

**STATEMENT OF PETER NIMROD
HIGH WATER INSPECTION TRIP
MISSISSIPPI RIVER COMMISSION
MARCH 25, 2015, AT A HEARING
AT VICKSBURG, 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 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 and Albemarle. Items 616L/543L - Francis/Above Greenville - Relief Well Project was officially accepted by the Vicksburg District last Fall. 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 76% 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 26% complete. Magruder has had all kinds of terrible issues with its subcontractor Shoreline Construction. 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.

MAINLINE LEVEE - CONSTRUCTION

Construction on the Levee Enlargement & Berm Project along our levee system continues to slowly proceed due to a lack of serious congressional funding. 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 97% complete. Item 463L, a 2.7 mile levee enlargement project, was awarded to Circle Construction, LLC and is currently 71% complete. Item 509L, a 3.9 mile levee enlargement project, was awarded to Affolter and is currently 63% complete. Item 511L, a 3.4 mile levee enlargement project, was awarded to My Company, Inc. in November, 2014 and is currently 0% complete. The Vicksburg District has sent us a Request for Right-of-Way for 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).

YAZOO BACKWATER LEVEE

As you know there are 4 Backwater Areas as part of the MR&T Project. These backwater areas are designed to overtop during a Project Design Flood. During the Epic 2011 Flood none of these backwater levees were overtopped. The St. Francis Backwater Levee was 4.6' from overtopping, the White River Backwater Levee was 9' from overtopping, the Red River was 11.4' from overtopping, while the Yazoo Backwater was 4" from overtopping! As you also know, the Yazoo Backwater is the only Backwater Area that doesn't have a pumping plant. These 4 Backwater Areas are designed to overtop 2' below the Project Design Flood, but they all had different freeboard measurements during the 2011 Flood. Please work hard to initiate raising the Yazoo Backwater Levee. Once a few more items on the Mainline Mississippi River Levee in Louisiana are enlarged the Yazoo Backwater (YBW) Levee needs to be raised from elevation 107.0' to 112.8' based on the current PDF. We recognize that the Flowline Study is underway but we are becoming more and more concerned with the tone from Washington with CEQ, FEMA and Corps Headquarters that our YBW Levee may not get raised.

LEVEE SLIDES

There are currently over 10 slides within the Mississippi Levee District. The Board appreciates the Vicksburg District and the Hired Labor Crew for performing these slide repair activities.

SCOUR HOLE DOWNSTREAM OF STEELE BAYOU STRUCTURE

The Mississippi Department of Transportation (MDOT) built the Hwy 465 Bridge over Steele Bayou in 1959. Ten years later in 1969 the Steele Bayou Structure was built by the Corps just upstream of the bridge. The rapid release of water through this drainage structure over the years has caused severe scour, erosion and bank caving problems around the bridge. In 1985 the Corps did a channel stabilization project from the Steele Bayou Structure to 100' past the Hwy 465 Bridge. In 2008 a survey was done that discovered a 45' deep energy hole had formed 100' downstream from the bridge. In 2013 a new survey revealed this energy hole was now 55' deep and was only 85' from the bridge. This energy hole was getting deeper and wider and was now 6' below the bottom of the downstream bridge pier. The Vicksburg District designed a permanent solution to fix the scour hole. Luhr Brothers was the contractor and they completed the project last Fall. The Board appreciates the Vicksburg District for jumping on this problem area and fixing the problem.

WATERS OF THE UNITED STATES (WOTUS)

The Environmental Protection Agency (EPA) has introduced its Proposed Rule and it is a significant expansion of the Clean Water Act (CWA) that will affect every American, and have a significant impact on my community due to the proposed increased jurisdiction over all waters. 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. **The EPA and the Corps should withdraw its Proposed Rule and keep "navigable" as the defining term for "waters of the U.S." under CWA jurisdiction.**

FEDERAL FLOOD RISK MANAGEMENT STANDARD (FFRMS)

FFRMS originated in 2011 with President Barack Obama's March 30, 2011 issuance of Presidential Policy Directive - PPD-8 - National Preparedness. FFRMS seeks to improve flood risk management by directing agencies to "update" their flood-risk reduction standards for all federally-funded projects. In April, 2013 the Hurricane Sandy Rebuilding Task Force called for minimum flood risk reduction standard and announced that all federally funded buildings projects needed to be 1' above the base flood elevation (BFE)(the 100-year flood). President Obama's Climate Action Plan - released in June, 2013 - directs agencies to incorporate the most recent science on expected rates of sea-level rise. FFRMS is looking at 3 options to establish revised Elevation and Flood Hazard Areas: (1) Climate-informed science approach (the "preferred" option); (2) Freeboard: BFE + 2' or BFE + 3' for critical infrastructure; or (3) the 500-year elevation. This process included no public involvement. They did not perform a benefit-cost analysis for "significant action". We believe FFRMS will affect PL84-99 (federal assistance to repair levees after being damaged) and will eventually affect Flood Insurance (FIRM). FEMA is trying to expand the floodplain vertically and horizontally. This will affect millions of Americans by forcing them to purchase flood insurance and it will discourage industry and businesses from locating to the Mississippi Delta. On December 16, 2014 President Obama signed into law the Consolidated and Further Continuing Appropriations Act, 2015 funding the federal agencies through the fiscal year. It included a provision to prohibit the use of funds to implement a new Federal Flood Risk Management Standard (FFRMS). Despite this provision on January 30, 2015 President Obama signed EO 13690! He is making laws without due process or the consent of Congress! **We need Congress to stop FFRMS!**

SECTION 408 PERMITS

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 CRF33 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 has 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. To perform this the Corps will have to inspect construction and follow NEPA guidelines. This is a big problem! 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. **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.**

PRINCIPALS AND GUIDELINES (P&G)

The Council of Environmental Quality (CEQ) draft proposal of changes to the Principals and Guidelines (P&G) for Federal Agencies fails to establish a clear, concise, and workable framework to guide development of water resources projects. It elevates environment considerations over economic benefits, social well-being and public safety. Because of these critical and extensive failings, we recommend that this effort be put aside and restarted from the beginning. **We are asking Congress to continue to add language in the Appropriations Bill that directs the Corps to utilize the previous Principals & Guidelines.**

GREENVILLE HARBOR FRONT INDUSTRIAL FILL PARK EXPANSION PROJECT

The Corps deeded the old Greenville Mat Casting Field to the Mississippi Levee Board back in 2002. Since that time the Greenville Port has been looking for tenants. Everyone wants lake front property but this area is subject to routine Mississippi River flooding. The Board has been working with the Greenville Port, Washington County, City of Greenville, Delta Council and the Washington County Economic Development Center on developing a project to raise 50 acres of this property approximately 25' to an elevation of 147'. The 2011 Flood reached 143.2'. We propose raising the site by building earthen containment dikes with water control structures that will allow us to dredge uniform sand material from a Mississippi River dike field located 2 miles from the site. The Vicksburg District performed a Jurisdictional Determination on the subject tract. The Board appreciates this work and looks forward to getting further assistance and guidance from the Vicksburg District in obtaining a permit to dredge this sand material and fill this property. Washington County is applying for a Tiger Grant for \$15M to build this 50 acre site.

WELCOME GEN. WEHR

The Board is excited to have Gen. Wehr back in Vicksburg as the President of the Mississippi River Commission. We want to congratulate him and we look forward to working with him again.

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.

A handwritten signature in black ink, appearing to read "Peter Nimrod". The signature is fluid and cursive, with a large loop at the end.

Peter Nimrod, P.E., P.L.S.
Chief Engineer - MS Levee Board
March 25, 2015