

# ***Oversight Hearing on Implementation of Corps of Engineers Water Resources Policies***

Committee on Environment and Public Works  
United States Senate

Prepared Testimony of:

Garret Graves, Chair

Coastal Protection and Restoration Authority of Louisiana

February 7, 2013



## Introduction

Thank you for the invitation to testify today on behalf of the Coastal Protection and Restoration Authority of Louisiana (CPRA) and the citizens of our state. We appreciate this opportunity to share Louisiana's perspective on the efforts to update and improve the nation's water resources program. As you are well aware, Louisiana has had a great deal of experience with hurricane protection, flood control, ecosystem restoration and navigation issues over the years and we certainly recognize the importance of a strong federal partner in addressing these national priorities.

In the past seven years, Louisiana has faced the devastating impacts of Hurricanes Katrina, Rita, Gustav, Ike and Isaac and in 2011, record high water on the Mississippi River challenged flood protection systems statewide – resulting in one of the largest flood-fighting efforts in Louisiana's history. Further, our state continues to be at the forefront of the worst oil spill in the nation's history -- the Deepwater Horizon disaster. Nearly three years after the platform explosion and tragic deaths of 11 Americans, our state continues to experience re-oiling associated with this devastating oil spill. Today, over 200 miles of our coast remain oiled. These challenges that the State has faced in recent years have highlighted how incredibly important it is to both fund and execute effective preventative measures for flood control and coastal restoration to reduce overall costs to U.S. taxpayers, to improve the resilience of our nation's economy, to protect the citizens of Louisiana, to improve the health of our coastal ecosystem and to ensure the future of the best wild seafood Mother Nature has to offer.

I would first like to commend the comparative progress of the U.S. Army Corps of Engineers in accomplishing repairs and revisions to the Greater New Orleans Area Hurricane Protection System. While important milestones were missed, the job is far from over and we are not in agreement in all of the Corps decisions, the relative progress in restoring protection to this region has been impressive. What would have taken decades under the traditional Corps system, in about six years we have the best protection our region has ever had. And, the Hurricane Protection System has already begun paying off. An estimated hundreds of millions of dollars and numerous lives were saved just a few months ago as Hurricane Isaac came bearing down on south Louisiana.

Unfortunately, outside of the post-Katrina project implementation model, the Corps is a complete disaster. An outdated and inefficient project process, budget cuts, lack of accountability, rogue attorneys, and the rise of the bureaucratic morass has relegated the once-exemplary Corps to an entity incapable of progress.

A recent Harvard University study confirm our observations in Louisiana: “[t]he speed and efficiency of federal government action have declined dramatically in recent decades, threatening the ability of the Army Corps to execute its priorities.”<sup>1</sup> This is chiefly due to an increase in the bureaucracy associated with implementing large scale engineering programs. The result of this bureaucracy is that Corps

---

<sup>1</sup> William Niebling, Jonathan Baker, Laila Kasuri, Sarah Katz, Kim Smet, “The Mississippi River,” Harvard International Water Security Initiative, p. 13, available at [http://watersecurityinitiative.seas.harvard.edu/sites/default/files/Harvard%20Water%20Federalism%20-%20Mississippi%20River%20Background%20Paper\\_0.pdf](http://watersecurityinitiative.seas.harvard.edu/sites/default/files/Harvard%20Water%20Federalism%20-%20Mississippi%20River%20Background%20Paper_0.pdf).

projects are structured in such a way as to require each project process or phase to be completed numerous times during the execution of a single project so that “it is possible to cycle indefinitely between stages, or become stalled at any particular stage.”<sup>2</sup> This is especially concerning given that delays can cause what may have initially been affordable expenses to quickly grow out of control.<sup>3</sup>

Two examples of these circular processes from projects authorized in the Water Resources Development Act of 2007 (WRDA 07) include the Morganza to the Gulf Hurricane Protection Project and the Louisiana Coastal Area ecosystem restoration program. In the first instance, the Corps has spent an estimated \$72 million studying the Morganza to the Gulf project without building a single component. The project, or project components have been authorized by Congress for construction three times. Most recently, the Corps' cost estimate ballooned from \$886 million in WRDA 07 to in excess of \$12 billion according to their most recent reanalysis.

In the second example, the Corps spent an estimated \$100 million studying wetlands restoration associated with the Louisiana Coastal Area program and has not constructed a single restoration project authorized by Congress. Our state has lost an estimated 1900 square miles of coastal wetlands -- largely as a result of Corps actions -- and the Corps is doing nothing to stop to loss or restore the wetlands.

Delay and skyrocketing costs have too often been the hallmarks of Corps projects. These characteristics have repercussions far outside of the Corps of Engineers.

### **Disaster Prevention Versus Disaster Response**

The Congressional Budget Office determined that every dollar invested in proactive disaster mitigation efforts results in three dollars in cost savings. A report for FEMA developed by the National Institute of Building Sciences found that up to four dollars in benefits resulted for every one dollar in hazard mitigation. We believe that the federal government would realize even higher rates of cost savings and benefits from proactive hurricane protection and coastal restoration investments in Louisiana.

Again, the performance of the New Orleans area Hurricane Protection System during Hurricane Isaac exemplifies the benefits of protection investments.

Rather than leaning forward, efficiently protecting communities around the nation, and aggressively seeking those disaster cost savings, our federal policies seem to prioritize disaster response over disaster prevention. This backwards approach is comparable to building a hospital next to an accident-prone crosswalk to treat victims hit by cars rather than spending a fraction of the dollars eliminating the risk through the construction of an elevated catwalk to cross the street.

I have heard many senior federal agency officials and Members of Congress say that the federal government simply cannot afford to fund projects to protect the most vulnerable American communities. The facts, common sense and sound fiscal policy prove otherwise. An estimated \$150 billion was spent responding to the 2005 hurricanes. Hurricane Sandy response efforts are already

---

<sup>2</sup> *Id.* at 13-14.

<sup>3</sup> *Id.* at 18.

expected to exceed \$60 billion. The reality is that the funds are already being spent. Exponentially more dollars are being spent picking up the pieces after a disaster rather than on preventative measures that would have prevented the loss and destruction from ever happening.

Recent disasters in Louisiana prove this point.

Every consumer in the country has a stake in coastal Louisiana. One example is national energy implications of disasters in our state. A few days after Hurricane Isaac made landfall, gasoline prices spiked an average of 25 cents/gallon nationwide. This translates to consumers paying an extra \$100 million a day in higher gas prices. Following Hurricanes Katrina and Rita in 2005, consumers paid an estimated \$300 million a day in higher gasoline prices and the 2008 hurricanes (Gustav and Ike) caused consumers to incur over \$500 million a day in higher prices to fill their gas tanks.

In just the last 10 years, a fraction of the disaster response funding could have been proactively invested in hurricane protection, flood control and coastal restoration projects in Louisiana -- saving over 1,000 lives, preventing the displacement or evacuation of over one million Louisianans and protecting hundreds of billions of dollars in economic activity and infrastructure in south Louisiana.

Rather than suggesting that we cannot afford to invest in water resource projects, I would argue that we cannot afford to continue to be reactive. We must fundamentally reform this nation's water resources program in order to be responsive to the urgency of the threats we face and nimble enough to prevent impediments on our nation's waterways that obstruct commerce on the maritime transportation system.

### **First, Do No Harm**

Following Hurricane Katrina, the State of Louisiana made fundamental reforms in our water resources program. We restructured state government and consolidated virtually all water resource missions into a new coastal office, the Coastal Protection and Restoration Authority. The governor and Legislature have entrusted the CPRA with billions of dollars in hurricane protection, flood control, non-structural and coastal restoration efforts. We also recently completed a new comprehensive master plan for coastal Louisiana that establishes a clear, prioritized, science-based vision for the future of our coastal area. Though the plan conveys a number of difficult decisions, this plan won the support of the oil and gas community, environmental groups, federal resource agencies and the unanimous support of the Louisiana Legislature.

Despite the exponential increases in state investments and our aggressive streamlining efforts, the unsustainable resource management practices of the Corps of Engineers continue to thwart our efforts. Today, the U.S. Army Corps of Engineers is the cause of the greatest rate of wetlands loss in the nation. That's right -- the federal agency that is responsible for wetlands protection is the source of the majority of the 1900 square miles of coastal wetlands that we have lost in Louisiana. The state continues to lose up to 20 square miles of coastal wetlands each year. Prior to the construction of levees on the lower Mississippi River system, the State of Louisiana was actually growing an estimated 0.75 square miles a

year. As the Corps itself concedes,<sup>4</sup> one of the primary causes of coastal land loss in Louisiana is due to the construction of levees on the lower Mississippi River which have starved coastal wetlands from a crucial supply of sediment for decades. The Corps also refuses to limit navigation channels to their authorized dimensions. On the Gulf Intracoastal Waterway, for example, lack of bank stabilization has resulted in thousands of acres of private property being inundated and has allowed saltwater intrusion in many areas. The Corps' continued operations and maintenance practices on navigation channels and refusal to beneficially use their dredged material is one of the greatest ongoing threats to our state.

The Corps recently altered their wetlands mitigation methodologies in the New Orleans district to a Modified Charleston Method that triples mitigation requirements upon private citizens and levee districts in some cases. Meanwhile, the Corps has failed to carry out a single mitigation project for the extraordinary loss caused by their own actions and exempted themselves from complying with the new methodology for the post-Katrina work. The Corps has even annually ignored Louisiana's inconsistency determination under the Coastal Zone Management Act and refused to participate in mediation to address their unsustainable natural resource practices. Until the Corps is held to the same standard as anyone else in regard to mitigation requirements and respect of private property, the future of many areas of south Louisiana are in question.

Additionally, when non-federal entities, such as the State, have attempted to provide their own mitigation efforts to address damages from navigation channels by building sediment diversions off of these channels to support the sediment-starved coastal wetlands, the Corps has responded by arguing that the State must then dredge the river sediments that are deposited by natural water flow near the diversion. Thus the Corps has devised a brilliant strategy for supplementing their own operations and maintenance budget by siphoning money from these ecosystem restoration efforts (for diversions) to dredge navigation channels. The preposterous result of this strategy is that the Corps is demanding that the State mitigate for its mitigation projects. In reality such activities should clearly be funded from the Corps' operations and maintenance budget.

### **Delays, Costs and Lack of Accountability**

While the Corps of Engineers must be commended for their relative expediency in conducting repairs and revisions to certain components of the Greater New Orleans Hurricane Protection System and praised for the performance of the system during Hurricane Isaac, a stark contrast lies in areas outside this levee system. In fact, an estimated 90 percent of the flooding that occurred as a result of Hurricane Isaac could have been prevented had the command simply completed authorized tasks. Let me repeat that for emphasis: an estimated 90 percent of the flooding that occurred as a result of Hurricane Isaac could have been prevented had the Corps simply completed tasks previously authorized by Congress,

---

<sup>4</sup> "Another contributing factor in coastal land loss is the lack of sediment introduction by the Mississippi River to the neighboring ecosystems. Man-made structures along the river have resulted in a significant decrease in the natural introduction of river water to the neighboring ecosystems, which historically helped nourish healthy wetlands. Sediment deposits formed natural ridges and barrier islands that serve as south Louisiana's first line of defense against storm surge." Army Corps of Engineers Website, "Louisiana Coastal Area Ecosystem Restoration Study (LCA), available at <http://www.mvn.usace.army.mil/environmental/lca.asp>.

authorizations that the Corps either ignored or failed to complete. We can cite many examples, such as the West Shore project, first authorized for project development in 1971. The project has been in the Corps' "study phase" for over 40 years. Had the project been constructed thousands of homes would not have flooded and flooding of Interstate 10 and U.S. Highway 61 could have been prevented.

Several hundred million dollars for flood protection efforts in Plaquemines Parish have sat in Corps' construction appropriation accounts dating back to 2005 and 2006 with virtually no construction activities since that time. Less than six months ago many areas of Plaquemines Parish were also flooded by Hurricane Isaac. Another example includes lower Jefferson Parish. In this case, Congress authorized the consolidation and construction of several Corps flood protection projects (Section 205 projects) in the Lafitte area in WRDA 07. To date, the Corps has not taken any action to protect these residents despite repetitive flooding over the last several years -- each requiring millions of dollars in FEMA aid. Dewatering efforts in Lafitte continued for several days following Hurricane Isaac.

Every single parish in South Louisiana has an ongoing, bad example of Corps' delays and sky-rocketing costs. The southwest study (Calcasieu, Cameron and Vermilion parishes) is on track to be five years late in developing a final plan for coastal restoration and hurricane protection. The south-central study (Iberia, St. Mary and St. Martin parishes) was authorized in 2007 and has not begun. The lower Atchafalaya River Reevaluation report was completed nearly 10 years ago, but has not emerged from the Corps' processes. An estimated \$12 million dollars and 12 years were expended on the Donaldsonville to the Gulf study before the Corps determined to abandon the effort last year -- leaving a huge void in areas of St. Charles, Lafourche, St. John parishes and others.

Another example is the Mississippi River Gulf Outlet (MRGO) closure and restoration report, which was required under federal law to be submitted to Congress by May of 2008. Four years later, the report was released with the Corps threatening to abandon the congressionally-authorized project without a \$1 billion "voluntary contribution" by the State of Louisiana to the project. The Louisiana Protection and Restoration analysis and design was due to Congress in late 2007 pursuant to federal law. The Corps provided a response to Congress in 2010 that failed to answer a single question posed by Congress. Consequently, the report costs ballooned from the original estimate of \$8 million to over \$26 million.

In fact, the Corps has failed to comply with a single statutory deadline on any work in Louisiana since Hurricanes Katrina and Rita over seven years ago. Over 15 deadlines required under federal law on various proactive plans, reports and projects have been ignored by the command with zero accountability. Meanwhile, our state continues to flood and erode while FEMA spends billions of dollars reacting to hurricanes and flooding disasters. Numerous other misinterpretations of the law and regulatory obstacles have impeded state and local efforts to protect our citizens and restore our coast.

### **Unilateral PPAs**

In 2007, Congress changed the name of the Project Cooperation Agreements to Project Partnership Agreements, or PPAs. Under the current terms of the Corps' Project Partnership Agreements, the Corps retains "exclusive control" over key terms of these agreements, in addition to general immunity, while

the non-federal sponsor's role is largely reduced to that of a bystander -- hardly that of a "partner". This prevents our ability to help keep projects on schedule and on budget.

It has also allowed the Corps to attempt to make unilateral determinations as to when a project segment is "complete" and becomes the responsibility of the non-federal sponsor.

The Corps' project completion determination process whereby once the Corps releases its contractor, it then tries to automatically turn the project segment over to the non-federal sponsor to trigger operation, maintenance, repair, replacement, and rehabilitation responsibilities for the project. But let me be clear, the standard and procedure for releasing a contractor under a construction contract is entirely separate and distinct from the standard and procedure for turning a project over to a non-federal sponsor. There is little to no correlation between a project segment established for contracting purposes and those related to actual project performance. Under this flawed scenario, there is no guarantee that the overall project will meet objectives once the Corps turns over final segments or the completed project.

For example, the Corps of Engineers has recently determined that it will transfer operation and maintenance of small segments of the New Orleans Hurricane Protection System to the CPRA and levee districts rather than waiting for completion of actual projects or polders. This is in light of the fact that, notwithstanding the "internationally acclaimed \$10 billion effort" to rebuild the New Orleans levee system after Katrina, the Corps' recent inventory of flood control systems has given this system a near-failing rating of "poor."<sup>5</sup> In other recent examples, the Corps attempted to hand over project segments to the state then took them back to address engineering and seepage issues.

Further, attempting to coordinate the management of adjacent polder or project segments of a levee or floodwall during a severe weather event by different organizations only creates more obstacles to effective and efficient protection of communities. This Corps policy is a dangerous precedent that could be expanded to other areas of the country. Congress should provide strict guidance to the Corps on the transfer of responsibility for completed projects that are designed holistically to provide independent function or utility to ensure consistent management of protection infrastructure.

Furthermore, the Corps refuses to provide terms in the PPAs that would give non-federal sponsors the ability to audit the Corps in the same manner that the Corps has the ability to audit the local sponsors. In particular, the Corp contracts contain numerous provisions that allow them review the items that the State submits for crediting and have wide discretion to reject items for credit which the Corps determines are not "reasonable" expenses. Non-federal sponsors have no such rights, including even the simple right to audit the Corps expenses. The Corps has repeatedly indicated such non-federal sponsor auditing is not permitted under the Corps' "long standing policy" to prohibit auditing of their records and more particularly, to exclude the local sponsor from reviewing the "reasonableness and

---

<sup>5</sup> Mark Schleifstein, The Times Picayune, Aug. 29, 2011, available at [http://www.nola.com/environment/index.ssf/2011/08/new\\_orleans\\_levees\\_get\\_a\\_near-.html](http://www.nola.com/environment/index.ssf/2011/08/new_orleans_levees_get_a_near-.html).

allowability” of their expenses. While the Corps has also suggested such auditing and review would violate the appropriations and appointments clauses of the U.S. Constitution because it would involve non-federal entities in matters of federal appropriations, the Corps has even rejected suggested PPA provisions that would not allow the non-federal sponsor to prohibit project expenditures but simply allow audits to determine the reasonableness, allocability, and allowability of the costs, in which the non-federal sponsor typically shares 35% of the costs. Nonetheless, auditing provisions are allowed in cooperative agreements with other federal agencies who partner with the State of Louisiana on other restoration efforts.<sup>6</sup> Such review would provide an additional check on cost and time overruns by the Corps on projects. Congress should therefore require the Corps to provide local sponsors the ability to review and audit the Corps expenses.

### **Crediting**

Likewise, the Corps should be required to clarify its crediting procedures which should encourage non-federal partners to work with the Corps to fulfill the goals of federally authorized water resource development projects. Specifically, Congress should clarify that crediting for in-kind contributions by a non-Federal sponsor which are integral to a project and eligible for credit should be allowed for work performed both *before* and *after* the signing of a PPA. First, if a non-federal sponsor is prevented from obtaining credit for work on projects prior to the execution of a PPA, this could either divest a non-federal sponsor from reimbursement for work that should rightly be credited simply because it is performed early or could increase delays in the project process while the sponsor waits for credit eligibility. Second, because it is often the case that a majority of the non-federal sponsor’s work occurs after the signing of a PPA, if such work is not credited the costs for the non-federal sponsor could become prohibitively high. It is also important that Congress clarify that credits may be transferred between projects so that non-federal parties will be encouraged to maximize their efforts to support the Corps’ work and to acknowledge their contributions in doing so. The goal of clarifying crediting parameters is essential to facilitating construction that is urgently needed for these projects in a manner that is fair to all parties.

### **Conclusion**

We are here today because it is clear that there are numerous issues which need to be addressed with regard to the Corps’ performance which have not been fixed in the years since Hurricane Katrina brought these issues to the forefront of national attention. If we do not take action to fix these problems, this would amount to an admission that the process is working – which it clearly is not. If the Corps’ process works, Congress should impose it upon every other federal agency. In fact, no other agency employs such a bureaucratic approach to project development and implementation.

---

<sup>6</sup> Various agreements with NRCS, USGS, EPA and USFWS contain the following provisions under articles usually entitled “State Review of Records”: “CPRA shall have the right to conduct an audit, when appropriate, of [federal agency]’s records for the Project to ascertain the reasonableness and allowability of its costs for inclusion as credit against the federal share of Project costs.”

The Corps must be forced to comply with existing laws rather than allowing the tail to wag the dog -- the Corps attorneys repeatedly thwarting the intent of Congress and inventing new legal obstacles that ostensibly require some "legal fix" in a future water resources act. Resolution to crediting, clarifying conditions for transfer of completed projects or polders, accountability to deadlines, 902 fixes, levee certification, vegetation policy, putting non-federal sponsors on a level playing field, auditing project costs and other fixes are certainly important, but even the cumulative benefit of these issues could be comparable to putting lipstick on a pig. The reality is that the entire process is fatally flawed. These incremental reforms will never put the Corps of Engineers on a trajectory to eliminate the backlog and perform efficiently.

The next Water Resources Development Act should:

- 1) Include programmatic authority for water resources projects that meet certain national benefits related to economic, ecological, loss prevention, National Flood Insurance Program liability reduction and lower Stafford Act liability. Billions of dollars in projects that fail to meet the criteria should be eliminated from the backlog.
- 2) A project development and implementation process that encourages rather than discourages adaptive management to provide for the greatest efficacy of project performance.
- 3) A predictable, dedicated revenue stream should be established based upon a certain estimated reduction in liability to the Stafford Act/Disaster Relief Fund and the National Flood Insurance Program. Other investments like pre-disaster mitigation and hazard mitigation grant program funds should be coordinated to address highest priority investments. Wetlands mitigation funds should be pooled to achieve greater net benefits. Potential partnerships with private insurers, mitigation bankers and other ecological credits should be considered.
- 4) Require the Corps to mitigate for wetlands losses and encroachment on private property (embankment stabilization) just as is required of everyone else. The Corps must first do no harm to our sustainability.
- 5) Dedicate the Harbor Maintenance Trust Fund for navigation and beneficial use purposes. Our navigation channels are the most efficient means of transportation in the nation. We need to do all we can to ensure authorized channel dimensions.
- 6) Establish a true partnership between the Corps and non-federal partners rather than relegating states and local governments to bystander status.
- 7) Hold the Corps accountable to project and actuarial milestones that reduce risk/liability and improve community, economic and ecological resilience.
- 8) Establish a separate Corps administrative fund that transparently shows the Corps administrative costs and eliminates the current process of billing project and study funding. The current practice creates an incentive for the Corps to perpetually keep a project in study or construction phase in order

to continue billing staff time and expenses to a project. Project completion rather than infinite studying should be incentivized.

9) Provide incentives for state and local governments and tax incentives for private citizens to reduce risk and liabilities associated with the National Flood Insurance Program, Disaster Relief Fund/Stafford Act and the federal treasury.

Several billion dollars in projects have been identified for implementation. These authorized projects have been subjected to years of studies, planning, public comment, environmental reviews and other processes. In Louisiana, outside of the post -Katrina HPS repairs and revisions virtually no construction funding has been made available for any of these hurricane protection, flood control or coastal restoration programs in the last several years. Stakeholders in these authorized projects often base fundamental decisions upon the efficient and successful implementation of such projects. Decisions such as whether to continue living in a newly flood-prone area, whether to elevate a home, economic development decisions, public infrastructure investments and others are all predicated upon these projects. The uncertainty and unpredictability associated with a project in limbo could be even more dangerous than not providing protection or restoration at all. Our citizens deserve some predictability or certainty on project schedules.

The fact of the matter is that the Corps' actions to impede state and local efforts, project inaction and their hypocritical position on wetlands mitigation do not serve to save the federal government money or better protect the public. In fact, they actually expose the federal government to greater Stafford Act liabilities by increasing the probability of homes flooding, of more families being displaced, a greater number of businesses being destroyed, adversely affecting employment opportunities, causing a declining ecosystem and reducing economic activity through business interruption. Further, the Corps' failure to properly maintain the navigation channels that it has constructed through Louisiana's fragile wetlands is generating millions, if not billions of dollars in costs for the state. Common sense, which the American people are more swiftly demanding of our leaders, should lead the Corps and the federal government to take preventative measures to prevent billions of dollars in damages before future storms have the opportunity to create them.

The arrogance and complete disregard for Congress and federal law by the Corps of Engineers must stop. In recent years, a number of new military leaders within the Corps appear to recognize the fundamental problems within the command. While these developments are cause for optimism, the systemic nature of these problems and the bureaucratic resistance to change will require the direct involvement of the White House and Congress to solve.

Again, thank you for this opportunity to testify today. I look forward to your questions.