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MISSISSIPPI LEVEE COMMISSIONERS

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**STATEMENT OF PETER NIMROD  
LOW WATER INSPECTION TRIP  
MISSISSIPPI RIVER COMMISSION  
AUGUST 19, 2015, AT A HEARING  
AT LAKE VILLAGE, AR (GREENVILLE, MS)**

GENERAL WEHR AND MEMBERS OF THE MISSISSIPPI RIVER COMMISSION:

I am Peter Nimrod, Chief Engineer for the Board of Mississippi Levee Commissioners, and I have the privilege of presenting this statement on their behalf. The Board of Mississippi Levee Commissioners was established in 1865 and is celebrating its 150<sup>th</sup> Anniversary! The Board is comprised of 7 elected commissioners representing the counties of Washington, Bolivar, Sharkey, Issaquena, and parts of Humphreys and Warren counties. The Mississippi Levee Board is responsible for 212 miles of levees and 350 miles of interior streams.

**THE GREAT 2011 FLOOD**

The Epic 2011 Flood was a record flood on the Mississippi River. We had (11) major problem areas discovered during the 2011 Flood that needed our attention and remedial work: Buck Chute, the predicted overtopping of the Yazoo Backwater Levee, Francis, the Albemarle levee slide, Winterville, Above Greenville, Greenville, Avon, Leota, Lake Jackson, Ben Lomand, and Tara Wildlife.

To date the Vicksburg District has contracted and completed resetting the Yazoo Backwater Levee, Buck Chute, Albemarle, Francis and Above Greenville. Item 456L - Tara Seepage Control Project was awarded to Harding Enterprises. All 32 relief wells have been installed and they are working on the 11,500' long landside seepage berm. This project is currently 78% complete. East Bank Seepage Control will include 5 Reset Items - Greenville, Avon, Leota, Lake Jackson and Ben Lomand. Magruder Construction was awarded the contract in late 2013 and the project is currently only 52% complete. To date the 4,400' long, 110' wide landside seepage berm has been built and 43 relief wells have been installed at the Avon site. The contractor will begin installing relief wells at the other sites soon. It is great to know that all 11 of our problem areas will have permanent solutions in place by the end of 2015.

The 2011 Flood is the new benchmark highwater event that will be used from this point forward. The safe passage of this multi-hundred year event is a testament to the daily maintenance activities of the Levee Boards, Congress's yearly wise appropriations for construction and maintenance for the MR&T Project, and the Corps of Engineers vision, foresight, engineering and construction.

*“Where People Come First”*

## **2015 HIGHWATER**

Due to the above average rainfall in May and June, plus Tropical Storm Bill in mid-June, and then the heavy rainfall in late June and early July, the Mississippi River was above floodstage in July. This is the first time the River has been above flood stage in July since 1935 - 80 years ago. On August 1<sup>st</sup> the River was dropping fast but was still above flood stage. This is the first time in recorded history (starting in 1901) that the River has been above flood stage in August.

## **MAINLINE LEVEE - CONSTRUCTION**

The historic highwater throughout the month of July flooded all the riverside borrow areas and very little construction was done on our Levee Enlargement & Berm Project. Of the original 69 miles of deficient levee in the Mississippi Levee District, we have now completed 35.4 miles and currently have another 14.7 miles under contract. Item 468L, a 4.7 mile levee enlargement project is currently 98% complete. Item 463L, a 2.7 mile levee enlargement project, was awarded to Circle Construction, LLC and is currently 72% complete. Item 509L, a 3.9 mile levee enlargement project, was awarded to Affolter and is currently 72% complete. Item 511L, a 3.4 mile levee enlargement project, was awarded to My Company, Inc. in November, 2014 and is currently 5% complete. The Vicksburg District is currently advertising Item 465L, a 2.7 mile levee enlargement and berm project. The Levee Enlargement & Berms Project needs to move towards completion because at this point our Mainline Mississippi River Levee will overtop during a Project Design Flood (PDF).

## **STEELE BAYOU SEDIMENTATION REDUCTION PROJECT**

The Steele Bayou Sedimentation Reduction Project installs drop pipe structures at medium to large headcut locations throughout the length of Steele Bayou. Phases I through VI included 65 sites and are complete. Of the original 100+ headcut sites on Steele Bayou, the Corps has installed structures at 54 sites and Delta FARM has installed structures at 37 small headcut sites. The Corps is currently advertising for Phase VII which will include 12 more sites on Steele Bayou. The Mississippi Levee Board is very pleased with this project because it will not only help flood control by keeping the sediment out of the channel, but it will enhance water quality as well.

The Vicksburg District is beginning to look at headcut sites up in Coahoma and Bolivar County for the Big Sunflower River Sedimentation Reduction Project.

## **LEVEE SLIDES**

There are currently over 10 slides within the Mississippi Levee District. We are disappointed that the Hired Labor Crew is only digging out and pushing back up these slides and not properly repairing them using lime treatment, but we understand the money is not there this year. The Board appreciates the Vicksburg District and the Hired Labor Crew for performing these slide repair activities.

## WATERS OF THE UNITED STATES (WOTUS)

As we discussed during the highwater inspection in March, 2015, the Environmental Protection Agency (EPA) had introduced its Proposed Rule and it is a significant expansion of the Clean Water Act (CWA) that will affect every American. The definitions provided in the Proposed Rule are very broad and do not provide clarity to which waters could be considered "waters of the United States" under CWA jurisdiction. Under current CWA section 404(a), any person engaging in activities that result in the "discharge of dredged or fill material into navigable waters" must obtain a permit from the Corps of Engineers (Corps). The term "navigable waters" is defined broadly by statute to mean "waters of the United States." The Proposed Rule uses terms such as "adjacent", "neighboring", and "tributary" to expand the CWA reach to ditches, ephemeral ditches, ponds and other waters that are too small, too far removed, with too speculative and insubstantial an effect on traditionally navigable waters, to allow any meaningful connection to navigability. The Proposed Rule would make the very drainage ditches considered in *Rapanos vs. United States* jurisdictional when the U.S. Supreme Court ruled that they were not! Furthermore, the majority of the U.S. House of Representatives and the U.S. Senate object to the Proposed Rule which would expand CWA jurisdiction. On May 1, 2014 a bipartisan group of 231 Members of Congress wrote EPA and the Corps a request "that this rule be withdrawn." On May 14, 2014 52 Senators voted in favor of an amendment to prohibit the EPA and Corps from implementing the Proposed Rule's guidance and from using it. On September 9, 2014 the House passed (262-152) H.R. 5078, the Waters of the United States Regulatory Overreach Protection Act of 2014, a bipartisan bill to prohibit the EPA and Corps from finalizing the Proposed Rule. **Despite all this opposition the Administration released the Final Rule on June 29<sup>th</sup>. The American Farm Bureau Federation states that this Final Rule is worse for the farmers than the Proposed Rule! EPA and the Corps should withdraw its Final Rule and keep "navigable" as the defining term for "waters of the U.S." under CWA jurisdiction.**

## SECTION 408 PERMITS

As we discussed during the highwater inspection in March, 2015, when someone plans an activity close to the levee we review the plans and submit them to the Corps for their evaluation and no objection. Once we get a no objection letter from the Corps we issue the applicant a Levee Board Permit. If there is an activity located off the r.o.w. but might affect the integrity of the levee we review the plans and give them to the Corps for their review. If this activity might impact the levee we have the right to stop any activity that might jeopardize a flood control project under: The Rivers and Harbors Act of 1899 Section 14 states "that it shall not be lawful for any person to ... impair the usefulness of any ... levee." Also in the Vicksburg District Regulations (DR1130-2-530) FAQ (Appendix G) and CFR33 Part 208.10 (Appendix H) covers the permit process. In CFR33 Part 208.10 - "This authority extends beyond the project rights-of-way to the extent that any activity which might endanger the project integrity is subject to review by and control of the Corps of Engineers." This authority exists in Section 9 of the Flood Control Act of 15 May 1928 (33 U.S.C.A. 702i) and Sections 14 and 16 of the River and Harbor Act of 3 March 1899 (33 U.S.C.A. 404 and 411). . It had come to our attention that Corps Headquarters issued guidance in July, 2014 that the Corps District Engineer shall start issuing Permits for work on the levee right-of-way (r.o.w.). This guidance also said that the Corps has no authority to regulate activities off the r.o.w. The Levee Board owns the levee r.o.w. and we issue the permits. If the Corps starts issuing permits for activities on our levee there will be two permits for the same proposed work. I appreciate the MRC's written response to my March statement that 408 Permitting business will remain like it

always has been. **However we need Corps Headquarters to wake up and stop this non-sense about issuing Permits on Levees owned and operated by Levee Boards and keep the permitting process in the hands of the levee owners and that they continue to stand behind their authority to regulate activities off the r.o.w.**

### **YAZOO BACKWATER LEVEE - "UNACCEPTABLE" RATING**

Up until 2006 the Yazoo Backwater Levee got an "Outstanding" levee rating from the Vicksburg District. In 2007 the rating system changed and from 2007-2010 the YBW Levee got an "Acceptable" levee rating. During the Epic 2011 Flood, the YBW Levee was put to the ultimate test. Water came within 4" of overtopping the levee. The YBW Levee held out 16.33' of water. There was not one sandboil or underseepage issue under this levee. The Steele Bayou and Little Sunflower Drainage Structures had no issues during this historic flood event. Yet in 2011 the Vicksburg District demoted the levee rating to "minimally acceptable". This rating continued for the next few years. In 2014 the Vicksburg District demoted the rating for the YBW Levee to "unacceptable" because the gates of the Steele Bayou Structure & the Little Sunflower Structure are in need of rehabilitation. The gates on the structures are under the direct responsibility of the Corps of Engineers. I think this "unacceptable" rating is unjust and unfair to the Mississippi Levee Board. **We think the Vicksburg District should reconsider this rating and based on proven performance in 2011 change this rating for the YBW Levee back to "acceptable".**

### **MISSISSIPPI BASIN MODEL**

In 1942 the Corps' Chief Engineer, MG Eugene Reybold, commissioned the construction of the Mississippi Basin Model. Site preparation and construction began in 1943 using German prisoners of war. The actual construction of the hydraulic portion of the model started in 1947 with the surface of the model being accurately molded in concrete and at a 1:2000 horizontal scale (1 mile = 2.64') and a 1:100 vertical scale. It took many years to complete this 600 acre project located near Clinton, MS. The model was completed in 1966. This model was used to aid in the development of basin-wide plans for coordinated operation of flood control works. The model was used to test future projects to determine the benefits or disadvantages. The model was continuously being updated to match the improvements and changes in the River. The model was used almost daily during the 1973 Flood. The development of computer modeling slowly moved to the forefront and the model was no longer needed. The Mississippi Basin Model was closed and given to the City of Jackson in 1993. A City Park (Butts Park) was developed around the site. The high cost of maintaining the site caused the Mississippi Basin Model to be abandoned and it is becoming overgrown with trees. I invite you all to go visit this modern marvel which helped develop flood-control for the Mississippi River Basin before it is gone for good.

### **CLOSING**

Again, on behalf of the Board, we continue to value our association with the Mississippi River Commission and the Vicksburg District and appreciate the opportunity to meet with you on these inspections.



Peter Nimrod, P.E., P.L.S.  
Chief Engineer - MS Levee Board  
August 19, 2015