

WRITTEN TESTIMONY

OF

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BEFORE THE

SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ON

IMPLEMENTATION OF CORPS OF ENGINEERS WATER RESOURCES POLICIES

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10:30 AM – DIRKSEN SENATE OFFICE BUILDING, ROOM 406

Chairman Boxer, Ranking Member Vitter, and members of the Committee,

Thank you for the opportunity to testify before you today. My name is Robert A. Turner, and I am a registered professional engineer with over thirty years of experience in Civil and Structural design. I served as the executive director of the Lake Borgne Basin Levee District in St. Bernard Parish, Louisiana, from 2001-2007. I now serve as the Regional Director of the Southeast Louisiana Flood Protection Authority – East (SLFPAGE), which was created after Hurricane Katrina to bring regional professional management to individual levee districts. Our Board has four registered professional engineers and includes members from California and North Carolina, providing specialized expertise from beyond the borders of our State.

SLFPAGE has been engaged with the US Army Corps of Engineers and the Louisiana Coastal Protection and Restoration Authority during the planning, design and construction of the Hurricane and Storm Damage Risk Reduction System (HSDRRS) for the metropolitan New Orleans area. Much has been accomplished in the years since Katrina. A 14 billion dollar civil works project designed to reduce hurricane storm surge risk in the New Orleans area has been substantially completed in less than seven years. Many dedicated individuals working for the Corps, the State of Louisiana, and local levee districts have worked tirelessly to make this happen. It serves as a testament to what our nation can accomplish when such projects are fully funded up front. Our Board of Commissioners wants to again thank Congress and the taxpayers of our nation for recognizing the importance of Greater New Orleans to the nation and for providing the funds necessary to complete the work.

Based upon our experiences with US Army Corps of Engineers policies and procedures during the last seven years, we offer the following insight and recommendations:

Partnering between the Corps and non-federal sponsor

There are clear indications that in the years since Katrina, the Corps has made an effort to improve its relations with non-federal sponsors through a “partnering” process. Progress has been made, but there is room for improvement, and several recommendations are discussed below.

Early Contractor Involvement. To facilitate the construction of several HSDRRS projects, the Corps utilized a procurement contracting method called Early Contractor Involvement (ECI) instead of the usual design-bid-build method. ECI was used to accelerate the construction schedule by bringing on a construction contractor early in

the design phase of the work to offer constructability advice and guidance to the designer. On most HSDRRS projects using ECI, the Corps did not negotiate a fixed price with the construction contractor until construction was substantially complete. The Corps prohibited the non-federal sponsor from observing the fixed price negotiation process, and continues to refuse to provide any information as to how the fixed prices were determined. Thus the non-federal sponsor is expected to pay the required cost share of a contract amount that was negotiated without observing the process, reviewing the details of the negotiations, or providing input to the negotiators. Corps policy should be changed to either allow the non-federal sponsor to observe the negotiation process and provide input to the negotiators, or prohibit the use of the ECI contracting method on civil works projects that require a cost share from a non-federal sponsor.

On several projects, the non-federal sponsors signed non-disclosure agreements prohibiting the release or discussion of sensitive information. The Corps should investigate the use of such agreements with the non-federal sponsor as a prerequisite for observing and providing input into the negotiation process.

Alternatives Evaluation Process. The Corps utilizes an Alternatives Evaluation Process (AEP) to identify and evaluate multiple alternatives and ultimately select the best alternative(s) for project design and construction. The AEP process was used in the HSDRRS Armoring planning process, and the non-federal sponsor team asked to participate. We were told that Corps policy prohibits participation of the non-federal sponsor in the AEP process. Corps policy should be changed to not only allow, but encourage non-federal sponsor participation in all civil works project AEPs.

Dispute Resolution. Occasionally, the Corps and non-federal sponsor may disagree on a chosen course of action, and despite best efforts, a consensus cannot be reached. It appears to us that the Corps has not developed a clear dispute resolution policy for such instances. The Corps should develop such a process for dispute resolution that requires timely written documentation of arguments supporting both sides of the dispute, along with the reasons for selecting the chosen course of action.

Independent External Peer Review

Several large, complex HSDRRS projects were selected by the Corps as candidates for Independent External Peer Review (IEPR). But the IEPR process has lagged far behind the design and construction of the projects. It appears that many of the projects will be substantially complete long before all of the IEPR Reports are finalized. In our

opinion, the IEPR process can serve as a valuable tool only if the process is initiated early and aggressively managed. One of the primary purposes of the IEPR process should be to inform the design process early enough to allow appropriate changes to be made efficiently and effectively. All comments generated by IEPR panel members pertaining to the project design should be resolved before the design is finalized and the corresponding portion of the work released for construction.

To assure independence, the Corps should revise existing policy regarding IEPR to clearly define the role of the non-federal sponsor in the IEPR process. The non-federal sponsor should have the same access to the review panel as the Corps. The Corps and non-federal sponsor should be allowed to provide pertinent information to the reviewers for their consideration. The reviewers' comments should be made available to both entities, and both should be allowed to submit responses .

In-kind Credit Approval

The requirements placed upon non-federal sponsors for documenting and applying for credit for "work in-kind" are complex and confusing. They are included in various sections of the Code of Federal Regulations and several Corps policy documents. We recommend that the Corps develop a document to guide the non-federal sponsor in the collection and presentation of the data necessary to support in-kind credits. The document should include examples of acceptable submittal packages and suggested templates for use in data collection and presentation. The procedures for submitting work in-kind credit packages should be reviewed with the non-federal sponsor shortly after a Project Partnering Agreement is executed.

National Standards for Levee Systems

National standards for levee design, construction, operations, maintenance, rehabilitation, repair, and improvement do not exist. We believe that the development and use of levee safety standards will ultimately provide a means to measure the level of risk reduction provided by an existing levee system, improve the reliability of future levee projects, and help to communicate the flood risk for those living behind levees. Two major factors must be considered as national standards are developed. First, the standards must be well-founded in the best available science. The Corps has already undertaken the task of advancing the scientific knowledge base and should continue to do so. But any attempt to develop national standards must include input from non-federal stakeholders, including states, tribes, regional authorities and local levee owners.

Second, there must be a clear recognition that a “one size fits all” approach is inappropriate. For example, some criteria established for levees protecting densely populated urban areas should be different from criteria used for levees in low density rural areas. Standards should be developed with this in mind, and should be structured to allow for decisions regarding the selection of project criteria to be informed by risk.

Use of the Modified Charleston Method for Computing Compensatory Mitigation

Rising sea levels, coastal erosion, and areal subsidence are continuing to cause rapid loss of coastal wetlands and barrier islands in the lower Mississippi Delta. Compensatory mitigation should be required when there are unavoidable impacts to wetlands, even when those impacts result from levee owners acting to fulfill their mission. In May, 2011, the US Army Corps of Engineers New Orleans District adopted a new method for determining compensatory mitigation called the Modified Charleston Method (MCM). It is important to note that the MCM is not used by the Corps to determine compensatory mitigation requirements for the HSDRRS in the metropolitan New Orleans area. However, it will be used for all future work that impacts jurisdictional wetlands in coastal Louisiana.

SLFPAE agrees with the stated intent of adopting a more accurate and consistent method of calculating compensatory mitigation, as compared to the previously used methodology. But it appears that in its current form, the MCM will in some cases greatly increase the cost to mitigate for unavoidable wetland impacts. SLFPAE recommends that the New Orleans District revisit and review the ratios and calculations used in the MCM in coordination with local stakeholders to confirm that they are correct and appropriate for use along the Louisiana coast, and do not unnecessarily increase costs for needed flood protection projects that reduce risks for our citizens and their communities, businesses and infrastructure.

In closing, I, on behalf of the Board of Commissioners of the Southeast Louisiana Flood Protection Authority – East, would like to once again thank the members of the Committee for allowing me the opportunity to provide this testimony. We hope the information provided will be helpful in your work. We look forward to answering any questions you may have and assisting the Committee in any way that you might find helpful. I can be reached by phone at (504)-280-2411, or by email at rturner@slfpae.com.