service (USFWS), National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS)
[19] *See* Note 4.
[20] "Mississippi River Diversion Slated For Closure Because of Threat to Shipping," Times Picayune, Nov. 6, 2008, *available at* http://www.nola.com/news/index.ssf/2008/11/mississippi_river_diversion_sl.html.

36 – (continued) See previous page.

37 - See previous comment.

38 - CEMVN concurs with the importance of wetlands as habitat for wildlife and fisheries and their importance to maintaining commercial and recreational fisheries. To evaluate impacts and mitigation to wetlands, CEMVN used a wetland value assessment, as developed by the USFWS and multiple other agencies to determine impacts to wetland habitat. The wetland value assessment is used for the evaluation of most coastal wetlands restoration projects and permit actions in coastal Louisiana. Based upon the results of this habitat model, wetland mitigation was proposed and a wetland mitigation plan prepared that fully mitigates for the lost wetland habitat and functions.

39 - As noted by the commenter, this statement is incorrect. The Final SEIS has been changed to reflect the correct percentage of the total river discharge that dredged material would comprise. The statement has been changed to the following: "The daily sediment load discharge for the Mississippi River ranges from 436,000 tons per day to 219,000 tons per day, with an average of 341,000 tons per day (Louisiana Department of Natural Resources 2008). The total proposed sediment discharge into the Mississippi River for the entire project is 324,000 tons. Assuming the length of dredging would be 300 days, approximately 1,080 tons would be discharged into the Mississippi River per day, which represents 0.33 percent of the river's sediment load. If dredging activities take longer than 300 days, the daily volume of sediment discharge would be less than predicted."

40 - The discharge of dredged material into the Mississippi River would not increase the suspended sediment concentration to a level that would increase shoaling at the West Bay Sediment Diversion project. The rate of sedimentation at the West Bay Sediment Diversion project is primarily a result of a decrease in flow velocity of the river at this location in combination with the mixing of sediment laden freshwater and denser saltwater.

4. The Corps Failed to Consider Costs of Dredging the Gulf Intracoastal Waterway to Accommodate Deep-draft Traffic.

The Corps plans to dredge the Industrial Canal to 36 feet deep in order to accommodate deep-draft traffic. With the closure of the Mississippi River Gulf Outlet, the only route for deep-draft traffic would be along the Gulf Intracoastal Waterway (GIWW). If the GIWW is not normally dredged to 36 feet deep for maintenance dredging, the cost of dredging the GIWW lower must be added to the costs of the project. Also, the Corps must consider the cumulative impacts of dredging the GIWW to 36 feet deep.

41 - The GIWW/MRGO from mile 60 to mile 66 is maintained to a depth of 36 feet. The MRGO deep-draft channel was only deauthorized south of its confluence with the GIWW (from mile 60 to the Gulf of Mexico). The GIWW west of the confluence with the MRGO would continue to be maintained at a depth of 36 feet.

5. The Corps Failed to Consider Costs to the Community of Lost Business Revenues and Increased Vehicular Delays During the Lock Construction.

The Corps recognizes that during construction, local businesses will lose revenue and those living in the Holy Cross and Lower Ninth Ward neighborhoods will experience significant vehicular traffic delays during construction. Yet the Corps failed to take these costs into consideration when calculating the benefit/cost ratio of the lock replacement project. The Corps' failure to take these costs into consideration is arbitrary and capricious, particularly when the project's benefits are all tied to reduced delayed lock traffic but the Corps turns a blind eye to the economic costs of vehicular delays during construction.

42 – The benefit cost analysis does consider changes in vehicle traffic. In 1997, when traffic was substantially greater than the post-Katrina conditions and it could be assumed that the Florida Avenue Bridge would be replaced, the project would have resulted in reduced traffic and monetary benefits in the form of reduced delay. However, traffic volumes have decreased substantially post-Katrina and the plans to replace the Florida Avenue Bridge have been indefinitely postponed. Considering these changes in the existing conditions, the 2008 updated economic analysis assumes that the increased efficiency of the new lock would not result in substantial benefits by reducing vehicle traffic delays. While intangible costs (i.e., costs which can not be quantified) to the community are not part of the benefit cost analysis, these "costs" are considered adverse effects in the overall assessment provided by the SEIS. CEMVN is committed to avoid, minimize, and mitigate for these losses through various measures, including a $43 million Community Based Mitigation Plan.

H. The Corps Failed to Examine Alternative Dredging and Disposal Methods and Procedures That Would Reduce Environmental Harms.

1. The Corps Arbitrarily Dismissed the Alternative of Using a Bucket Dredge To Reduce Environmental Impacts of the Project.

The Corps arbitrarily dismissed the possibility of using an environmental bucket clamshell dredge designed to minimize re-suspension of sediment during the dredging operation. *Cf.* Public Notice of Proposed Maintenance Dredging of the Gulf Intracoastal Waterway (GIWW), Inner Harbor Navigation Canal, New Orleans, LA, dated May 16, 2006. The Corps devoted only one sentence in the entire DSEIS to the alternative of using a clamshell bucket dredge. The Corps claims that "[b]ucket dredging is a substantially slower method and dredge material must be handled twice in order to temporarily or permanently dispose of the material." DSEIS, vol. 1 at 56. But the Corps failed to quantify the cost of delay from using a clamshell dredge for and balance those costs against the environmental harm that could be avoided if the Corps used a clamshell bucket dredge.

The Corps also failed to consider the possibility of using a clamshell bucket dredge to dredge the most contaminated areas. By ignoring the possibility of using a clamshell dredge, the Corps inflated the costs of disposing contaminated sediments in a landfill. The Corps' current costs analysis for landfill disposal adds in costs for dewatering contaminated sediments before disposing them in a landfill. However, dewatering is not necessary if the Corps uses a bucket

43 - Due to cost and time considerations, material would need to be hydraulically dredged. Typically, the length of time required for hydraulic dredging is an order of magnitude less than clamshell dredging. It is not inconceivable that clamshell dredges could be used for small portions of the project, and if so, impacts to water quality in the IHNC would be reduced relative to those described in the SEIS.
Disposal options, including landfills, were considered in Appendix F of the Draft SEIS. In the Final SEIS, CEMVN has carried the option of disposing of dredged material unsuitable for open water disposal in a landfill.

dredge. Therefore, the Corps could save on costs of landfill disposal if it used a bucket dredge. By arbitrarily dismissing the possibility of using a bucket dredge to minimize harm to the environment, the Corps has failed to reduce environmental harm from the lock replacement project.

43 – (continued) See previous page.

2. The Corps did not Consider Placing the "Upland Confined Disposal Facility" in an Actual Upland.

The Corps admits that "a confined disposal facility may be needed to contain dredged material requiring upland disposal." DSEIS, App. E at vii. The term "upland" is used nationwide by the Corps and environmental scientists to refer to areas that are neither water *nor* wetlands. *See* Sulkin Decl. ¶ 12. Wetlands may delineate the area between water and uplands. Id. The only location the Corps has considered to build the confined disposal facility for the project is in wetlands within the coastal zone. The Corps even acknowledges that the area where it plans to build the confined disposal facility is "primarily wetlands." DSEIS at 127. Therefore, the confined disposal facility is not an "upland" facility. *See* Sulkin Decl. ¶ 13. Because the Corps does not plan to build the confined disposal facility in uplands, the Draft Supplemental Environmental Impact Statement contains incorrect information, showing that the Corps failed to take a "hard look" at the environmental impacts of this project.

44 - The term 'upland disposal' refers to the disposal in a confined facility that is isolated from wetlands and other water bodies. In the case of the CDF, the existing wetlands are excavated and a dike constructed to fully isolate the dredged material from adjacent wetlands, uplands and open water bodies.

45 - CEMVN evaluated other locations for disposing of dredged material, including landfill disposal. However, the only location that is suitable for the construction of a CDF is along the south bank of the GIWW/MRGO north of Bayou Bienvenue. For a CDF to be viable for disposal of material from dredging at the lock project, it must be in an undeveloped area where a pipe outfall can be located to transport hydraulically dredged material. Pipes cannot be placed across navigable waterways such as the GIWW; therefore, the proposed location is the only viable location for the CDF.

The Corps failed to consider alternative locations in actual upland for a confined disposal facility. *See* Sulkin Decl. ¶ 15; Kohl Decl. ¶ 9. The confined disposal facility is not a "water-dependent" activity and thus, does not need to be sited near water. *See* Sulkin Decl. ¶ 16. The Corps failed to consider alternate locations, and it is likely and presumed that there are alternative locations for a confined disposal facility that would have fewer impacts on the aquatic environment than the Corps' proposed location. *See* Sulkin Decl. ¶ 17. The Corps must dispose of contaminated sediments in an upland site, not wetlands that are prone to flooding, as the Corps currently proposes. *See* Kohl Decl. ¶ 9.

Further, because the Corps does not plan to build the confined disposal facility in uplands, the DSEIS contains incorrect information, and the Corps' reliance on guidance regarding upland disposal facilities fails to provide sufficient protection to the aquatic environment. *See* Sulkin Decl. ¶ 14.

46 - The dredged material not suitable for disposal in open water would be fully contained within the CDF. The CDF would be constructed by excavating material at the CDF location and creating a containment berm isolating the dredged material from adjacent areas and therefore, would not affect adjacent wetlands or open water bodies. Once capped, vegetation would be allowed to cover the CDF and contaminated dredged material would be effectively and indefinitely contained. The vegetated surface would be resistant to erosion and the CDF would essentially be an upland hill.

3. The Corps Must Dispose of Sediments Containing PCBs in a Landfill.

The Corps evaluated the possibility of disposing contaminated sediments in a landfill, but ultimately dismissed the option as too expensive. Regardless of the expense, the Corps must put sediments containing PCBs in a landfill. Failure to dispose of PCB and other toxic sediments in a landfill violates state and federal law governing hazardous waste disposal.

47 - In the Final SEIS, CEMVN has included the option of disposing of dredged material not suitable for disposal in open water in a landfill.

4. The Corps Failed to Consider the Alternative of Only Installing a Shallow-Draft Lock.

Even though a deep-draft lock is not economically justified, the Corps failed to examine the alternative of building a shallow-draft lock. The Corps failed to examine whether building a shallow-draft lock and only dredging the canal to shallow-draft depths would reduce harms to the aquatic environment. The Corps also failed to explain how installing a shallow-draft lock instead of a deep-draft lock in not practicable. By failing to examine these alternative, the Corps failed to reduce harm to the aquatic environment to the maximum extent practicable.

I. The Corps failed to Demonstrate How the Proposed Mitigation Plan Will Mitigate For The Environmental Harm the Corps Will Cause When It Destroys Wetlands for the Project.

1. <u>The Corps Fails to Provide a Clear Plan for Mitigation</u>.

The Corps fails to demonstrate in the DSEIS how the proposed mitigation plan will make up for the environmental harm the Corps will cause when it destroys hundreds of acres of wetlands for its confined disposal facilities and graving site. First, the Corps fails to provide a clear picture of the mitigation it plans to undertake. Throughout the DSEIS, the Corps estimates the mitigation area to be anywhere from 31 to 178 acres in size. *See* DSEIS, App. Q at 18. The Corps' 404(b)(1) analysis give no indication of how the mitigation will work, other than depositing the dredged spoil in the open water of the mitigation site. Simply dumping dredged material into open water does not constitute mitigation. The analysis must show how the mitigation will take place in order to ensure that a healthy natural wetland will result from the dredge disposal. The Corps states that "it is anticipated that wetlands plants would colonize this platform, and that the disposal site would transform into a functioning marsh." DSEIS, App. Q at 7. It is extremely difficult to create a wetland, and the Corps must present a working plan showing that this mitigation has a good chance for success.

2. <u>The Corps Must Provide For Alternate Mitigation If There Is Not Enough Suitable Material to Mitigate for the Wetlands Loss.</u>

The Corps admits that it may not actually be able to complete its mitigation in the area where it would prefer to do so. The Corps suggests that "If the entire mitigation cannot occur at the triangular-shaped mitigation area located south of Bayou Bienvenue due to a lack of suitable material, DEMVN would fully mitigate for the loss...." DSEIS, App. Q at 59. The Corps fails to elaborate on this contingency. The Corps must mitigate for the impacts from the lock replacement project, and the lack of a working plan that will actually mitigate for the project's impacts demonstrates that the Corps has not taken a hard look at the mitigation for this project.

3. <u>The Corps Must Mitigate For Harms Caused by the Confined Disposal Facility Backfill Site.</u>

The Corps has not planned to mitigate for the impacts caused by the CDF Backfill Site. *See* DSEIS, App. Q at 59. The Corps claims that these impacts would only be "temporary," but this project will last over 10 years, so mitigation for these 138 acres must be done. The Corps'

48 - The 1997 EIS evaluated various lock alternatives, including shallow-draft lock designs. Shallow-draft designs were fully evaluated in the 1997 EIS. The material determined not suitable for disposal in open water would be placed in the fill cell of the CDF. Furthermore, subject material primarily originates from dredging the bypass channel around the lock construction site and would occur no matter what the depth of lock chosen.

49 - A conceptual wetland mitigation plan has been developed for the restoration of at least 85 acres of brackish marsh and included in the Final SEIS. The conceptual wetland mitigation plan located in Appendix M includes mitigation implementation, maintenance and monitoring descriptions. The conceptual wetland mitigation plan has been developed to incorporate the details necessary to assess compliance of the recommended plan with the Clean Water Act (CWA) Section 404(b)(1) Guidelines and Section 2036 of the Water Resources Development Act (WRDA) of 2007.

50 - CEMVN has completed a conceptual wetland mitigation plan and it is included as Appendix M in the Final SEIS. CEMVN anticipates receiving a waiver from LDEQ for beneficial use of dredged material for wetland mitigation purposes. Further, CEMVN has fully committed to mitigating for all impacts to wetlands and waters of the U.S. from the lock replacement project as described in Section 5.3.18 of the Final SEIS. A discussion of alternative mitigation options is provided in this section of the SEIS.

51 - CEMVN has fully committed to mitigating for impacts from the disposal cell, which will be used to temporarily store dredged material until reused as backfill. The disposal cell comprises 138 of the 209 acres of wetland impacts from the CDF. The impacts to wetlands from the disposal cell were included in the wetland value assessment, and habitat units lost from the disposal cell construction would be mitigated at the triangular-shaped wetland mitigation site as described in Section 5.3.18.

claims that "The CDF Backfill site is expected to naturally reforest after construction activities are completed" do not excuse the Corps from its obligation to mitigate for the multiple years in which that wetland value will be lost because of the project. *See* DSEIS, App. Q at 59.

4. The Corps Has Not Supported With Evidence Its Conclusion That Wetlands It Will Destroy During the Project Will Re-vegetate Themselves.

Throughout Appendix Q, the Corps states that the CDF disposal site, CDF Backfill Site, Graving Site, and Stockpile Area will all re-vegetate. *See* DSEIS, App. Q at 24, 27, 28,59, 61, 62. However, the Corps provides no evidence to support this assumption. The Corps states that "it is anticipated that the CDF Disposal site would reforest with native hardwoods after the completion of construction." DSEIS, App. Q at 59. However, the Corps also acknowledges that "much of the recruitment is Chinese tallow," which is not a native hardwood. DSEIS, App. Q at 19. Appendix Q gives no evidence that desirable wetland species will dominate these cleared areas.

5. The Corps Fails To Identify Where It Plans To Find Additional Borrow Materials for the Graving Site.

The Corps states that "if it is determined that the volume of material in the stockpile is not adequate to restore the graving site to the preconstruction elevation, borrow material would be imported to reach this elevation." *See* DSEIS, App. Q at 23. In order to assess the impacts of this project under the Clean Water Act's § 404(b)(1) guidelines and assess cumulative impacts of the project, the Corps must identify from where it would take the additional borrow materials.

6. The Corps Should Have Consulted EPA Region 6 Regarding Water Quality Screening Criteria.

The DSEIS does not indicate that the Corps consulted with EPA Region 6 regarding water quality screening criteria for hazardous waste sites. Instead, the Corps used criteria from EPA Region 4. *See* DSEIS, App. Q at 30. The Corps should have consulted with EPA Region 6, which is responsible for water quality issues in Louisiana.

7. The Corps Failed to Examine Alternative Locations for the Mitigation, Confined Disposal Facility, or Graving Sites.

The Corps failed to examine alternative locations for mitigation, the confined disposal facilities, or the graving sites. The Corps failed to examine any alternatives to the locations it chose for the mitigation, confined disposal facility, or graving sites. By not examining alternative locations for any the portions of the lock replacement project the Corps wants to perform in wetlands, the Corps has failed to show that there are no practicable alternatives to destroying several hundred acres of wetlands for the lock replacement project.

51 – (continued) See previous page.

52 - There is substantial evidence to support that the CDF and offsite construction area will naturally revegetate following project completion. The areas proposed for the CDF and offsite construction area are former dredged material disposal sites. They are now entirely vegetated with woody plant species as described in Section 5.3.17. The long-term condition for vegetation colonization at these sites following the placement of dredged material would be similar to existing conditions, based upon how the system has responded to the last placement of dredged material. The commenter is correct that Chinese tallow is not a hardwood and the Final SEIS has been changed to reflect this error.

53 - CEMVN has identified numerous borrow sites for the HSDRRS projects. It is anticipated that one of the sites near the lock replacement site would supply borrow material for filling the offsite construction area, if necessary. The borrow material would be contractor-furnished, and would meet CEMVN criteria for borrow site selection, including no impacts to wetlands during borrow excavation. The information on contractor-furnished borrow material was added to the Final SEIS.

54 - The Region 4 screening level criteria comparisons were intended to provide an assessment of whether or not concentrations for constituents without regulatory criteria (Louisiana DEQ or EPA Region 6) would potentially be of concern and whether the dilution for the constituents in question would be likely to govern. Appendix C, Section 4.1 states that "*Elutriate concentrations (maximum and geometric mean values) were compared to the most conservative of acute and chronic Federal and State of Louisiana water quality criteria. Where no such criteria existed, EPA Region 4 water quality screening criteria for hazardous waste sites were used, if available*." Region 4 Waste Management Division Freshwater Surface Water Screening Values for Hazardous Waste Sites are available at *http://www.epa.gov/region4/waste/ots/ecolbul.htm#tbl1*). EPA Region 6 does not provide such criteria. In no case was the dilution calculated using the Region 4 criteria the determining dilution for establishment of a mixing zone. Dilution requirements were ultimately established based on comparison of expected effluent and runoff concentrations to state and Federal water quality standards and from analysis of elutriate toxicity and coordination with the appropriate resource agencies.

55 - CEMVN has evaluated disposal of dredged material not suitable for open water disposal in a landfill in the Final SEIS. Dredged material to be placed in the CDF for use as backfill at the lock construction site would have temporary impacts to wetlands, and is the closest undeveloped location for sediment storage. Further, the 1997 EIS evaluated an alternative location for the offsite construction area, but due to wetland impacts and landownership, a new site was chosen in the Final SEIS.

The history of the project has been to reduce impacts to wetlands by choosing a more urbanized location for the placement of a new lock. All of the alternative lock locations as shown on Figure 4-1 and described in Section 4.1 would have substantially greater impacts to wetlands because of the requirements to dredge new access channels through coastal wetlands. All of these alternatives have been evaluated and dismissed through the history of the project due to extensive impacts to wetlands as well as significant impacts to the human environment. The current IHNC Lock Replacement project conceptual design provides the least possible impact to wetlands of any of the alternatives previously evaluated since the start of project planning in 1960.

8. The Corps Fails To Articulate a Clear Vision as to What Type of Wetland the Mitigation Should Be.

In Appendix Q (the Corps' 404(b)(1) analysis), the Corps states that the site consists of shallow, brackish water with scattered, remnant cypress stumps. *See* DSEIS, App. Q at 18. Yet, the Corps intends to make the area into a "functioning marsh." DSEIS, App. Q at 7. However, Appendix Q also acknowledges that other organizations are interested in restoring these areas. Many of these groups intend to restore this area into a cypress swamp, which is very different from a brackish marsh. This again is reason to include a mitigation plan to make sure that these mitigation efforts are not contrary to a larger plan to restore a fresher water regime to the area.

56 - CEMVN has a working conceptual wetland mitigation plan and it is included as Appendix M in the Final SEIS. CEMVN's conceptual design is compatible with the concepts of other organizations that are planning restoration projects in this area. Further, CEMVN cannot rely on artificial water sources such as freshwater discharge from a wastewater treatment plant to create freshwater wetlands or cypress swamps. In order to truly mitigate for impacts to wetlands, the mitigation site must be self-sustaining after the initial site construction and maintenance, and not rely on pumps and pipes for hydrology or freshwater input.

9. The Mitigation Plan Does Not Account For The Wetlands' Storm Buffering Abilities and Water Storage Capacity.

The lock replacement project proposes to impact almost 250 acres of wetland and replace them with as little as 37 acres. This could be devastating, as these wetlands are very close to urban New Orleans and act as a buffer to hurricanes and flood waters. Wetlands have a tremendous ability to absorb flood waters. In fact, an acre of wetland can store about a million gallons of water.[21] This project would reduce this area's flood buffering capability by 250 million gallons. Additionally, while research is on-going, studies show that wetlands can be effective in reducing storm surge from hurricanes. Studies suggest that 4 miles of intact marsh can reduce storm surge by a foot.[22] These wetlands protect a particularly vulnerable area of New Orleans, and these impacts (storm surge protection and flood storage) must be included in an analysis of cumulative and secondary impacts. *See* Sulkin Decl. ¶ 34.

57 - The storage capacity of wetlands is greatest along floodplains where wetland soils are saturated in response to seasonal rainfall events and either 1) store rainfall and release it slowly into a river or 2) absorb floodwaters which exceed the rivers banks or a levee. Coastal wetlands provide relatively little storage capacity as the soils are typically saturated throughout the year and typically can not absorb additional water from rainfall or flooding. The wetlands that would be impacted by the construction of the CDF are located within a portion of the HSDRRS referred to as the Bayou Bienvenue Central Wetland Unit. The wetlands within this Unit are surrounded by levees, and water levels within the Unit are controlled by two tide gates; one at the confluence of Bayou Bienvenue and MRGO and the other at the confluence of Bayou Dupre and MRGO. The HSDRRS levees bound the north and east sides of the Unit along the MRGO and GIWW, and a local levee bounds the Unit along its south side. The 14-foot high local levee abuts Florida Avenue and the railroad tracks and provides protection from tidal inundation for St. Bernard Parish, the Lower Ninth Ward and Holy Cross neighborhoods. When the floodgates are closed, the Unit stores water pumped from the surrounding neighborhoods during rain events, or floodwaters overtopping the HSDRRS. However, this storage only occurs as a result of containment within the Unit when the floodgates are closed and not because the wetlands within the Unit absorb water. Wetlands within the Unit are typically saturated and provide very little capacity to store additional water. The storage capacity of the Unit is greatest in the open water areas where land mass (such as wetlands) does not displace water. Of the approximately 29,000 acres within the Unit, the CDF would fill approximately 209 acres of wetlands which comprise approximately 0.7 percent of the total storage area. Further, the loss of storage capacity resulting from the fill cell would be temporary and only the disposal cell would permanently reduce storage capacity. The disposal cell would permanently fill approximately 71 acres of the Bayou Bienvenue Central Wetland Unit, which comprises 0.2 percent of the total storage area. Neither the temporary or permanent impacts to storage capacity in the Bayou Bienvenue Central Wetland Unit from the construction of a CDF would be substantial.

III. ASPECTS OF THE PROPOSED PROJECT VIOLATE CLEAN WATER ACT REGULATIONS, MAKING THE PROJECT, AS PROPOSED, ILLEGAL.

Although the Corps does not grant itself a permit for discharges or dredge or fill material, "the Corps authorizes its own discharges of dredged or fill material by applying all applicable substantive legal requirements, including public notice, opportunity for public hearing, and application of the section 404(b)(1) guidelines." 33 C.F.R. § 336.1. Therefore, all Corps projects must comply with the 404(b)(1) guidelines. The lock replacement project does not comply with the 404(b)(1) guidelines, and is therefore illegal as proposed.

58 - CEMVN respectfully disagrees; the lock replacement project complies with 404(b)(1) guidelines and the 404(b)(1) evaluation is included as Appendix Q in the SEIS.

A. The Corps Failed To Examine Alternative Non-Wetland Locations for the Confined Disposal Facility and Lock Construction.

The Corps failed to comply with Clean Water Act regulations when selecting its preferred alternative for the lock replacement project. *See* Sulkin Decl. ¶ 15, 19. Under federal law "no discharge of dredged or fill material shall be permitted if there is a practicable

59 - Besides disposing of dredged material not suitable for open water in a landfill (as described in the Final SEIS), CEMVN has not identified a practicable alternative to the proposed CDF location. Hydraulic dredging precludes placing discharge pipes across navigable waterways, so locations north of the GIWW are not feasible. Additionally, all other areas on either side of the IHNC are developed.

[21] *See* EPA, Office of Water "Wetlands: Protecting Life and Property from Flooding" May 2006, EPA843-F-06-01.
[22] *See* Costanza, R. et. Al. THE VALUE OF COASTAL WETLANDS FOR HURRICANE PROTECTION, AMBIO Vol. 37, No. 4 JUNE 2008.

alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." 40 C.F.R. § 230.10(a). Where the project intends to discharge dredge or fill material into a special aquatic site, such as a wetland, and that aspect of the project is not "water dependent," the law presumes that "practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise." *Id.* § 230.10(b).

59 – (continued) See previous page.

The Corps failed to examine alternative, non-wetland locations in which to build the proposed confined disposal facility. A confined disposal facility is not "water dependent," therefore the law presumes that there are practicable alternatives to building a confined disposal facility in the wetlands. *See* 40 C.F.R. § 230.10(b). The Corps failed to "clearly demonstrate" that there is no place where it could build a confined disposal facility other than in the wetland area they have proposed. *See* Sulkin Decl. ¶ 17. In order for the Corps to comply with Clean Water Act regulations, the Corps must examine alternate non-wetland locations in which to dispose the dredged spoil.

60 - The IHNC Lock Replacement project is water dependent because the lock services waterborne traffic. All components of the project that are necessary to build a new lock, demolish the old lock and provide improved flood protection are also water dependent. All non-wetland areas where a CDF could be built are located in developed portions of the City of New Orleans. Further, these areas are limited to sites south of the GIWW-IHNC confluence. Hydraulically dredged material would be pumped to the CDF and the placement of a pipe across the GIWW/MRGO would impede navigation. Developed areas in the Lower Ninth Ward and Bywater, which would be the only locations where a CDF could built in a non-wetland site, are not practicable because of the potential displacement of businesses and residences, and risk of exposure to contaminants of concern for residents during placement.

The Corps also failed to examine alternative, non-wetland locations where it could construct the lock and then float the lock in place. The Corps has not shown under the Float-in-Place plan that there are no alternative locations to build the lock that would destroy no or fewer wetlands. *See* Sulkin Decl. ¶ 18. The Corps examined the cast-in-place alternative, which would destroy no wetlands, and the float-in-place alternative, which would destroy wetlands. The Corps failed to show how the cast-in-place is not practicable or to show that there is not another location where the lock could be built and then floated or transported to the new lock location. The Corps' failure to examine alternatives to destroying hundreds of acres of wetlands for the confined disposal facility and graving site violates the law.

61 - CEMVN has demonstrated that the Cast-in-place Plan is a viable alternative and fully evaluated that alternative in the SEIS. The 1997 EIS Plan evaluates an alternative location for the offsite construction area.

B. The Corps Failed to Evaluate the Alternative Of Using a Clamshell Bucket Dredge To Reduce Environmental Harms from Dredging.

Federal regulations prohibit the Corps from discharging "dredged or fill material… if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." 40 C.F.R. § 230.10(a). The Corps failed to evaluate and consider using a method of dredging that would cause less harm to the aquatic ecosystem than hydraulic dredging. The Corps arbitrarily dismissed the possibility of using an environmental bucket clamshell dredge designed to minimize re-suspension of sediment during the dredging operation, claiming that "[b]ucket dredging is a substantially slower method and dredge material must be handled twice in order to temporarily or permanently dispose of the material." DSEIS, vol. 1 at 56.

62 - Due to cost and time considerations, material would need to be hydraulically dredged. Typically, the length of time required for hydraulic dredging is an order of magnitude less than clamshell dredging. It is not inconceivable that clamshell dredges could be used for small portions of the project, and if so, impacts to water quality in the IHNC would be reduced relative to those described in the SEIS.

The Corps' failure to actually examine using a bucket dredge as a less-harmful alternative to hydraulic dredging violates federal regulations. Not only would bucket dredging reduce the threat of contaminating the aquatic ecosystem and the dredge point, but it would reduce damage to water quality at the confined disposal and mitigation sites as well. The Corps dismissed the

63 - Due to cost and time considerations, material would need to be hydraulically dredged. Typically, the length of time required for hydraulic dredging is an order of magnitude less than clamshell dredging. It is not inconceivable that clamshell dredges could be used for small portions of the project, and if so, impacts to water quality in the IHNC would be reduced relative to those described in the SEIS.

alternative without quantifying the cost of delay from using a clamshell dredge, balancing those costs against the environmental harm that could be avoided if the Corps used a clamshell bucket dredge, and showing that using a bucket dredge is not a practicable alternative to hydraulic dredging that would reduce harm to the aquatic environment.

C. The Corps' Dredging Plan Violates The Clean Water Act.

Federal regulations prohibit dredging or discharging fill material if that dredging or discharging would violate "any applicable State water quality standard." 40 C.F.R. § 230.10(b)(1). Yet, the Corps admits that it will not be able to achieve safe levels of tributylin, total PCBS, Arochlor 1016, and dieldrin when dredging the Industrial Canal. *See* DSEIS, vol. 1 at 137 ("Adequate dilution would be attainable within a mixing zone complying with State of Louisiana requirements for all constituents except of tributylin, total PCBS, Arochlor 1016, and dieldrin."). It explains that "[e]ffluent treatment may be required when dredging areas of the IHNC with elevated concentrations of these constituents," but it has not devised a plan to treat the effluent so that it is safe and meets Louisiana's water quality standards. Therefore, the Corps may not complete the lock replacement project as long as the project intends to violate water quality standards for tributylin, total PCBS, Arochlor 1016, and dieldrin.

D. The Corps' Proposed Mitigation Violates the Clean Water Act.

An Environmental Impact Statement must include a discussion of the steps that could be taken to mitigate the environmental consequences of the proposed action. *See* 42 U.S.C. § 4332. As a part of the Corps' mitigation plan, the Corps wants to allow discharge and runoff from the confined disposal facility to enter Bayou Bienvenue. The purpose of mitigation is to compensate for unavoidable impacts to the aquatic environment. *See* Sulkin Decl. ¶ 28. The Corps admits that the discharge will not meet water quality standards and instead of devising a plan to treat the water before disposing of it in Bayou Bienvenue, the Corps plans to attain a water quality waiver. DSEIS, at 5; *see* Sulkin Decl. ¶¶ 29, 31. The waiver will allow the Corps to discharge toxic effluent into the bayou impairing the overall water quality of the bayou. The Corps' mitigation plan must compensate for the negative environmental impacts of this project to wetlands and water quality. ***Yet the Corps plans to mitigate harms to water quality by harming water quality even further.***

The Corps' mitigation plan, in which it intends to dump dredged sediments into open water in an attempt to build wetlands, is illegal. Federal regulations prohibit dredging or discharging fill material if that dredging or discharging would violate "any applicable State water quality standard." 40 C.F.R. § 230.10(b)(1). Because the Corps admits that its mitigation plan, which involves placing dredged sediments into a triangle-shaped portion of Bayou Bienvenue, would violate water quality standards, that mitigation plan is illegal. The Corps must go back to the drawing board and devise a mitigation plan that will not violate water quality standards.

Additionally, when analyzing the impacts of the project on Bayou Bienvenue, the Corps assumed that "the entire width and depth of the bayou are enveloped in the mixing zone."

63 – (continued) See previous page.

64 - Appendix C Water Quality and Sediment Evaluation Section 4.2 Page 89 states: "Assuming maximum copper and lead dilution requirements are revised as previously discussed, adequate dilution will be attainable within the mixing zone for all constituents except tributyltin (dilution ratio 3179 chronic), total PCBs (dilution ratio 404 chronic), Aroclor 1016 (dilution ratio 321 chronic) and dieldrin (dilution ratio 128 chronic). Effluent treatment may be required to address elevated levels of these constituents when dredging certain areas of the IHNC. However, the mixing that is inherent in dredging will likely flatten peak concentrations somewhat. Based on the geometric mean elutriate concentrations (Appendix C Table 4.2.5), all dilution requirements can be met within the prescribed mixing zone in the GIWW. If treatment is required, it is anticipated that simple broadcasting of activated carbon around the weir of the CDF will be effective in reducing effluent concentrations of organic compounds sufficiently to permit discharge. The use of activated carbon has been evaluated for another project to reduce volatile emissions from pounded water in a CDF. Bench testing will be required to establish dosage and contact time requirements to meet treatment objectives for the IHNC effluent."

65 - Dredged material that would be used beneficially for the establishment of marsh are not expected to cause adverse effects to the benthos or to fish at the mitigation site or effluent discharge area at Bayou Bienvenue. CEMVN intends to seek a water quality waiver for exceeding water quality standards at Bayou Bienvenue. The waiver is warranted because elutriate toxicity tests demonstrated that adverse impacts on dredged material effluent discharge to is unlikely to promote adverse impacts to water column organisms in Bayou Bienvenue (Appendix C).

66 - CEMVN proposes to beneficially use dredged material to create wetlands as mitigation for impacts from the CDF and offsite construction area. The use of dredged materials to create wetlands is commonly implemented in coastal Louisiana by USACE as well as other state and Federal agencies. The restoration technique is common practice and the need for a water quality waiver is often necessary for this restoration technique. Waivers are commonly issued where the temporary impacts are determined to be acceptable given the overall beneficial impacts.

67 - Bayou Bienvenue would be classified as a Category 4 water body (tidal channel with flow less than 100 cubic feet per second) in Louisiana State Environmental Regulatory Code Part IX, Subpart 1, Chapter 11, subsection 1115C. For Category 4 water bodies, the zone of initial dilution is restricted to 1/10 of the average flow over one tidal cycle (effectively, 1/10 of the cross sectional area), and the mixing zone is permitted to encompass the entire cross sectional area (i.e., "the entire width and depth of the bayou") and flow. CEMVN concurs that the water quality waiver is not mitigation but is a regulatory…

DSEIS, at 137. "It is inappropriate to use the entire waterbody as a mixing zone when determining water quality impacts and compliance with water quality limitations." *See* Sulkin Decl. ¶ 30. The Corps' plan to seek a water quality waiver for its "mitigation" plan is not proper mitigation. "A 'mitigation' plan that harms water quality and seeks a water quality wavier does not compensate for harms to the aquatic environment." *See* Sulkin Decl. ¶ 32.

IV. THE LOCK REPLACEMENT PROJECT IS CONTRARY TO THE PUBLIC INTEREST AND THEREFORE, THE CORPS MUST RECOMMEND THE NO-BUILD/DEAUTHORIZATION ALTERNATIVE.

The Corps must select the no-build alternative and recommend that Congress deauthorize the lock replacement project because it is not in the public interest. Federal regulations direct that the Corps' "district engineer will… follow the guidance in 33 CFR 320.4(b)… when evaluating Corps [projects] in wetlands." 33 C.F.R. § 336.1. To determine if a proposed project is consistent with the public interest, "[t]he benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments." 33 C.F.R. § 320.4(a)(1). The district engineer must consider all factors that may be relevant to the proposal when evaluating whether a project is in the public interest, including: conservation, aesthetics, general environmental concerns, wetlands, wildlife values, and the welfare of the people. *See id.*

The Corps failed to balance the harm to the local community from loss of valuable wetlands that provide valuable flood storage capacity and buffer storm surge, the disruption of their lives for years during the lock construction project, the loss of business revenues during construction, the loss of time because of traffic delays during construction, the potential undermining of the flood walls and hurricane protection levees from the canal deepening and widening and the confined disposal facility, the risk of contamination when the confined disposal facility fails, and the threat to downstream coastal restoration projects from increased shoaling downstream caused by the increased sediment load in the Mississippi River with the limited benefits that a few limited navigation interests might reap from the project. Had the Corps done so, it would have concluded that the project is contrary to the public interest. *See* 33 C.F.R. § 320.4(a).

Federal regulations acknowledge that "[m]ost wetlands constitute a productive and valuable public resource, the unnecessary alteration or destruction of which should be discouraged as contrary to the public interest." 33 C.F.R. § 320.4(b)(1). Those regulations list multiple ways in which wetlands are valuable, including wetlands that are "significant in shielding other areas from… storm damage," those that "serve as valuable storage areas for storm and flood waters," and those "wetlands which are unique in nature or scarce in quantity to the region or local area." *Id.* at § 230.4(b)(2). The regulations prohibit the Corps from granting a permit to fill in wetlands that shield areas from storm damage, serve as valuable storage areas for storm and flood waters, or are unique or scarce to the area unless the district engineer, after his public interest analysis, concludes "that the benefits of the proposed alteration outweigh the damage to the wetlands resource." *Id.*

67 – (continued) …instrument. The use of dredged materials to create wetlands is commonly implemented in coastal Louisiana by USACE as well as other state and Federal agencies. The restoration technique is common practice and the need for a water quality waiver is often necessary for this restoration technique.

68 - CEMVN has completed a 404(b)(1) evaluation for the project and it is located in Appendix Q. The project minimizes permanent impacts to wetlands and proposes to fully mitigate those impacts as described by the results of the wetland value assessment prepared by USFWS. All aspects of the project, including mitigation measures to reduce adverse impacts, must be considered in determining whether the project is in the public interest.

69 -The wetlands that would be impacted by the construction of the CDF are located within a portion of the HSDRRS that is surrounded by levees with water levels controlled by two tide gates; one at the confluence of Bayou Bienvenue and MRGO and the other at the confluence of Bayou Dupre and MRGO. This area is referred to as the Bayou Bienvenue Central Wetland Unit. The Bayou Bienvenue Central Wetland Unit is bounded by HSDRRS levees along the MRGO and GIWW on the north and east sides, and a local levee along the south side. The local levee on the south side of the Unit abuts Florida Avenue and the railroad tracks and is 14 feet high. This levee provides protection from tidal inundation for St. Bernard Parish, the Lower Ninth Ward and Holy Cross neighborhoods. When the tide gates are open, the wetlands in the Bayou Bienvenue Central Wetland Unit do not provide storage, because all rainwater is pumped from the neighborhoods over the 14 foot high levee/floodwall and into the Unit where the water flows out with the tides into the MRGO. However, when the floodgates are closed, such as during a severe tropical storm event, the approximately 29,000 acre Bayou Bienvenue Central Wetland Unit provides storage for discharge from forced drainage in nearby neighborhoods and storm surge that overtops the HSDRRS. The CDF would fill approximately 209 acres of the Bayou Bienvenue Central Wetland Unit, which comprises 0.7 percent of the total storage area. Further, the CDF is comprised of a fill cell, which would be used for temporary storage of dredged material, and a disposal cell, which would be used for permanent storage of dredged material. The disposal cell would permanently fill approximately 71 acres of the Bayou Bienvenue Central Wetland Unit, which comprises 0.2 percent of the total storage area. Neither the temporary or permanent impacts to storage capacity in the Bayou Bienvenue Central Wetland Unit from the construction of a CDF would be significant.

70 - See previous comment.

As part of the lock replacement project, the Corps plans to destroy hundreds of acres of wetlands for "confined disposal facilities" and a graving site. But the Corps ignored the fact that these wetlands shield the Lower Ninth Ward and the Holy Cross neighborhoods from storm surge, serve as valuable storage areas for storm and flood waters, and are unique in nature and scarce in quantity because they are located in an urban coastal area. By ignoring these important functions of the wetlands the Corps plans to destroy, the Corps' public interest analysis was arbitrary and capricious. By recommending a project that is not in the public interest, the Corps violates Clean Water Act regulations.

71 - The wetlands that would be impacted through the construction of the CDF and offsite construction area are located within the HSDRRS and have been previously used for dredged material disposal. The majority of the land between Bayou Bienvenue and the GIWW is occupied by wetlands of similar composition and these wetlands are separated from urban areas by a large area of open water and colonized Chinese tallow, and invasive species. Thus, the wetlands are not within an urban area and, furthermore, being in an urban area would not qualify a wetland as scarce in quantity.

V. THE CORPS NEEDS A CLEAN WATER ACT § 402 PERMIT TO COVER POINT SOURCE DISCHARGES FROM THE CONFINED DISPOSAL FACILITY.

The Corps must obtain a Clean Water Act § 402 permit to cover any point source discharges of water from the confined disposal facility. According to the Draft Supplemental Environmental Impact Statement, the Corps plans to pump water from inside the confined disposal facility over the hurricane protection levee and into the Gulf Intracoastal Waterway. DSEIS, App. E at 18. The Draft Supplemental Environmental Impact Statement also contemplates "weir structures" to control[] discharge of effluent." DSEIS, App. E at 18; *see* Sulkin Decl. ¶ 25. Expert Barry Sulkin notes that, "[t]he Corps refers to both 'effluent' and 'runoff' being discharged from the confined disposal facility. The Clean Water Act requires a facility to obtain a § 402 permit for point source discharges from a facility." *See* Sulkin Decl. ¶ 26. The act of routing or pumping water from the confined disposal facility into the GIWW or Bayou Bienvenue constitutes a point source discharge into waters of the United States. *See* Sulkin Decl. ¶ 27. This point source discharge also requires the Corps to obtain Louisiana's version of a §402 permit, a Louisiana Pollution Discharge Elimination System Permit. *See* Sulkin Decl. ¶¶ 24, 27. Neither the 1997 EIS nor the current DSEIS address this issue.

72 - A National Pollution Discharge Elimination System permit will be acquired for the lock construction project (see Table 6-1 of the SEIS). Any disturbance of 1 acre or more in a construction project triggers this requirement. As part of the project's plans and specifications, a Storm Water Pollution Prevention Plan will be prepared and submitted with the Notice of Intent to LDEQ.

VI. THE CORPS' PLAN TO DESTROY 250 ACRES OF COASTAL WETLANDS IS NOT CONSISTENT WITH LOUISIANA'S COASTAL RESOURCES PROGRAM AND MASTER PLAN.

A. The Corps Failed to Examine Whether All Aspects of the Lock Replacement Project Are Consistent With Louisiana's Coastal Resources Program.

When examining whether the lock replacement project and its proposal to destroy almost 250 acres of wetlands is consistent with Louisiana's Coastal Resources Program, the Corps ignored Louisiana's actual program and master plan. Instead of looking at Louisiana's plan and protections for its coastal resources, the Corps addressed the federal guidelines. The Corps cannot demonstrate consistency with Louisiana's program by only looking at the federal plan, because states may adopt more protections than the federal program requires. By only looking at the federal guidelines and not the state's guidelines, the Corps has not insured that the project is, to the maximum extent practicable, consistent with Louisiana's program. The Corps' failure to do so violates federal law. *See* 16 U.S.C. § 1456(c)(2) ("Any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to

73 - CEMVN prepared a Coastal Consistency Determination for the Louisiana Coastal Zone Management Program and is located in Appendix I of the Final SEIS. This determination describes how the project is consistent with Louisiana Coastal Use Guidelines.

the maximum extent practicable, consistent with the enforceable policies of approved State management programs.").

B. The Corps Failed To Show That All Aspects of the Lock Replacement Project Are Consistent with the Federal Guidelines or State Law.

Louisiana's Coastal Resources Program requires that "all activities shall be planned, sited, designed, and constructed, operated, and maintained to avoid to the maximum extent practicable significant" *1)* destruction or adverse alteration of wetlands, *2)* detrimental discharges or suspended solids into coastal waters, including turbidity resulting from dredging, *3)* discharges of toxic substances into coastal waters, *4)* adverse alteration or destruction or unique or valuable habitats, and *5)* increases in the potential for flood hurricane or other storm damages, or increased likelihood that damage will occur from such hazards. *See* La. Admin. Code tit. 43 pt. I §701.G.

The Corps can only show that it has avoided impacts to the "maximum extent practicable" where it shows that the:

> benefits resulting from the proposed use would clearly outweigh adverse impacts from noncompliance with the modified standard and there are no feasible and practicable alternative locations methods, and practices for that use that are in compliance with the modified standard and *(1)* significant public benefits will result from the use, or; *(2)* the use would serve important regional, state, or national interests, including the national interest in resources and the siting of facilities in the coastal zone identified in the coastal resources program, or *(3)* the use is coastal water dependent.

La. Admin. Code tit. 43 pt. I §701.H. The Corps admits that aspects of the lock replacement project will have significant impacts on coastal resources, but it has not demonstrated that those aspects of the project will lead to significant public benefit, serve important interest, or are coastal water dependent. Specifically, the Corps' confined disposal facilities, mitigation and graving sites will all have significant adverse impacts on coastal resources, but those aspects of the project lead to no public benefits, serve no important interests and are not coastal water dependent.

1. <u>The Corps has not Avoided Wetlands Destruction to the Maximum Extent Practicable</u>.

The Corps failed to demonstrate that it has avoided destruction of wetlands to the "maximum extent practicable," as state law and federal guidelines require. *See* La. Admin. Code tit. 43 pt. I §701.G.5. The Corps admits that "about 247 acres of bottomland shrub wetlands at the graving site and CDF facilities along the spoil bank of the GIWW would be cleared for project construction." DSEIS, App. I at 11. The Corps failed to demonstrate that it examined

74 - CEMVN prepared a Coastal Consistency Determination for the Louisiana Coastal Zone Management Program and is located in Appendix I. This determination describes how the project is consistent with Louisiana Coastal Use Guidelines. The IHNC Lock Replacement project is water dependent since its only purpose is to serve waterborne traffic and provides benefits to the public as well as to the Port of New Orleans.

75 - CEMVN chose the proposed location for the CDF and offsite construction area because they are located within areas previously used for dredged material disposal, and provide the only undeveloped areas in close proximity to the project where dredged material could be hydraulically pumped. Besides the locations chosen for the project components, alternative locations would be in developed areas and would cause greater community impacts.

alternative non-wetland locations at which to build the confined disposal facilities or graving site.

2. The Corps has not Avoided Detrimental Discharges of Suspended Solids to the Maximum Extent Practicable.

The Corps failed to show that it examined alternatives to its proposed mitigation plan, which would lead to "detrimental discharges of suspended solids into coastal waters" or alternative methods of dredging that would reduce turbidity. The Corps failed to evaluate the possibility of using a clamshell bucket dredge to reduce suspended solids during dredging and reduce the amount of contamination. The Corps' failure to do so violates state law and federal guidelines. *See* La. Admin. Code tit. 43 pt. I §701.G.11.

76 - The restoration of wetlands through the beneficial use of dredged material determined suitable for open water disposal would not cause detrimental discharges of suspended sediments into coastal waters (Section 4.3.4 of the SEIS). Further, CEMVN is proposing wetland restoration as mitigation that is similar to designs proposed by the state of Louisiana and the University of Wisconsin.

3. The Corps has not Avoided Discharges of Toxic Substances to the Maximum Extent Practicable.

The Corps failed to show that it has avoided "discharges of… toxic substances into coastal waters" to the "maximum extent practicable." *See* La. Admin. Code tit. 43 pt. I §701.G.13. The Corps' plan to use hydraulic dredging will produce a slurry of water and contaminated sediments. *See* Kohl Decl. at ¶ 15. Those contaminated sediments would be suspended in the water slurry, and will either settle into the coastal wetlands where the Corps plans to build its so-called confined disposal facilities, or it will leak from those facilities and contaminate the adjacent waterbodies. Because the Corps has not considered building the confined disposal facility in actual uplands or using a clamshell bucket dredge to reduce the risk of contaminating the aquatic environment during dredging, it has failed to demonstrate that it has avoided these impacts to the maximum extent practicable, as required by law.

77 - The CDF would be a fully contained system where hydraulically dredged material would be placed and allowed to dewater. The dredged material would be separated from adjacent wetlands and open water bodies by containment dikes. Water would be clarified prior to discharge as effluent into the GIWW. Dredged material determined not suitable for open water disposal would be contained in the CDF.

Due to cost and time considerations, material would need to be hydraulically dredged. Typically, the length of time required for hydraulic dredging is an order of magnitude less than clamshell dredging. It is not inconceivable that clamshell dredges could be used for small portions of the project, and if so, impacts to water quality in the IHNC would be reduced relative to those described in the SEIS.

4. The Corps has not Avoided Adverse Alternation of Valuable Urban Wetlands to the Maximum Extent Practicable.

The Corps failed to show that it has avoided, to the "maximum extent practicable," "adverse alteration or destruction of unique [and] valuable" urban coastal wetlands in a flood-prone area. *See* La. Admin. Code tit. 43 pt. I §701.G.16. The Corps suggests that the wetlands it plans to destroy "are not particularly valuable or unique." DSEIS, App. I at 14. Yet the Corps ignores the fact that the wetlands it plans to destroy are valuable in that they provide protection against storm surge and flooding and act as "horizontal levees" protecting the Lower Ninth Ward and Holy Cross neighborhoods, which were flooded following Hurricane Katrina.

78 - The wetlands located on the site are of low quality being vegetated mainly by invasive Chinese tallow trees, have been impacted in the past from the disposal of dredged material, and are isolated from tidal and flood flows by a flood protection levee and there elevation. These wetlands are located within the HSDRRS and do not provide protection against storm surge.

5. The Corps has not Avoided Increases In the Potential For Flood, Hurricane or Storm Damage to the Maximum Extent Practicable.

The Corps failed to show that it has avoided, to the "maximum extent practicable," "increases in the potential for flood, hurricane, or other storm damage, or increases in the likelihood that damage will occur from such hazards." *See* La. Admin. Code tit. 43 pt. I §701.G.17. By destroying almost 250 acres of wetlands that provide flood storage capacity and

79 - The wetlands that would be impacted through the construction of the CDF and offsite construction area are located within the HSDRRS and have been previously used for dredged material disposal.

Levees and floodwalls would be entirely reconstructed as part of the Lock Replacement project and all new levees and floodwalls would meet USACE design criteria.

storm surge buffer protecting vulnerable areas such as the Lower Ninth Ward and Holy Cross neighborhoods, the Corps will increase the potential for flood and storm damage and increase the likelihood damage will occur from floods and storms. The Corps declined to examine whether the confined disposal facility or deepening of the Industrial Canal will undermine the levees and floodwalls, yet the Corps arbitrarily concludes that "the proposed project would not increase flooding potential" and "[a]dequate flood protection would be provided throughout the construction period." DSEIS, App. I at 14. The Corps cannot conclude that filling in wetlands will not increase flooding potential when it failed to quantify the current flood storage capacity of those wetlands.

79 – (continued) See previous page.

6. The Confined Disposal Facilities, Mitigation, and Graving Sites are Not Coastal Water-Dependent Activities.

As support for its plan to destroy 250 acres of wetlands, the Corps states that "the IHNC lock replacement project is definitely water-dependent." DSEIS, App. I at 21. While the lock is water-dependent, may aspects of the project are not water dependent. For example, the confined disposal facilities, which are meant to safely store contaminated sediments, are **not** water dependent. On the contrary, the contaminated sediments would pose much less risk to human health and the environment if they were disposed of in an actual upland facility that is not hydrologically connected to sensitive wetland ecosystems and bayous. *See* La. Admin. Code tit. 43 pt. I §711.E. Because the confined disposal facilities and graving site are not coastal water dependent, the Corps' plan to destroy coastal wetlands for that portion of the project is not owed any deference.

80 - The IHNC Lock Replacement project is water dependent because the lock services waterborne traffic. All components of the project that are necessary to build a new lock, demolish the old lock and provide improved flood protection are also water dependent. The CDF needs to be proximate to the IHNC so dredged material can be pumped from dredges to the CDF. Further, dredged material in the fill cell must be close to the lock site to reduce travel distances when the material is transported for use as backfill.

7. The Corps has not Insured that Wetland Areas Will Be Restored to the Maximum Extent Practicable.

Also, the Corps makes no plans to insure that disturbed areas actually return to functioning wetlands. Instead, the Corps plans to leave the areas alone and hope for the best. This fails to meet the requirements that "[a]reas modified by surface alteration activities shall, to the maximum extent practicable, be revegetated, refilled, cleaned and restored to their pre-development condition upon termination of use." *See* La. Admin. Code tit. 43 pt. I §711.F.

81 - The existing condition of the affected wetlands is a result of past dredge material disposal and natural regeneration. By returning these areas to their pre-construction elevations and allowing them to regenerate naturally, CEMVN would be implementing the same practices which resulted in the establishment of the existing wetlands.

8. The Corps has not Demonstrated That, To the Maximum Extent Practicable, Wetlands Are Not Drained or Filled.

The Corps fails to demonstrate that it has avoided, to the maximum extent possible, draining or filling wetlands. *See* La. Admin. Code tit. 43 pt. I §711.D. Instead, the Corps recognizes that "[t]he CDF and graving site would affect wetlands" and suggests that "at the conclusion of the project these areas would be returned to their former elevations and allowed to revegetate back to bottomland shrub hardwood." DSEIS, App. I at 21. The Corps fails to explain how it has avoided, to the maximum extent practicable, draining or filling wetlands. The Corps provides no explanation as to any alternatives it examined to destroying the wetlands or showing that it has no other option than to destroy wetlands.

82 - The fill cell of the CDF would permanently impact approximately 90 acres of wetlands. The impacts to wetlands at the disposal cell of the CDF and the offsite construction area would be temporary. All impacts to wetlands would be fully mitigated and a conceptual mitigation plan is provided in Appendix M. Additionally, the Final SEIS evaluates the option of disposing of dredged materials not suitable for open water disposal in a landfill, which would eliminate all permanent impacts to wetlands from the project.

C. The Corps' Plan to Destroy 250 acres of Coastal Wetlands Protecting New Orleans is Inconsistent with Louisiana's Master Plan.

The Corps' proposal to destroy almost 250 acres of wetlands within the hurricane protection system in New Orleans yards of fill is inconsistent with the Louisiana's Comprehensive Master Plan for a Sustainable Coast ("Master Plan").[23] The Louisiana Legislature unanimously approved the Master Plan during the 2007 Regular Session. SCR No. 11, 2007 Leg., Reg. Sess. (La. 2007). The Master Plan emphasizes the importance of the wetlands as a fundamental part of the hurricane protection system and states that wetland areas within the hurricane protection system "need to remain intact and undeveloped." *Id.* The Master Plan also states that development in wetlands or areas near the levee footprint "would not only be risky from a safety and economic standpoint, but it would also degrade wetlands and eliminate interior flood storage capacity." *Id.* The Corps' proposed confined disposal facilities and proposed graving site lie within the hurricane protection system. The Master Plan also states that "overall hydrology must be improved by minimizing impediments to water flow." Master Plan at 68. The Corps' plan to destroy almost 250 acres of endangered wetlands within the hurricane protection system is inconsistent with the state's mandate to improve hydrology and minimize impediments to water flow and inconsistent with the unequivocal language of the Master Plan.

D. The Corps Must Provide a Copy of Its Consistency Determination to Louisiana Before Approving the Lock Replacement Project.

Federal law requires the Corps to provide a copy of its consistency determination to Louisiana before approving the lock replacement project. Federal law requires that each Federal agency carrying out an activity in the coastal zone "shall provide a consistency determination to the relevant State agency… at the earliest practicable time, but in no case later than 90 days before final approval of the Federal activity…." 16 U.S.C.A. § 1456(c)(1)(C). The Corps should adopt suggestions from the Louisiana's Department of Natural Resources as to how the lock replacement project should be altered to become consistent with Louisiana's coastal resources program and Master Plan.

VII. THE CORPS MUST INCLUDE THE FINAL COORDINATION REPORT PURSUANT TO THE FISH AND WILDLIFE COORDINATION ACT.

The Corps failed to include the final Fish and Wildlife Coordination Act (FWCA) report in the DSEIS. *See* Kohl Decl. ¶ 17. The U.S. Fish and Wildlife Service states in its August 14, 2008 letter to Louisiana Department of Wildlife and Fisheries, that "the Service is reviewing. . . the proposed disposal plan for contaminated sediments . . . [and] that recommendations will be included in our next Coordination Act Report." DSEIS, App. N at 3. The omission of the final report is significant and should be included in the Final SEIS. *See* Kohl Decl. ¶ 17.

[23] For a copy of the Master Plan, see http://www.lacpra.org/.

83 - The storage capacity of wetlands is greatest along floodplains where wetland soils are saturated in response to seasonal rainfall events and either 1) store rainfall and release it slowly into a river or 2) absorb floodwaters which exceed the rivers banks or a levee. Coastal wetlands provide relatively little storage capacity as the soils are typically saturated throughout the year and typically can not absorb additional water from rainfall or flooding. The wetlands that would be impacted by the construction of the CDF are located within a portion of the HSDRRS referred to as the Bayou Bienvenue Central Wetland Unit. The wetlands within this Unit are surrounded by levees and water levels within the Unit are controlled by two tide gates; one at the confluence of Bayou Bienvenue and MRGO and the other at the confluence of Bayou Dupre and MRGO. The HSDRRS levees bound the north and east sides of the Unit along the MRGO and GIWW, and a local levee bounds the Unit along its south side. The 14-foot high local levee abuts Florida Avenue and the railroad tracks and provides protection from tidal inundation for St. Bernard Parish, the Lower Ninth Ward and Holy Cross neighborhoods. When the floodgates are closed, the Unit stores water pumped from the surrounding neighborhoods during rain events, or floodwaters overtopping the HSDRRS. However, this storage only occurs as a result of containment within the Unit when the floodgates are closed and not because the wetlands within the Unit absorb water. Wetlands within the Unit are typically saturated and provide very little capacity to store additional water. The storage capacity of the Unit is greatest in the open water areas where land mass (such as wetlands) does not displace water. Of the approximately 29,000 acres within the Unit, the CDF would fill approximately 209 acres of wetlands which comprise approximately 0.7 percent of the total storage area. Further, the loss of storage capacity resulting from the fill cell would be temporary and only the disposal cell would permanently reduce storage capacity. The disposal cell would permanently fill approximately 71 acres of the Bayou Bienvenue Central Wetland Unit, which comprises 0.2 percent of the total storage area. Neither the temporary or permanent impacts to storage capacity in the Bayou Bienvenue Central Wetland Unit from the construction of a CDF would be substantial.

84 - CEMVN prepared a Coastal Consistency Determination for the Louisiana Coastal Zone Management Program and is located in Appendix I. This determination describes how the project is consistent with Louisiana Coastal Use Guidelines. The IHNC Lock Replacement project is water dependent since its only purpose is to serve waterborne traffic and provides benefits to the public as well as to the Port of New Orleans.

85 - The Final FWCA report is prepared by USFWS after public comments have been provided on the Draft SEIS and FWCA. The Final FWCA report is included in the Final SEIS as Appendix N.

VIII. THE REPLACEMENT OF THE INDUSTRIAL CANAL LOCK IS NOT "ECONOMICALLY JUSTIFIED" AND THUS IS NOT AUTHORIZED BY CONGRESS UNDER THE MRGO ENABLING ACT.

The act enabling the replacement of the Industrial Canal Lock is not an act at all, but a portion of the act which authorized the construction of MRGO. *See* 70 Stat. 65. The pertinent part of the act states, "when economically justified by obsolescence of the existing industrial canal lock, or by increased traffic, replacement of the existing lock or an additional lock…is hereby approved…" The existing lock at the Industrial Canal is not economically justified under the act because the old lock is not obsolete and there is no increase in traffic. Even under the enabling act, there are only two situations which allow for the replacement of the Industrial Canal lock, obsolescence and increased traffic, neither of which has occurred.

86 - The original Authority for lock replacement, which was established by Public Law 84-455 of 1956 has been modified several times by the Congress. The current lock requirements and location are authorized by WRDA 1986.

IX. THE DE-AUTHORIZATION OF MRGO HAS ALSO DE-AUTHORIZED THE LOCK REPLACEMENT.

House Report 110-080 §7013 states that, "[t]he project for navigation, Mississippi River-Gulf outlet, authorized by the Act entitled 'An Act to authorize construction of the Mississippi River-Gulf outlet', approved March 29, 1956 (70 Stat. 65), as modified by section 844 of the Water Resources Development Act of 1986 (100 Stat. 4177), is not authorized." The entirety of the enabling act, which is also the enabling act for the lock replacement, is no longer authorized. The de-authorization of the MRGO project also results in the de-authorization of the lock replacement which was authorized by under the MRGO construction project. Without Congressional authorization, the lock replacement project cannot continue.

87 - The Congress deauthorized the MRGO deep-draft navigation channel from the Gulf of Mexico to its confluence with the GIWW (mile 60). The portion of the MRGO west of its confluence with the GIWW is still authorized as a deep-draft channel (mile 60 to mile 66).

CONCLUSION

Given the serious risks the lock replacement project, as proposed, poses to the surrounding communities and the ecosystem, the Corps' failure to take a hard look at the risks it is asking the local communities to bear,[24] and the lack of economic justification for the lock replacement project, Louisiana Environmental Action Network, Gulf Restoration Network, and the Holy Cross Neighborhood Association urge the Corps to select the no-build alternative and recommend that Congress de-authorize the lock replacement project. Further, because the Corps has not yet complied with NEPA, the Eastern District of Louisiana's injunction stopping the project still stands.

88 - Thank you for your comments. CEMVN, through the preparation of this Final SEIS, coordination with the public and resource agencies, and review and evaluation of public comments has fully complied with NEPA and has addressed the concerns expressed by the Eastern District of Louisiana's injunction.

[24] *See* Sulkin Decl. ¶ 35.

Ref. # 112-004

Prepared by:

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DECLARATION OF DR. ALEXANDER S. KOLKER

I, Dr. Alexander S. Kolker, am an adult over the age of 18 and I duly swear and attest the following:

Qualifications

1. My name is Alexander Kolker. I hold a PhD in Marine and Atmospheric Sciences and I am an expert in fields of coastal geology and geochemistry. Through my work and studies, I am also familiar with general principles related to coastal processes, sediment dynamics and environmental chemistry.

1 - Noted

2. I completed my undergraduate studies at University of California, Santa Cruz and attended Stony Brook University, State University of New York for my masters and doctoral studies. My doctoral thesis examined "The Impacts of Climate Variability and Anthropogenic Activities on Salt Marsh Accretion and Loss on Long Island."

2 - Noted

3. After receiving my doctoral degree, I had two post-doctoral scholarships, one at Stony Brook University, and another at Tulane University. After my post-doctoral scholarship at Tulane, I held a position as an Adjunct Assistant Research Professor at Tulane University. I currently serve as an Assistant Professor at Louisiana Universities Marine Consortium, and I maintained status an Adjunct Professor in the Department of Earth and Environmental Sciences at Tulane University.

3 - Noted

4. An accurate copy of my curriculum vitae is attached to and incorporated into this Statement.

4 - Noted

5. This declaration contains my expert opinions, which I hold to a reasonable degree of scientific certainty. My opinions are based on my application of professional judgment, training and expertise of sufficient facts or data, consisting specifically of a review of the portions of the Draft Supplemental Environmental Impact Statement for the Industrial Canal Lock Replacement Project. I have based my opinions on facts and data typically and reasonably relied upon by experts in my field. In some cases, I have identified where the Army Corps of Engineers failed to provide sufficient facts, data, or analysis to take a hard look at the environmental impacts of the proposed project.

5 - Noted

Opinions

Increased Sediment Levels in the Mississippi River

6. The Army Corps of Engineers indicates that the proposed dredging plan for the lock replacement project will increase sediment levels in the Mississippi River by 6%, not an insignificant amount. A high sediment load in the Mississippi River is not necessarily a problem, and indeed a lack of sediment deposition is responsible for much of the coastal land loss in South Louisiana. However, the Army Corps is currently concerned about

6 – As noted by the commenter, this statement is incorrect. The final SEIS has been changed to reflect the correct percentage of the total river discharge that dredged material would comprise. The statement has been changed to the following: "The daily sediment load discharge for the Mississippi River ranges from 436,000 tons per day to 219,000 tons per day, with an average of 341,000 tons per day (Louisiana Department of Natural Resources 2008). The total proposed sediment discharge into the Mississippi River for the entire project is 324,000 tons. Assuming the length of dredging would be 300 days, approximately 1,080 tons would be discharged into the Mississippi River per day, which represents 0.33 percent of the river's sediment load. If dredging activities take longer than 300 days, the daily volume of sediment discharge would be less than predicted.

recent shoaling at the mouth of the Mississippi River, and increased dredging costs associated with this dredging. The Draft Supplemental Environmental Impact Statement does not account for increased dredging costs in the lower Mississippi River that could result from this construction. I would suggest that the Army Corps discuss the increased dredging costs associated with this in the context of a regional sediment management plan.

6 - (continued) See previous page.

Levee Stability

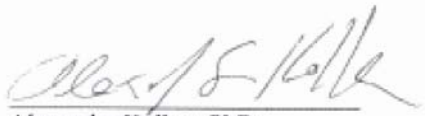
The Army Corps of Engineers needs to be more explicit about safety and levee stability issues relating to project. One particular concern is the subsurface geology in and around the area where construction, dredging and lock expansion will is scheduled to occur. A group led by the University of California, Berkeley found organic rich, clay deposits underneath the levees in the lower Ninth Ward. They believe that water can flow through these deposits. This flow has the potential to undermine the structural stability of the floodwalls, and was at least partially responsible for their collapse during Hurricane Katrina. The Army Corps has not adequately searched for or identified these layers, nor have they devised a plan for dealing with them during construction. I would urge all sides involved to consult with an independent, professional engineer to critically evaluate all safety concerns surrounding this construction.

As the canal depth is increased, it is possible that more permeable strata will be exposed, thereby increasing the potential for levee undermining. It is important for the Army Corps of Engineers to examine subsurface geology to ensure that it will not be dredging down into soils that would permit water to flow beneath the levees and floodwalls, undermining the levees and floodwalls and compromising hurricane protection. I would urge all sides involved to consult with an independent, professional engineer to critically evaluate all safety concerns surrounding this construction.

7 - USACE recognizes these risks, and these risks would be avoided through extensive testing and detailed design. Appendix E makes adequate recommendations as to the next steps for testing, modeling, and design of the CDF. Subsurface investigations were conducted in the IHNC to support the conceptual designs for the lock construction and levee and floodwall replacement. Furthermore, geotechnical analysis was conducted as part of sediment sampling in the IHNC. Deep soil mixing would be required to provide adequate slope stability during construction.

declare under penalty of perjury that the foregoing is true and correct.

Executed on ___ day of January, 2009,



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EDUCATION

State University of New York, Stony Brook University 2005
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State University of New York, Stony Brook University **2000**
Master of Arts in Biological Sciences: Ecology and Evolution

University of California, Santa Cruz **1995**
Bachelors of Arts in Biology

EMPLOYMENT HISTORY

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PUBLICATIONS

Five Recent Publications

Kolker, A. S., and S. Hameed (2007), Meteorologically driven trends in sea level rise, Geophysical Research Letters, 34, L23616, doi:10.1029/2007GL031814.

Reed, D.J., Cahoon, D.R., **Kolker, A.S.**, Brinson, M., Donnelly, J., Kearney, M., Leonard, L.L., Orson, R.O., and Stevenson, J.C. (2009) Wetland Accretion. US Climate Change Science Program. Synthesis and Assessment Product 4.1.

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Hartig E. K., Gornitz V., **Kolker A.**, Mushacke F., and Fallon D. (2002). Anthropogenic and Climate-Change Impacts on Salt Marshes of Jamaica Bay, New York City. *Wetlands* **22**(1), 71-89.

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Kolker, A.S. (2005). The Impacts of Climate Variability and Anthropogenic Activities on Salt Marsh Accretion and Loss on Long Island. Marine Sciences Research Center, Stony Brook University, Stony Brook, NY 241 p

Synergistic Activiies
*Hosted a scientific session titled, "Evaluating Climate Records to Understand the Causes and Consequences of Climate Change in Coastal Systems" at the 2007 Estuarine Research Federation Meeting.
*Member, Climate Change Science Program – Coastal Wetland Group.
* Proposal Reviewer for National Institutes for Climate Change Research, National Oceanographic and Atmospheric Agency- Coastal Ocean Program
* Journal Reviewer for Geochemica et Cosmochemica Acta, San Francisco and Estuary Science., Wetlands Ecology and Management

Students Supervised
Graduate: Kristen Butcher (Tulane University 2007 – Present).
Undergraduate: Tamara Kroboth (Stony Brook University 2002 - 2004).

Recent Collaborators: Denise Reed (University of New Orleans),
Don Cahoon (US Geological Survey),
Matt Kirwan (US Geological Survey).
Mead Allison (U. of Texas)
Jeffery Donnelly (Woods Hole Oceanographic Institution)
Liviu Giosan (Woods Hole Oceanographic Institution)
Franco Marcantonia (Texas A + M University)
Steve Goodbred (Vanderbilt University),
J. Kirk Cochran (Stony Brook University),
Robert C. Aller (Stony Brook University).
Sultan Hameed (Stony Brook University).

Graduate Advisors: Jeff Levinton (M.S.), J. Kirk Cochran and Steven L. Goodbred (Ph.D.)
Postdoctoral Advisor: Mead Allison

Declaration of Barry Kohl, Ph.D.

I, Barry Kohl, Ph.D., am an adult over the age of 18 and I duly swear and attest the following:

Qualifications

1. My name is Barry Kohl. I am an expert in the fields of geology and sedimentology and have studied contaminated sediment issues. I have an understanding of riverine processes and sedimentation and have served as a sediment expert regarding contaminated sediments in several rivers and lakes in state and federal cases.

1 - Noted

2. In the past 11 years I have been conducting research and giving seminars on heavy metal contamination of river sediments in Louisiana and Mississippi streams. I have been investigating sources for contaminated sediments and discussing sediment chemistry with colleagues at Tulane University and LSU.

2 - Noted

3. I have been working closely with the Louisiana Departments of Environmental Quality (LDEQ) and Health and Hospitals (DHH) in developing a program for testing fish and sediments for contaminants as well as advising LDEQ on proposed research into methylation of mercury in Louisiana lakes and streams. I have also been qualified as an expert geologist in both state and federal courts and have testified as such.

3 - Noted

4. An accurate copy of my curriculum vitae is attached to and incorporated into this Statement as exhibit A.

4 - Noted

5. This Declaration contains my expert opinions, which I hold to a reasonable degree of scientific certainty. My opinions are based upon sufficient facts or data, consisting specifically of a review of the references listed at the bottom of the Declaration. These are facts and data typically and reasonably relied upon by experts in the fields of geology and civil engineering. Also, I have developed my opinions using reliable principles and methods, which I have applied in a scientific and reliable manner to the facts of this case.

5 - Noted

6. I will not receive compensation for preparing this Declaration.

6/7 - Noted

Summary of Opinions

7. I prepared a declaration regarding the U.S. Army Corps of Engineers (Corps) proposed Confined Disposal Facility (CDF) and its vulnerability, February 10, 2006, on and hereby adopt and incorporate that declaration of as exhibit B.

8. The Corps' disposal techniques will contaminate the natural environment by carrying suspended fine sediment with adsorbed contaminants, as well as contaminants dissolved in water, from the proposed disposal sites into surrounding marsh areas. Deposits of contaminated

8 – Sediment disposed at the Mississippi River disposal site and at the wetland mitigation site is unlikely to pose adverse impacts to aquatic receptors at the disposal site and adjacent areas. Discharge of effluent from the Confined Disposal Facility (CDF) into the GIWW has been determined to be to be safe for humans and the biological environment and to meet all Clean Water Act regulations. Details of the sediment evaluation were provided in Appendix C of the Draft SEIS and this evaluation demonstrates that adverse impacts to the aquatic environment in the GIWW are unlikely. The risks to human health are evaluated in Appendix R. Sediments, or suspended sediments, within the CDF could be incidentally washed into receiving water bodies under three scenarios: 1) the containment levees are eroded to an elevation below the sediments within them (i.e., greater than 17 feet), 2) precipitation falls fast enough that 17-feet of flooding occurs within a relatively short period of time and overtops the levees from within; 3) the risk reduction levees are overtopped and floodwaters enter the CDF as a result of storm surge. The dikes surrounding the CDF would be designed using the same standards as levees comprising the risk reduction system and would be resistant to erosion thereby preventing scenario 1. The volume of rainfall required to fill the CDF would never realistically occur, thereby precluding scenario 2. Substantial modification of the Greater New Orleans Hurricane and Storm Damage Risk Reduction System greatly minimizes the occurrence of scenario 3. Once the CDF is capped and vegetated, the contaminant would be effectively and permanently contained within an upland hill and would not be suspended in flood waters. The period of potential risk would occur prior to capping of the sediments. Given the dilution that would occur if there was a breach during a large storm event, material losses from the CDF would not result in exposure concentrations that would present human health concerns.

sediments placed into the proposed disposal areas will be prone to inundation, erosion, and contaminated sediments will wash into receiving water bodies.

9. The Corps failed to consider alternative upland locations for the confined disposal facility. All contaminated sediments must be disposed of in a confined upland disposal site. The wetlands where the Corps plans to build the confined disposal facility are not uplands and are prone to flooding.

10. The Mississippi River Gulf Outlet (MRGO) CDF will be sited between the Gulf Intracoastal Waterway (GIWW) levee and Bayou Bienvenue and will be below the elevation of past hurricane storm surges. This area was inundated during hurricane Katrina, yet the Corps failed to reevaluate their disposal plans in light of the hurricane damage to the MRGO levee system. The Corps admits that modelling the potential for overtopping and impacts of high velocity flows from levee failure should be undertaken, " . . . to help in determining what protection the CDF may require" (Draft Supplemental Environmental Impact Statement (DSEIS), Appendix E, p. 25)

11. The Corps failed to address the potential impact of the confined disposal facility on the GIWW hurricane protection levee. The Corps acknowledges the potential for the confined disposal facility to undermine the levee, but failed to quantify the risk. The Corps states, "The other issue of concern is the potential impact of the dike loading on the foundation underlying the flood control levee." (DSEIS), Appendix E, p. 21).

12. The Corps failed to address the interaction between rebuilding of the Corps' GIWW hurricane levee and construction of the CDF. Will the confined disposal facility be built or used before the levees are finished? Are these two projects being coordinated?

13. The Corps failed to address how the confined disposal facility will be maintained and how often the CDF will be monitored over the life of the project.

14. The Corps failed to address how flood protection will be maintained while the work on the lock is being completed. Specifically, the Corps fails to quantify the increased risk of flooding while the eastbank bypass channel is being built or to specify additional protections to be in place to protect adjacent neighborhoods. Will use of the road parallel to the existing eastbank floodwall cause any weakness in the structure?

15. The suction dredge will create a water/sediment slurry which is estimated to be 15% sediment and 85% water (Priore and Cichon, 1996). This will increase the probability that a significant amount of adsorbed contaminants will be discharged with the water into adjacent marshes and bayous during the CDF dewatering phase. Has an environmental clamshell dredge been considered as an alternative?

16. The Corps did not consider the chronic affects to benthic organisms by contaminated, suspended-fines being discharged from the CDF into the water bodies and accumulating as toxic bottom sediment.

8 - (continued) See previous page.

9 - Alternative disposal sites were considered in Appendix F of the Draft SEIS. An option to dispose material in a suitable landfill has been included as an option in the Final SEIS. The disposal facility would first be excavated, and this excavated material would be used to construct a berm around the site. Once the berm is completed, the area would be effectively isolated from the surrounding wetlands and open water, and the disposal site itself would no longer function as a wetland (i.e., it would not meet the wetland hydrology criteria). Therefore, the confined disposal facility is considered an upland disposal facility, as opposed to a wetland disposal facility or open water disposal site.

10 - At this time, detailed plans and specifications have not been prepared for the Confined Disposal Facility or any other component of the Lock Replacement project as this would constitute continuing with project implementation and the expenditure of funds towards its completion without NEPA analysis and supporting decision documents. However, the Conceptual Confined Disposal Facility Design Report also recognizes that there is a potential for overtopping in storm events that would exceed the Greater New Orleans Hurricane and Storm Damage Risk Reduction System design elevation and that armoring of exterior containment dikes that could be vulnerable to levee overtopping would be considered in future detailed Confined Disposal Facility designs. The conceptual design also notes that the preliminary dike profile is substantial and would serve as a barrier to impacting water currents.

11 - USACE recognizes these risks, and these risks would be avoided through detailed design of the Confined Disposal Facility. Appendix E makes adequate recommendations as to the next steps for modeling and design. Dike design for containment at the Confined Disposal Facility would be required to meet USACE's design criteria for the HSDRRS as well as the design criteria for containment dikes.

12 - The levees along the GIWW have been rebuilt to authorized elevations as part of the HSDRRS maintenance conducted post-Katrina. The GIWW portion of this project is complete. The 100-year level of risk reduction will be provided by the construction of gated structures at Seabrook on the IHNC and east of the project area across the GIWW and MRGO. Individual Environmental Report #11 prepared by CEMVN documents the Proposed Action for this HSDRRS project.

13 - Once capped and vegetated, the Confined Disposal Facility would effectively and indefinitely contain the contaminated sediments.. Monitoring (water sample and analysis) would be conducted during disposal of dredged material with potential to cause exceedance of water quality standards outside the mixing zone of the GIWW to ensure that such exceedances do not occur. A long-term monitoring plan would be developed as part of the operation and maintenance plan for the new lock. The long-term monitoring plan cannot be developed at this time since the detailed designs for all project components, as well as the "as-built" details, upon which operation and maintenance plans must be based cannot be prepared at this time.

14 - A detailed summary of the slope stability analysis conducted by URS was provided in Appendix D of the Draft SEIS. "Construction Safety" Slope stability analyses, which included an assessment of both the adjacent railroad and roads, determined that both the Cast-in-place and Float-in-place plans would meet minimum factors of safety. Deep soil mixing would be required to stabilize slopes adjacent to the excavated bypass channels. The location of H-piles that support the floodwalls relative to the bypass channel was analyzed and it was determined that the creation of the bypass channel would not intersect the location of the H-piles. Further, as part of the Lock Replacement project, new levees and floodwalls would be constructed from the new lock south to the Mississippi River.

15 - The sediment analysis plan (Appendix C) assumes all sediments would be hydraulically dredged. For predicted effluent concentrations, all dilution requirements can be met within the prescribed mixing zones of the Gulf Intracoastal Waterway. Although the mixing that is inherent in hydraulic dredging will likely reduce peak predicted effluent concentrations, effluent treatment may be required for some dredged material. Use of a clamshell dredge would prevent the mixing of sediment with elevated concentrations of contaminants and sediments containing lower concentrations. Despite the mixing potential inherent in hydraulic dredging, maximum detected concentrations of contaminants were considered in the analysis. The purpose of the sediment analysis was to determine the feasibility of the project and all aspects of the dredging and disposal of sediment would be further developed during detailed design of the project components.

16 – A tiered approach was taken to determining toxicity to organisms from effluent discharge from the CDF into the GIWW. Modified elutriate testing was conducted and those tests determined that survival was not statistically different than from the control in toxicity testing conducted on estuarine standard elutriate, and no Lethal Concentration 50 (LC50) values resulted (Appendix C). Therefore no dilution of effluent is necessary for discharge of effluent into the marine environment and no chronic affects to benthic organisms are anticipated. The potential impact of suspended fine-grained material present in the CDF effluent discharge is considered "*de-minimus*" and is not regulated under Section 404 of the Clean Water Act.

17. The final Fish and Wildlife Coordination Act (FWCA) report is not included in the DSEIS. The U.S. Fish and Wildlife Service (DSEIS, appendix N, p. 3) states in its August 14, 2008 letter to Louisiana Department of Wildlife and Fisheries, that "the Service is reviewing. . . the proposed disposal plan for contaminated sediments . . . [and] that recommendations will be included in our next Coordination Act Report." The omission of the final report is significant and should be included in the Final SEIS.

17 – Standard procedure for FWCA compliance is to include a draft Coordination Act Report with a Draft EIS and a final FWCA with a Final EIS. The Final Fish and Wildlife Coordination Act report will be included in the Final SEIS.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on January 26 2009

Barry Kohl

Barry Kohl, Ph.D.
Geologist

References:

Kohl, B. 2006. Declaration of Barry Kohl, Ph.D. provided to the U.S. District Court, Eastern District of Louisiana, Case No. 03-0370, Section L, Judge Fallon, Mag. 4. 2 pp., 2 figs. (dated February 10, 2006).

Priore, W., and E. Cichon, 1996. Sediment Management - Dredging material from U.S. waterways: Water, Environment and Technology, Oct., vol. 8, p. 45-49.

Seed, R.B., 2005. Hurricane Katrina: Performance of the Flood Control System. Testimony of Raymond B. Seed, Ph.D., Professor of Civil and Environmental Engineering University of California at Berkeley; on behalf of the NSF-Sponsored Levee Investigation Team. Presented before the Committee on Homeland Security and Government Affairs U.S. Senate November 2, 2005.

Seed, R.B., P.G. Nicholson, R.A. Dalrymple, J. Battjes, R.G. Bea, G. Boutwell, J.D. Bray, B. D. Collins, L.F. Harder, J.R. Headland, M. Inamine, R.E. Kayen, R. Kuhr, J. M. Pestana, R. Sanders, F. Silva-Tulla, R. Storesund, S. Tanaka, J. Wartman, T. F. Wolff, L. Wooten and T. Zimmie, 2005. Preliminary Report on the Performance of the New Orleans Levee Systems in Hurricane Katrina on August 29, 2005. Report No. UCB/CITRIS - 05/01., 129 pp.

USACE, 2008. Draft Supplemental Environmental Impact Statement, Inner Harbor Navigation Canal Lock Replacement Project, New Orleans Parish, LA.

Curriculum Vitae
of
Barry Kohl, Ph.D.

Employment:
- 1966-1992 (retired) Chevron USA., Staff Biostratigrapher, Geophysicist and Petroleum Geologist.

Education:
- Ph.D. (Paleontology) Tulane University
- M.S. (Geology) University of Missouri
- B.S. (Geology) Purdue University

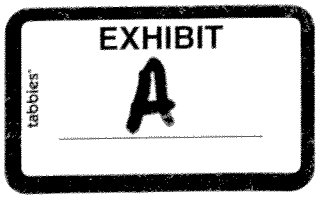
Research and Professional Experience:

Academic: 1983-present
- 1986-present. Adjunct Professor in Dept. of Earth and Environmental Sciences, School of Science and Engineering, Tulane University, New Orleans, LA.
- 1989-'04 Research on a Pleistocene Delta off Mississippi and Alabama Coast.
- 1992-1993 & '97-'98, '00: Participated on five deep-sea cruises on the R/V Edwin Link and the R/V Seward Johnson in the Gulf of Mexico. Collected bottom samples and cores from depths to 3,000 ft. by manned submersibles. The samples were used for inter-disciplinary research.
- 1985- Completed regional biostratigraphic research as part of a field study in southern Mexico. The results were published as a monograph in Bulletins of American Paleontology.
- 1983- Was chief biostratigrapher on the Drill Ship R/V *Glomar Challenger* which took sediment cores in the Gulf of Mexico as part of Deep Sea Drilling Project, Leg 96, sponsored by the National Science Foundation.

Environmental:
- 1998 -present. Have conducted a technical review of contaminated sediment data on several projects involving organic and inorganic pollutants in Mississippi and Louisiana.
- 1995-present. Have worked with Louisiana Dept. of Environmental Quality's mercury program to assist in documenting sources of mercury in sediments of Louisiana rivers and lakes. I have also been a member of an advisory committee with Dept. of Health and Hospitals to provide expertise on several research projects.

Professional Membership etc:
- Society for Sedimentology (Nat'l. SEPM): Awards Chairman, 1985.
- American Association of Petroleum Geologists (AAPG): Environmental Geology Committee. Division of Environmental Geosciences (DEG), Advisory Board Member (1992-1996). Technical Chairman, 1993.
- Gulf Coast Section of Society of Economic Paleontologists and Mineralogists (GCS-SEPM): Coeditor of Journal, 1988, Editor of Journal, 1997.
- New Orleans Geological Society (NOGS)
- Paleontological Research Institution (PRI), Ithaca, New York
- Cushman Foundation for Foraminiferal Research (Fellow)
- North American Micropaleontological Society (NAMS).

Publications:
- Have authored or coauthored 31 publications and 23 abstracts in scientific journals which received extensive peer review.



Declaration of Barry Kohl, Ph.D.

1. My name is Barry Kohl. I am an expert in the fields of geology and sedimentology and have studied contaminated sediment issues. An accurate copy of my curriculum vitae, as Exhibit A, is attached to my 2005 report to the court and incorporated by reference.

B1 - Noted

2. This Declaration contains my expert opinions, which I hold to a reasonable degree of scientific certainty. My opinions are based upon sufficient facts or data, consisting specifically of a review of the references listed at the bottom of the Declaration. These are facts and data typically and reasonably relied upon by experts in the fields of geology and civil engineering. Also, I have developed my opinions using reliable principles and methods which I have applied in a scientific and reliable manner to the facts of this case.

B2 - Noted

3. I will not receive compensation for preparing this Declaration.

B3 - Noted

4. As part of its project to dredge the Industrial Canal, the U.S. Army Corps of Engineers (Corps) plans to place contaminated sediments in "confined disposal facilities" located in or near wetlands south of the Mississippi River Gulf Outlet (MRGO) Hurricane Levee and adjacent to Bayou Bienvenue (see Kohl Fig. 1). These disposal areas would consist of contaminated sediments behind engineered berms and would provide for discharge of water and fine particles. The Corps has not specified how long it plans for these facilities to last, nor has it specified its plans for the level of a storm event that the facilities will be able to withstand. The

B4 – Appendix E of the Draft SEIS provides a conceptual design of the CDF. Once dewatered and capped, the CDF would resist erosion and last indefinitely. The level of contaminants in the sediments to be contained in this facility and in the water discharged from this facility was provided in Appendix C of the Draft SEIS. CEMVN will comply with all state and Federal regulations and accepted standards for the discharge of these waters into surrounding water bodies.

Corps has also not specified the level of contamination that it will deem acceptable for sediments it disposes of in these facilities or what concentrations of contaminates it plans to accept in discharges of water from the facilities.

B4 - (continued) See previous page.

5. Without knowing how long the disposal facilities will last, what types of storm events they will withstand, and how much contamination they will contain and discharge, there is no way of knowing what environmental impacts these facilities will have on the ecosystem of the Lake Pontchartrain Basin.

B5 - Appendix E of the Draft SEIS provides a conceptual design of the CDF. Once dewatered and capped, the CDF would resist erosion and last indefinitely. The level of contaminants in the sediments to be contained in this facility and in the water discharged from this facility was provided in Appendix C of the Draft SEIS. CEMVN will comply with all State and Federal regulations and accepted standards for the discharge of these waters into surrounding water bodies. A conceptual design of the wetland mitigation site is provided in Appendix M of the Final SEIS. It is anticipated that the newly established marsh would also last indefinitely, excluding any substantial subsidence or changes in hydrology. The level of contaminants found in sediments to be put to beneficial use and in the waters discharged from this site is also disclosed in Appendix C.

6. Hurricane Katrina destroyed the Lake Pontchartrain and Vicinity Hurricane Protection Levee along the MRGO. Indeed, according to the independent study by the NSF sponsored Levee Investigation Team (Seed et al. (2005), there were 17 post-Katrina breaches along the levee which borders the MRGO (see Kohl Fig. 2). Many of these breaches were catastrophic. This levee was the main protection for the area that includes the proposed disposal sites. High velocity erosional waters from the levee failure inundated the interior wetlands causing overtopping and breaching of the secondary St. Bernard protection levee. These waters also inundated proposed disposal sites and Highway 47 which passes through the area. Thus, if the Corps had disposed of contaminated sediments in the facilities prior to Hurricane Katrina, those sediments could have been resuspended by flood waters and redistributed in wetlands causing widespread environmental contamination.

7. Figure 1 shows the location of the Corps disposal sites. The MRGO disposal site varies in elevation from +3 to +10 ft. The mitigation site is in the Bayou Bienvenue wetlands and near sea level.

8. Figure 2 shows the breaches in the MRGO levee and other protection levees as a result of Hurricane Katrina.

B6/7/8 - Once the CDF is dewatered and capped, storm surge or flooding would not be sufficient to erode through the upper layer of cap material and expose contaminated sediments. If the CDF is flooded before the contaminated dredged material is dewatered and capped, there is a potential for some of the material to escape the CDF. However, the volume of material which would be exposed to mixing with floodwaters (i.e., the uppermost layer of the CDF) would be minimal in relation to the volume of water and potential mixing that would occur. The concentration of contaminants in eroded CDF material is expected to be lower than in situ concentrations due to dilution and therefore lower than conservative levels considered safe for human exposure (RECAP Screening Standards non-industrial) once into consolidates and dries outside the CDF. Furthermore, the CDF would receive the same level of hurricane and storm damage risk reduction as the rest of the greater New Orleans area, and will have the 100-year level of risk reduction upon completion of the surge barriers at the intersection of the IHNC and Lake Pontchartrain and across the Gulf Intracoastal Waterway and MRGO as described in Individual Environmental Report #11.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 10, 2006

Barry Kohl, Ph.D.
Geologist

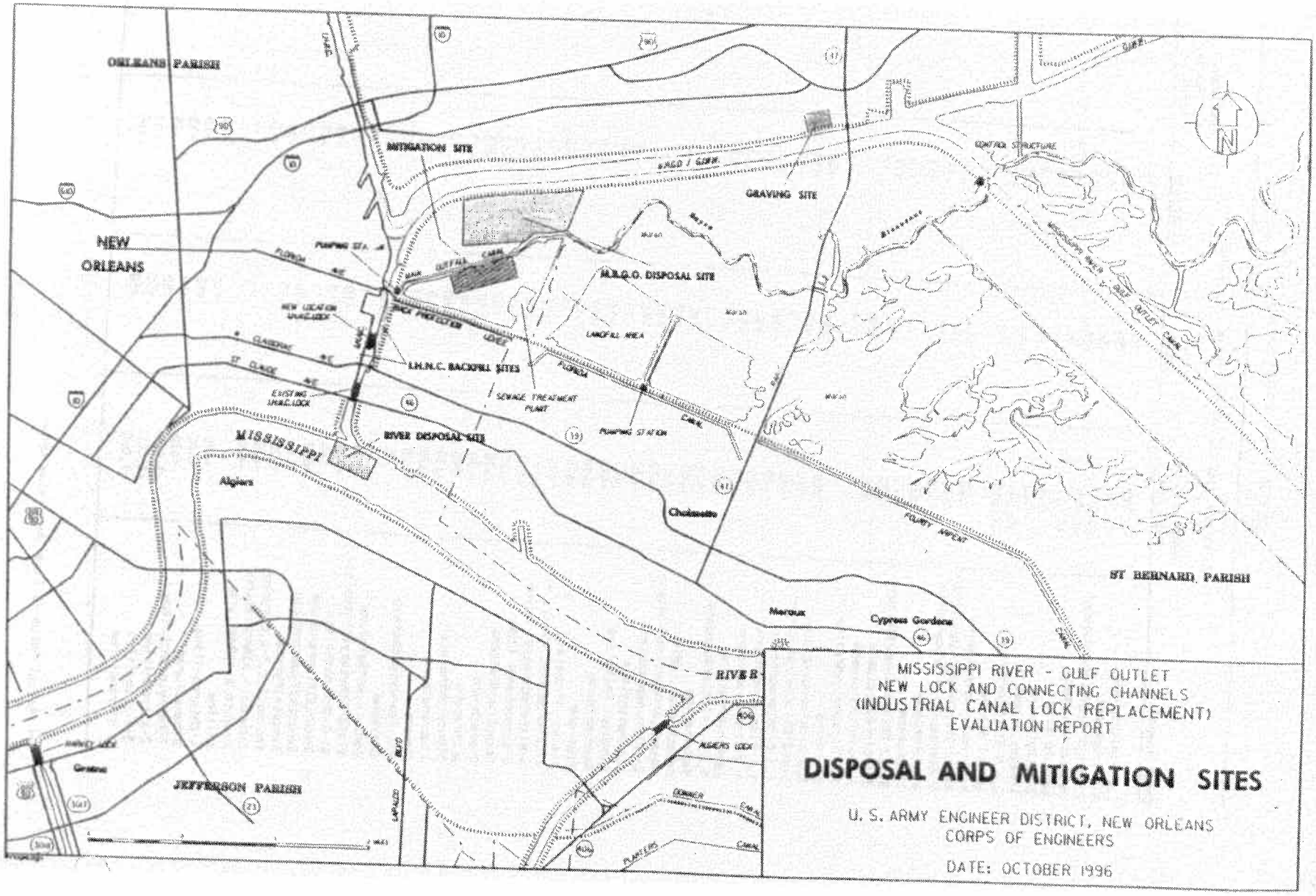
References:

Nicholson, P. 2005. Hurricane Katrina: Why Did the Levees Fail? Testimony of Peter Nicholson, Ph.D., P.E. Associate Professor of Civil and Environmental Engineering and Graduate Program Chair University of Hawaii. On behalf of the AMERICAN SOCIETY OF CIVIL ENGINEERS (ASCE) before the Committee on Homeland Security and Governmental Affairs, U.S. Senate, November 2, 2005. See http://www.asce.org

Seed, R.B., P.G. Nicholson, R.A. Dalrymple, J. Battjes, R.G. Bea, G. Boutwell, J.D. Bray, B. D. Collins, L.F. Harder, J.R. Headland, M. Inamine, R.E. Kayen, R. Kuhr, J. M. Pestana, R. Sanders, F. Silva-Tulla, R. Storesund, S. Tanaka, J. Wartman, T. F. Wolff, L. Wooten and T. Zimmie. (2005). Preliminary Report on the Performance of the New Orleans Levee Systems in Hurricane Katrina on August 29, 2005. Report No. UCB/CITRIS – 05/01., 129 pp.

Seed, R.B. (2005) Hurricane Katrina: Performance of the Flood Control System. Testimony of Raymond B. Seed, Ph.D., Professor of Civil and Environmental Engineering University of California at Berkeley; on behalf of the NSF-Sponsored Levee Investigation Team. Presented before the Committee on Homeland Security and Government Affairs, U.S. Senate November 2, 2005.

USACE, 1997. Mississippi River Gulf Outlet New Lock and Connecting Channels. Appendix D Evaluation Report, Environmental *in* Final Environmental Impact Statement, Inner Harbor Navigation Canal, Lock Replacement Project, New Orleans, LA. New Orleans District, USACE (March 1997), vol. 6 of 9.



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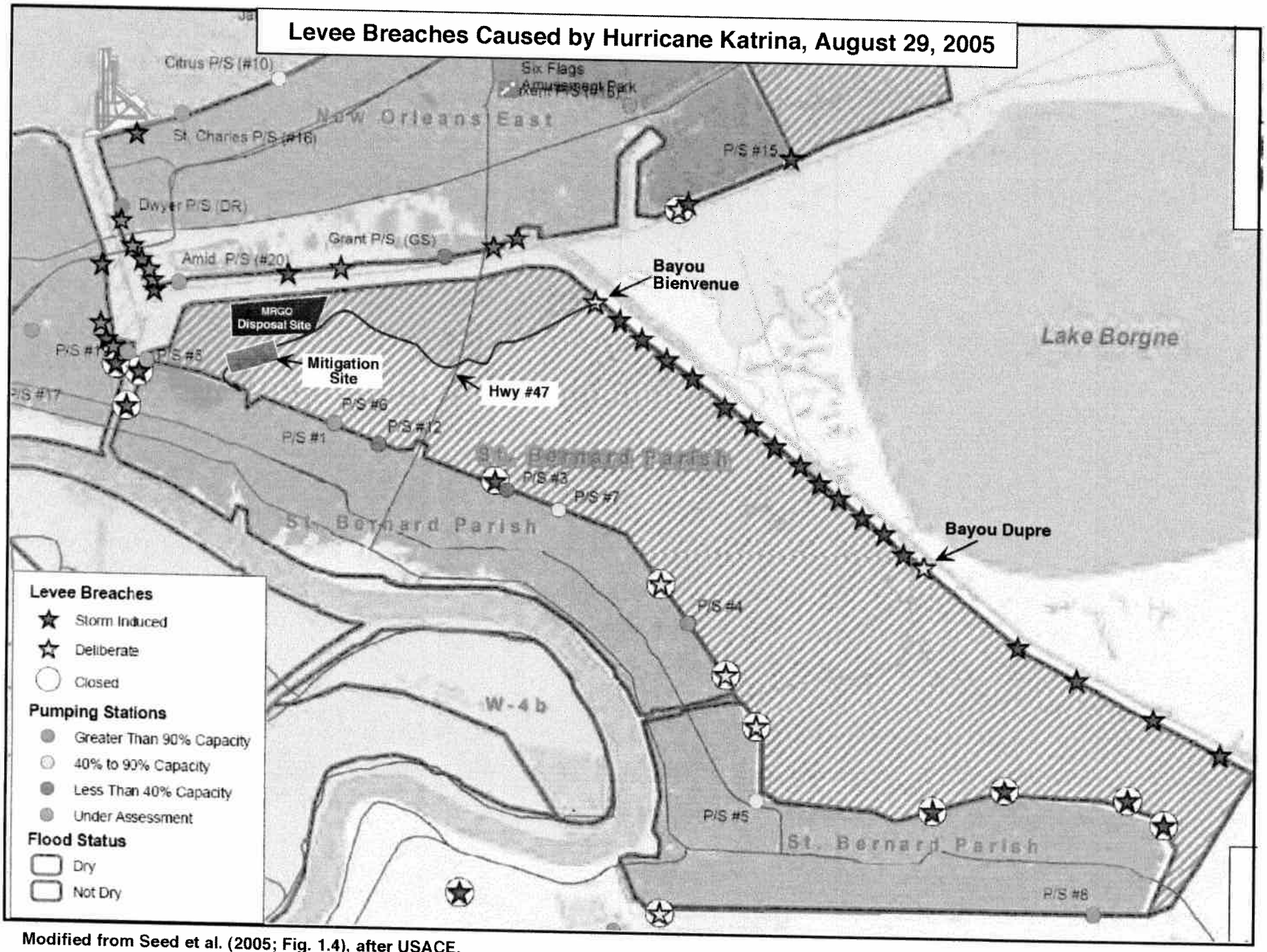
From USACE FEIS (1997)

Kohl, Fig. 1



Modified from Seed et al. (2005; Fig. 1.4), after USACE.

Kohl, Fig. 2

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DECLARATION OF BARRY W. SULKIN, M.S.

I, Barry W. Sulkin, M.S., am an adult over the age of 18 and I duly swear and attest the following:

Qualifications

1. My name is Barry W. Sulkin. I am an expert in the field of environmental science, water quality, and in all aspects of discharge permits under the federal Clean Water Act's National Pollutant Discharge Elimination System ("NPDES") and related state programs.

1 - Noted

2. I am an environmental consultant and also Director of the Tennessee office of Public Employees for Environmental Responsibility ("PEER").

2 - Noted

3. I received my Bachelor of Arts in Environmental Science in 1975 from the University of Virginia where I received a du Pont Scholarship. During my undergraduate years, I worked as a Lab Technician and Research Assistant at the University of Virginia and Memphis State University conducting water and soil/sediment sampling and analyses.

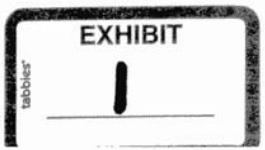
3 - Noted

4. In 1976 I joined the staff of what is now called the Tennessee Department of Environment and Conservation as a Water Quality Specialist. I worked in the Chattanooga, Knoxville, and Nashville field offices and the central office of what is now called the Division of Water Pollution Control in positions that included field inspector, scientist, enforcement coordinator, assistant field office manager, and assistant manager of the Enforcement Section. My duties included compliance inspections of water systems, wastewater systems under the NPDES permit program, enforcement coordination for the water pollution and drinking water programs, as well as work with the drinking water, dam safety, underground storage tank, and solid/hazardous waste programs. I also conducted investigations regarding fish kills, spills, and general complaints, including problems and complaints of stream alteration and water pollution.

4 - Noted

5. In 1984 I was promoted within the Division to Special Projects Assistant to the Director, and in 1985 I became state-wide manager of the Enforcement and Compliance Section for the Division of Water Pollution Control. In this capacity I was responsible for investigating and preparing enforcement cases, supervising the inspection programs, participating in developing NPDES permit, permit compliance tracking and evaluation, and field studies involving stream alterations and water quality impacts. During this time I also received additional training that included taking the EPA Permit Writer's Course.

5 - Noted



6. While in this position I received a joint State of Tennessee and Vanderbilt scholarship and took an educational leave to obtain my Masters of Science in Environmental Engineering in 1987 from Vanderbilt University. My thesis was "Harpeth River Below Franklin, Dissolved Oxygen Study," which was a field and laboratory study and computer analysis of stream water quality and impacts of pollutants from an NPDES permitted facility. I returned to my position as manager of the Enforcement and Compliance Section in 1987, where I remained until 1990.

6 - Noted

7. Since 1990 I have engaged in a private consulting practice regarding environmental problems and solutions, regulatory assistance, permits, stream surveys, and various environmental investigations primarily related to water. My work as a consultant has included projects related to federal Clean Water Act permits and related state programs. During my employment at the state agency, as well as in private practice since, I have had extensive experience and training regarding all aspects of NPDES permits under the federal Clean Water Act and related state programs. I have also received addition training related to permits and water quality issues including the EPA sponsored BASIN water quality modeling course.

7 - Noted

8. An accurate copy of my curriculum vitae is attached to and incorporated into this Statement.

8 - Noted

9. I am an environmental consultant to the Holy Cross Neighborhood Association, the Louisiana Environmental Action Network, and the Gulf Restoration Network regarding the Draft Supplemental Environmental Impact Statement (DSEIS) for the Industrial Canal Lock Replacement Project. I have reviewed the portions of the Draft Supplemental Environmental Impact Statement relating to water quality, mitigation, and the proposed confined disposal facility.

9 - Noted

10. This Statement contains my expert opinions, which I hold to a reasonable degree of scientific certainty. My opinions are based on my application of professional judgment, training and expertise of sufficient facts or data, consisting specifically of a review of the regulations and documents related to the general permit at issue in this matter. These are facts and data typically and reasonably relied upon by experts in my field.

10 - Noted

Summary of Opinions

11. The U.S. Army Corps of Engineers plans to dispose of dredged sediment from the Industrial Canal into a "confined disposal facility." *See* Appx. E. The Corps acknowledges that "A confined disposal facility (CDF) may be needed to contain dredged material requiring upland disposal." Appx. E at vii.

11 - The CDF would first be excavated, and this excavated material would be used to construct a berm around the site. Once the berm is completed, the area would be effectively isolated from the surrounding wetlands and open water, and the disposal site itself would no longer function as a wetland (i.e., it would not meet the wetland hydrology criteria). Therefore, the CDF is considered an upland disposal facility, as opposed to a wetland disposal facility or open water disposal site.

12. The term "upland" is used nationwide by the Corps and environmental scientists to refer to areas that are neither water nor wetlands. Wetlands may delineate the area between water and uplands.

12 - (continued) See previous response.

13. The only location the Corps has considered to build a confined disposal facility for the lock replacement project is in wetlands within the coastal zone. The Corps even acknowledges that the area where it plans to build the confined disposal facility is "primarily wetlands." DSEIS at 127. Therefore, the confined disposal facility is not an "upland" facility.

14. Because the Corps does not plan to build the confined disposal facility in uplands, the Draft Supplemental Environmental Impact Statement contains incorrect information, and the Corps' reliance on guidance regarding upland disposal facilities fails to provide sufficient protection to the aquatic environment.

15. The Corps failed to consider alternative locations in actual uplands for a confined disposal facility.

16. The confined disposal facility is not a "water-dependent" activity.

17. The Corps failed to consider alternate locations, and it is likely and presumed that there are alternative locations for a confined disposal facility that would have fewer impacts on the aquatic environment than the Corps' proposed location.

18. The Corps proposes to destroy wetlands for a graving site in which to build the lock. The Corps has not shown under the Float-in-Place plan that there are no alternative locations to build the lock that would destroy no or fewer wetlands.

19. The Corps failed to examine reasonable alternative locations for the confined disposal facility and the graving site and therefore has not complied with the Clean Water Act Section 404(b)(1) guidelines.

20. The Corps failed to consider impacts to the aquatic environment and groundwater from placing contaminated sediments in confined disposal facility built in wetlands.

21. The Corps only analyzed the human health impacts of putting contaminated sediments in the proposed confined disposal facility. The Corps should have also examined the impacts of putting contaminated sediments in the proposed confined disposal facility to the aquatic environment in order to fulfill its legal duty to take a hard look at the project's impact on the environment.

22. The Corps' "Human Health Evaluation for Confined Disposal Placement of INHC Dredged Materials" only used toxicity-based values and ignored groundwater protection values. Given the fact that the Corps plans to build the confined disposal facility in wetlands, the Corps should have examined the potential impacts of the contaminated sediment on groundwater.

23. The Corps claims in its analysis of the project's impacts on aquatic habitats that "all materials that exceed water quality criteria would be placed in the CDF and contained in upland disposal in perpetuity." DSEIS at 136. It is physically impossible to engineer a

13/14 - (continued) See previous page.

15 - Appendix F (Disposal Alternative Report) of the Draft SEIS provides a detailed accounting of disposal options including disposal in landfills. There are very few, if any, upland locations in southern Louisiana which have not been developed and would be appropriate for disposal of dredged material not suitable for open water disposal. Further, the Final SEIS evaluates the option of disposing of all dredged material not suitable for open water disposal in a landfill.

16 - Although the CDF is not by itself, a water-dependent activity, the CDF is a component of the IHNC Lock Replacement Project. The project provides for waterborne traffic and is water dependent; therefore, all components necessary to complete the project in its entirety are also water-dependent.

17 - Landfills were evaluated in detail in Appendix F as an alternative to a CDF for disposal of material not suitable for open water disposal. Further, the landfill option has been fully evaluated in the Final SEIS. There are no other suitable undeveloped locations for the placement of a CDF. Other undeveloped areas would require the placement of the hydraulic dredge discharge pipe across navigable waterways (e.g., GIWW), which make those locations infeasible.

18 - There are few, if any, upland locations in the project vicinity which are not developed. The 1997 EIS Plan evaluates an alternative location of the offsite construction area (graving site). Once construction of the lock is complete, the offsite construction area would be restored to previous elevations. The wetland vegetation at the offsite construction area currently consists primarily of young Chinese tallow trees which will rapidly colonize the disturbed area. It is anticipated that the site would return to pre-construction conditions within 10 years or less.

19 - Alternative locations for the confined disposal facility include landfills discussed in Appendix F. The offsite construction area (graving site) requires access to a waterbody connected to the IHNC at its confluence with the Gulf Intracoastal Waterway. There are no upland sites which meet these criteria. Further, the 1997 EIS Plan evaluated an alternative location for the offsite construction area.

20 - Impacts to the aquatic environment and groundwater are fully addressed in Appendices C and E of the SEIS. Once excavated and contained within a berm, the hydrologic connectivity with surrounding wetlands and open water would no longer exist. Contaminants in the sediments are bound to those sediments and can not be carried by groundwater from the confined disposal facility. Groundwater in the CDF vicinity has a very high salinity, and is tidally connected to the GIWW. There is no groundwater gradient to control or induce groundwater flow in the area, since the surrounding elevations are flat, and groundwater is very near the surface. Therefore, there is little or no groundwater migration from one place to another. No groundwater at the CDF would leave the CDF; and if it did, it would migrate very slowly to the GIWW due to tidal fluctuations, where dilution below risk levels would occur (see Appendix E). Although a number of contaminants of concern were predicted to have porewater concentrations that exceed the water quality criteria, none was predicted to pass through the foundation soil to any laterally transmissive layer at concentrations above the criteria in 10,000 years.

21 – The potential for impact of effluent discharge from the CDF on the aquatic environment following dredged material was evaluated in Appendix C. The evaluation concluded that adverse effects of effluent discharge to water column organisms were not predicted to occur.

22 - A preliminary leachate evaluation of potential impacts to groundwater was conducted as part of the CDF conceptual design effort. The results of that evaluation are summarized in Appendix E Confined Disposal Facility Conceptual Design Report Section 3.7.2, page 34. A more extensive evaluation of the leachate pathway is planned after soil sampling is conducted at the disposal site, which will provide site specific information regarding the geotechnical and chemical characteristics of the foundation materials and the underlying aquifer. The underlying aquifer is believed to be saline, however, and therefore no human health impacts would be anticipated as a result of consumption of this groundwater. Potential surface water impacts associated with groundwater discharge would therefore be of principal concern, however, as stated in Appendix E "none of the constituents was predicted to pass through the foundation soil to any laterally transmissive layer at concentrations above the screening criteria in 10,000 years."

23 - The CDF design has been successfully implemented for other projects. Once capped and vegetated, it will essentially be an upland hill. This is similar to any project which requires fill material, such as road embankments, which can effectively be considered permanent.

facility that will last "in perpetuity." Therefore, the Corps' analysis of the project's impact on aquatic habitats is insufficient.

23 - (continued) See previous page.

24. The Corps needs to obtain a separate permit for effluent discharges from the planned confined disposal facility.

24 - CEMVN concurs with this statement of fact.

25. According to the Draft Supplemental Environmental Impact Statement, "it was envisioned that effluent would need to be pumped over the flood control levee to the GIWW where dilution capacity is higher." Appx E at 18. The Draft Supplemental Environmental Impact Statement also contemplates "weir structures" to "control[] discharge of effluent." Appx E at 18.

25 - All necessary permits will be obtained prior to initiation of the project. Discharges of effluent from dredged material disposal sites is regulated under Section 404 of the Clean Water Act and will be coordinated with LDEQ.

26. The Corps refers to both "effluent" and "runoff" being discharged from the confined disposal facility. The Clean Water Act requires a facility to obtain a § 402 permit for point source discharges from a facility.

26 - All necessary permits will be obtained prior to initiation of the project. Discharges of effluent from dredged material disposal sites is regulated under Section 404 of the Clean Water Act and will be coordinated with LDEQ.

27. Pumping or routing water through a weir from the confined disposal facility into the GIWW or Bayou Bienvenue constitutes a point source discharge into waters of the United States, requires the Corps to obtain a Louisiana Pollution Discharge Elimination System permit, Louisiana's version of a § 402 permit.

27 - All necessary permits will be obtained prior to initiation of the project. Discharges of effluent from dredged material disposal sites is regulated under Section 404 of the Clean Water Act and will be coordinated with LDEQ.

28. The purpose of mitigation is to compensate for unavoidable impacts to the aquatic environment.

28 - CEMVN concurs with this statement of fact.

29. The Corps acknowledges that its plan to place dredged material near Bayou Bienvenue as a "mitigation" plan will "be insufficient to meet applicable water quality criteria in Bayou Bienvenue." DSEIS at 5.

29 - CEMVN concurs with this statement of fact.

30. When analyzing the impacts of the project on Bayou Bienvenue, the Corps assumed that "the entire width and depth of the bayou are enveloped in the mixing zone." DSEIS at 137. It is inappropriate to use the entire waterbody as a mixing zone when determining water quality impacts and compliance with water quality limitations.

30 - Bayou Bienvenue would be classified as a Category 4 water body (tidal channel with flow less than 100 cubic feet per second) in Louisiana State Environmental Regulatory Code Part IX, Subpart 1, Chapter 11, subsection 1115C. For Category 4 water bodies, the zone of initial dilution is restricted to 1/10 of the average flow over one tidal cycle (effectively, 1/10 of the cross sectional area), and the mixing zone is permitted to encompass the entire cross sectional area (i.e., "the entire width and depth of the bayou") and flow.

31. The Corps plans to seek at water quality waiver for its mitigation plan, which would harm water quality in Bayou Bienvenue. DSEIS at 5.

31 - CEMVN intends to seek a water quality waiver for the beneficial use of dredged material to restore wetlands in the triangular-shaped area as mitigation for wetland impacts. The waiver is warranted Because elutriate toxicity tests demonstrated that adverse impacts on dredged material effluent discharge is unlikely to promote adverse impacts to water column organisms in Bayou Bienvenue (Appendix C),

32. A "mitigation" plan that harms water quality and seeks a water quality waiver does not compensate for harms to the aquatic environment.

32 - CEMVN intends to seek a water quality waiver for the beneficial use of dredged material to restore wetlands in the triangular-shaped area as mitigation for wetland impacts. The waiver is warranted Because elutriate toxicity tests demonstrated that adverse impacts on dredged material effluent discharge is unlikely to promote adverse impacts to water column organisms in Bayou Bienvenue (Appendix C),

33. The habitat value assessment was not an appropriate measure for the value of the wetlands the Corps plans to destroy to build the graving site and the confined disposal facility. Given the location of the wetlands as a buffer between the Mississippi River Gulf Outlet—which acted as a funnel during Hurricane Katrina to bring floodwaters into New Orleans—and residential neighborhoods, the Corps should have considered the wetlands' flood protection value. The Corps' focus on habitat value rather than flood protection for wetlands in an urban area ignores the true value of the wetlands the Corps plans to destroy. The analysis

33 - The impacted wetlands are located within the Greater New Orleans Hurricane and Storm Damage Risk Reduction System. Theoretically, the CDF and a small portion of the offsite construction area (graving site) could store rainfall runoff pumped from developed areas when the water control structures on the hurricane protections system are closed during storms. However, the existing elevations of the CDF and offsite construction area prevent their use for rainfall storage until the many thousands of tidal wetlands and open water areas within the hurricane levee system are completely inundated..As such, the storage from tidal or storm-related flooding is extremely limited.

ignores the ramifications of filling in wetlands, decimating their flood storage capacity, on the people who live in the Lower Ninth Ward and the Holy Cross neighborhoods that were destroyed by floodwaters in 2005 during Hurricane Katrina and underestimates the wetlands' value.

34. The Corps' plan to compensate for wetland losses by creating new habitat instead of additional flood storage capacity places human health at risk from severe flooding during hurricanes and other flooding events.

35. The Corps has failed to take a hard look at the environmental impact of the proposed project on the local aquatic resources and flood protection.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 19 day of November, 2008,

BARRY SULKIN

33 - (continued) See previous page.

34 - The wetlands that would be impacted by the construction of the CDF are located within a portion of the HSDRRS that is surrounded by levees with water levels controlled by two tide gates; one at the confluence of Bayou Bienvenue and MRGO and the other at the confluence of Bayou Dupre and MRGO. This area is referred to as the Bayou Bienvenue Central Wetland Unit. The Bayou Bienvenue Central Wetland Unit is bounded by HSDRRS levees along the MRGO and GIWW on the north and east sides, and a local levee along the south side. The local levee on the south side of the Unit abuts Florida Avenue and the railroad tracks and is 14 feet high. This levee provides protection from tidal inundation for St. Bernard Parish, the Lower Ninth Ward and Holy Cross neighborhoods. When the tide gates are open, the wetlands in the Bayou Bienvenue Central Wetland Unit do not provide storage, because all rainwater is pumped from the neighborhoods over the 14 foot high levee/floodwall and into the Unit where the water flows out with the tides into the MRGO. However, when the floodgates are closed, such as during a severe tropical storm event, the approximately 29,000 acre Bayou Bienvenue Central Wetland Unit provides storage for discharge from forced drainage in nearby neighborhoods and storm surge that overtops the HSDRRS. The CDF would fill approximately 209 acres of the Bayou Bienvenue Central Wetland Unit, which comprises 0.7 percent of the total storage area. Further, the CDF is comprised of a fill cell, which would be used for temporary storage of dredged material, and a disposal cell, which would be used for permanent storage of dredged material. The disposal cell would permanently fill approximately 71 acres of the Bayou Bienvenue Central Wetland Unit, which comprises 0.2 percent of the total storage area. Neither the temporary or permanent impacts to storage capacity in the Bayou Bienvenue Central Wetland Unit from the construction of a CDF would be significant.

35 - CEMVN has conducted a detailed evaluation of all sediments that would be dredged from the IHNC during the Lock Replacement project. That evaluation is provided in Appendix C. The methods for disposal of these sediments are described and volumes quantified. Alternatives to disposal of dredged material not suitable for open water disposal are detailed in Appendix F. Impacts to wetlands and a conceptual mitigation plan is provided in Appendix M. A human health and safety evaluation for dredged materials permanently placed in the CDF is provided in Appendix R. All of these technical reports were provided to the public and resource agencies for review for 105 days, and CEMVN has addressed all comments on the SEIS and technical reports. CEMVN disagrees with the commenter and believes that a hard look has been taken on the impacts of the recommended plan on aquatic resources and flood protection.

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CURRICULUM VITA

Born: May 3, 1953, Memphis, TN

EDUCATION

1987 M.S., **Vanderbilt University** - Nashville, Tennessee
Major: Environmental Engineering
Master's Thesis: "HARPETH RIVER BELOW FRANKLIN DISSOLVED OXYGEN STUDY"- Field and lab study, QUAL2E computer modeling of river hydrology, water quality, and impacts of a sewage treatment plant.

1975 B.A., **University of Virginia** - Charlottesville, Virginia
Major: Environmental Science

Additional undergraduate courses: math and engineering at University of Tennessee - Knoxville 1982-1984

HONORS

River Hero Award, presented by River Network 2006

Lifetime Achievement Award, Tennessee Environmental Council, 1990

Water Conservationist of the Year, Tennessee Conservation League, 1989

State of Tennessee/Vanderbilt University
Environmental Engineering Graduate School Scholarship, 1985 - 1987

duPont Scholarship, University of Virginia, 1971 - 1975

Eagle Scout, 1967

PROFESSIONAL EXPERIENCE - CURRENT

Sept. 1990 - Present **Environmental Consultant**
Self-employed

Investigator, consultant, and scientist serving clients such as attorneys, environmental/citizen organizations, cities, individuals, businesses, media, and sub-contractor for other consultants/engineers. Activities include research projects, field studies/sampling, site evaluations, stream/wetland determinations, permit negotiations, information and file research, photography, and expert witness presentations concerning water quality, TMDL, erosion, landfills, and other environmental issues; also TN Director of Public Employees for Environmental Responsibility (PEER). Also employed by EPA as special expert to serve on Federal Advisory Committee for Detection and Quantitaion and Uses in the Clean Water Act representing environmental groups (June 2005- Dec 2007).

PROFESSIONAL EXPERIENCE - PREVIOUS

1987-June 1990 and 1985 — **Manager**
Enforcement and Compliance Section
Division of Water Pollution Control
Tennessee Dept. of Health and Environment
Nashville, Tennessee

Responsibilities: Statewide manager of enforcement investigations and legal referrals for water pollution programs under the federal Clean Water Act and the Tennessee Water Quality Act; witness for hearings before the Water Quality Control Board, and local and state courts; data processing and analysis for wastewater permit discharges; field research projects regarding water quality problems, as well as field work involving various stream, river, lake, and wetland issues.

1989 — **Instructor**
Graduate School of Engineering
University of Tennessee, Knoxville

Responsibilities: Assistant instructor for graduate course in environmental engineering- wastewater treatment.

Sept.-Nov.1986 and 1981 — **Assistant Manager**
Regional Field Office
Division of Water Pollution Control
Tennessee Dept. of Health and Environment
Nashville, Tennessee

Responsibilities: Coordinated inspections, complaint investigations, field studies, and enforcement for wastewater programs in 41 county region.

Sept. 1985 - Aug. 1986 Education leave to attend graduate school

1984-1985 — **Special Projects Assistant**
Director's Office - Elmo Lunn, Director
Division of Water Pollution Control
Tennessee Dept. of Health and Environment
Nashville, Tennessee

Responsibilities: Provided statewide coordination and technical assistance on deep well waste injection regulations, clear- cutting forestry problem investigations, animal waste problems, public relations and media presentations, state planning and policy, enforcement and field office coordination.

1982-1984 **Enforcement Coordinator**
Regional Field Office
Division of Water Pollution Control
Tennessee Dept. of Health and Environment
Knoxville, Tennessee

Responsibilities: Coordinated enforcement action in municipal and industrial drinking water and wastewater programs in 24 county region, including fish kills, spills, complaint investigations, and stream studies.

1981-1982 **Assistant Manager**
Enforcement Section
Division of Water Pollution Control
Tennessee Dept. of Health and Environment
Nashville, Tennessee

Responsibilities: Coordinated statewide investigations and legal actions for drinking water, wastewater, and safe dam programs.

1977-1981 **Water Quality Specialist**
Regional Field Office
Division of Water Pollution Control
Tennessee Department of Health and Environment
Nashville, Tennessee

Responsibilities: Inspected drinking water, and municipal and industrial wastewater systems for 41 county area; investigated spills, underground storage tanks, fish kills, and citizen complaints; conducted stream studies; coordinated enforcement program.

1976-1977 **Water Quality Specialist**
Regional Field Office
Division of Water Pollution Control
Tennessee Dept. of Health and Environment
Chattanooga, Tennessee

Responsibilities: Inspected public drinking water systems for nine county area; investigated spills and citizen complaints.

1975 **Research Assistant/Lab Technician**
Department of Environmental Science
University of Virginia
Charlottesville, Virginia

Responsibilities: Analyzed soil and sediment from Chesapeake Bay and marsh/wetland sites for Corps of Engineers dredge spoils study.

1974 **Research Assistant**
Department of Environmental Science
University of Virginia
Charlottesville, Virginia

Responsibilities: Weather research project data processing.

1974 **Research Assistant/Lab Technician**
Department of Civil Engineering
Water Quality Lab
Memphis State University
Memphis, Tennessee

Responsibilities: Field sampling and lab analyses of water for study of urbanization impacts of watershed streams.

PROFESSIONAL/CIVIC ORGANIZATIONS, CERTIFICATIONS, & EXPERIENCE (Past & Present)

Certified Erosion Prevention and Sedimentation Control Professional (TN), Aug. 2004 & Oct. 2007

Davidson County Grand Jury, Oct. - Dec. 1998, Nashville, TN

Nashville and Davidson County - Floodplain Review Committee, Oct. - Dec. 1998

National Environmental Health Association
Registered Environmental Health Specialist, 1994

State of Tennessee - *Registered Professional Environmentalist*, 1982

American Society of Civil Engineers

Water Environment Federation

Tennessee Environmental Council
Board of Directors 1994 to present

International Erosion Control Association

Tennessee Scenic Rivers Association

American Water Resources Association

ADDITIONAL TRAINING

"Fundamentals of Erosion Prevention and Sediment Control" certification course by the University of Tennessee and the Tennessee Department of Environment and Conservation, August 26, 2004; Recertification October 9, 2007

"BASINS Training" short course of EPA supported computer mapping and water quality modeling techniques, Utah State Univ., Logan UT, August 6 - 10, 2001

"Wetland Mitigation Techniques" workshop by Tennessee Tech. Univ., Cookeville, TN April 26, 1999

"Pulp and Paper Cluster Rule and Clean Water Act Permits", by Clean Water Network with EPA, Seattle, Washington, February 18-19, 1998

"Bioengineering Techniques for Streambank and Lakeshore Erosion Control", by Wendy Goldsmith, International Erosion Control Association, April 27, 1995

"Fundamentals of Hydrogeology, Karst Hydrogeology, and the Monitoring, Containment, and Treatment of Contaminated Ground Water", by Albert Ogden and Gerald Cox, January 6-7, 1994

"Ground Water Hydrogeology and Dye Tracing in Karst Terrains", by James Quinlan, April 2, 1992

"NPDES Permit Writers Course" by the Environmental Protection Agency (EPA), April 1988

"Sediment Oxygen Demand Workshop", by EPA, U.S. Environmental Research Laboratory, Gulf Breeze, Florida, September, 1987

"Compliance Monitoring for NPDES Permits", by EPA, October, 1978

"Hazardous Materials Tactical Workshop", by Tennessee Civil Defense, April 1978

"Troubleshooting O & M Problems at Municipal Wastewater Treatment Facilities", by EPA, March, 1978

PRESENTATIONS/PUBLICATIONS

July 2005

"The Clean Water Act Owner's Manual", second edition, contributing writer & editor, River Network, Portland, OR

December 2003

"Stream Flow and the Clean Water Act", Atlanta, GA, with River Network, Portland, OR

February 2003 & December 2004
"Clean Water Act - Train the Trainer", Denver, CO & Madison, WI, with River Network, Portland, OR

May 2002
"Tracking TMDLs", contributing writer & editor, National Wildlife Federation, Montpelier, VT & River Network, Portland, OR

February 2002
"A Protocol for Establishing Sediment TMDLs", contributing writer & editor, developed for the Georgia Conservancy & University of Georgia Institute of Ecology by the Sediment TMDL Technical Advisory Group, Athens, GA

May 2001 - May 2006
River Rally, annual national training conference held in: California, North Carolina, Washington, Virginia, Colorado, and New Hampshire; taught various each year on: Clean Water Act, NPDES Permits, Anti-degradation, Stormwater, TMDLs, Enforcement, Wetlands & Mitigation; by River Network, Portland, OR

March 2001
"The Ripple Effect - How to Make Waves in the Turbulent World of Watershed Cleanup Plans", contributing writer & editor, Clean Water Network, Washington, D.C.

October 1999 - April 2001
"Clean Water Act Workshop", presenter for three-day training conferences - Vermont, Georgia, Tennessee, Colorado, New Mexico, Ohio, and Alaska, with River Network, Portland, OR

October 2000
"TMDL Workshop", presenter for training in San Diego, CA, with River Network, Portland, OR

April 1999
"*U.S. Environmental Laws & Regulations Compliance - Understanding Your Obligations Under the Clean Water Act*", session on Clean Water Act for course sponsored by Government Institutes, Inc. of Rockville, MD, given in Nashville, TN

March 1999
"*NPDES and State Water Quality Permits*" and "*The TMDL Process*", presentations at the Tenn. Clean Water Network conference; March 27, 1999, Bethany Hills Camp, Kingston Springs, TN

March 1999
"*State of the Rivers: Tennessee*" presentation at World Wildlife Fund "*State of the Rivers Conference*", March 15, 1999, Chattanooga, TN, with co-author of Tenn. section of "*A Conservation*

Potential Assessment of the Mobile and Tennessee/Cumberland River Basins in Alabama, Georgia, and Tennessee" by WWF

December 1998

"America's Animal Factories", contributing writer & editor, National Resources Defense Council, Washington, D.C.

December 1998

"*The TMDL Process*", presentation with NRDC attorney at national Sierra Club state leaders conference, Santa Fe, New Mexico, December 11,1998

October 1998

"*Clean Water Act Permits, Modeling, and TMDLs*" presentation at national conference of clean water organizations & attorneys, by Clean Water Network/NRDC, Oct. 16, 1998, Washington, DC

May 1998

"*Impacts of State Route 840 Upon the Human and Biophysical Environment"* NEPA, ISTEA, and Public Participation in Transportation Projects, Dept. of Environmental Geography guest lecture, Austin Peay State University, May 1, 1998, Clarksville, TN

March 1998

"*The State, EPA, Citizens - How the System Works*" Tennessee Clean Water Conference, Opening Plenary Presentation, March 28, 1998, Nashville, TN

March 1998

"*Total Maximum Daily Loads (TMDL) The Science, Process, & Controversy*" American Water Resources Association 1988 Tennessee Conference; paper presentation as part of panel with EPA representatives on TMDLs, March 3, 1998, Nashville, TN.

February 1997

International Erosion Control Association, on panel of speakers for session on practical applications of erosion controls at annual IECA national conference, Nashville, TN

October 1994

"*Stream Ecology, BMPs, and Compliance*", environmental impacts of road building, Sierra Club Southern Appalachian Highlands Ecosystem Taskforce, Transportation Workshop, Banner Elk, NC

June 1994

"*Fundamentals of Tennessee Environmental Law*", presentation on Water Pollution Control and Compliance Strategies, for course sponsored by Government Institutes, Inc. of Rockville, MD, given in Knoxville, TN

June 1994

University of Tennessee Law School, guest lecture on Water Pollution and the related state and federal laws, Knoxville, TN

October 1992

"*Storm Water Regulations for Saw Mills*" - Seminar sponsored by the Tennessee Association of Forestry and the Univ. of TN, Nashville.

August 1992

"Storm Water Regulations for Industry" - Seminars sponsored by the Tennessee Association of Business and the Univ. of TN, Chattanooga, Knoxville, Jackson, and Nashville.

July 1992

Storm Water in Tennessee - A Training Manual for Manufacturers, University of Tennessee Center for Industrial Services

April 1992

"Dissolved Oxygen Study - Sewage Treatment Impacts and Assessments", VA Water Pollution Control Assoc. 46th Annual Conference, Roanoke, VA

October 1990

"The Tainted Waters of the Cumberland"; Cumberland Journal, v.1, no. 1, pp. 16-20; Nashville, Tennessee.

November 1988

"A Rapid Bioassessment of Richland Creek, Davidson County", by M. Browning, B. Sulkin, T. Merritt, TN Div. of Water Pollution Control

June 1988

"Assimilative Capacity of the Obed River at Crossville, Tennessee"; U.S. Geological Survey 1st Annual Hydrology Symposium, Nashville, TN

March 1987 - 1994

Vanderbilt University Graduate School of Engineering and Law School; guest lectures on water quality topics and computer modeling of river waste assimilative capacity.

July 1983

Testimony on the pollution at the Oak Ridge nuclear weapons facilities before Congressional hearing chaired by then Congressman Albert Gore.

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