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DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20314

REPLY TO
ATTENTION OF:

DAEN-CWZ-B

Aug. 29
26 August 1974

MEMORANDUM FOR: MR. NORMAN ROSS, ASSISTANT DIRECTOR
DOMESTIC COUNCIL

SUBJECT: Exchange of lands at Whitney Lake, Texas

1. Reference is made to our previous Memorandum, dated 19 July 1974, which inclosed a Fact Sheet.
2. In response to your request for further information, I am providing a Supplemental Fact Sheet on the proposed exchange of lands at Whitney Lake, including the procedure for disposal of lands that are excess to the requirements of a water resource development project, and a copy of the reply of the Chief of our Real Estate Directorate to Congressman Poage.
3. As the Supplemental Fact Sheet explains, the Corps has been meeting with representatives of the General Services Administration in an effort to develop criteria for land use surveys of multi-purpose water resources development projects under Executive Order 11724, and it is anticipated that such surveys will be conducted by the Corps commencing in 1975. Presently, there are no known excess lands at Whitney Lake and there can be no assurance that, as a result of a survey of this project, lands will be made available for disposal.
4. If I can be of any further assistance, please call.

FOR THE CHIEF OF ENGINEERS:

2 Incl
As stated

KENNETH E. MCINTYRE
Brigadier General, USA
Deputy Director of Civil Works



SUPPLEMENTAL FACT SHEET

26 August 1974

SUBJECT: Request for Exchange of Lands at Whitney Lake, Texas

1. Further consideration has been given to the proposal of Honorable C. K. Word, Jr., County Judge of Bosque County, Texas, relative to the exchange of 140 acres of Government-owned land in Hill County, and part of Whitney Lake Project, Texas, for 94 acres of private land in Bosque County, Texas, owned by the Estate of C. D. Johns. The proposed exchange should not be consummated since the 140 acres of Government-owned land are not excess to project requirements and the privately-owned 94 acres do not meet the criteria for acquisition and are not required for the project. It was further determined that there are no lands of the Steiner Ranch, which are adjacent to the existing Steiner Valley Park Public Use Area, that can be exchanged for Government-owned land since lands of the Steiner Ranch also do not meet the criteria for acquisition for this project and are not required.

2. Executive Order 11724, dated 25 June 1973, entitled "Federal Property Council" is designed to identify properties which are not utilized, are underutilized or are not being put to optimum use. The Corps and other Federal agencies have been meeting with representatives of the General Services Administration to develop criteria for land use surveys of reservoir projects to be performed under the provisions of Executive Order 11724. It is anticipated that such surveys, covering the Corps' multi-purpose water resources projects, will be conducted by the Corps beginning in 1975. In establishing the schedule for the survey program, Whitney Lake will be one of the initial projects scheduled for survey.

3. If lands at reservoir projects are determined excess, the following is the procedure for disposing of the property:

a. Property that has been determined excess to a water resource development project will be screened by the appropriate Division or District Engineer to determine if any of the elements or departments of the Department of Defense have a further requirement for the property.

b. When screening discloses a requirement therefor, action is taken to reassign or transfer the property to the requesting element or department within the Department of Defense. If the screening of property reveals no further Department of Defense requirement and the estimated fair market value of the property is less than \$1,000, the Department of the Army may dispose of the property by public sale.

c. If screening does not indicate any further need for the property and the estimated fair market value of such property is in excess of \$1,000, the property is reported to the General Services Administration (GSA),



for further Federal utilization or disposal pursuant to the Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 377). The GSA advises other executive agencies of the availability of the excess property and, if there is no interest, GSA will determine the property surplus and notify appropriate offices of states, counties and cities of the availability of the property. If no request for the property is received, the property will be disposed of by public sale (41 CFR 101-47.3).

d. Surplus real property sales for private use may be negotiated under the aforementioned Act (40 U.S.C. 484(e)(3)), where the character or condition of the property or unusual circumstances make it impractical to advertise publicly for competitive bids and the fair market value of the property and other satisfactory terms of disposal can be obtained by negotiation.

Also, if the estimated value of the property exceeds \$1,000, an explanatory statement of the circumstances of the disposal by negotiation must be submitted to the Committees on Government Operations of the Senate and House of Representatives in advance of each such disposal (41 CFR 101-47.304-12).



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As stated

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Deputy Director of Civil Works



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

file

CEQ?

SEP 25 1974

Dear Frank:

As we discussed yesterday, I believe that it would be to the President's advantage to include an environmental dimension in the rationale for any recission and deferral message on Corps of Engineers and Bureau of Reclamation public works projects. I have attached a package covering 20 public works projects that we believe are environmentally, as well as economically, questionable.

I am sure that most, if not all, of the projects identified in the attachment are under consideration by your people for the recission/deferral message. In that case, it would seem to be prudent to take advantage of the added bonus arising out of the environmental aspects of these projects.

The attached package has two types of summaries. First is a single sheet displaying all 20 projects and pertinent information. Following that are single page summaries for each project.

Projects were selected for this list based on a combination of the following criteria:

1. Major adverse environmental impacts: All projects on the list involve the destruction of several thousand acres of prime wildlife habitat, wetlands, and/or several miles of free-flowing rivers or streams presently inhabited by resident or migratory fish and wildlife. These same areas have usually provided important recreational, scientific, and/or cultural benefits to local inhabitants, campers, hikers, or visitors, with little or no maintenance costs.



Other major adverse environmental impacts often include the elimination of large areas of commercially productive forest or agricultural land.

2. Questionable economic justification for the project:

All projects on the list raise questions about the accuracy of the net benefits claimed for the project and/or the local or regional need for such benefits (flood control, irrigation, improved navigation, etc.) when weighed against the apparent environmental costs of achieving such benefits.

Note that most of the projects have a low benefit/cost ratio (less than 2.0). In addition, low discount rates have been applied to the determination of average annual benefits -- the rate was almost always between 2 7/8 and 3 1/2 percent, instead of a rate of 6 to 10 percent which would be more appropriate to current inflation and expected return on investments. Use of the higher discount rate would put most of the 20 projects below the break-even point.

3. Concern or criticisms expressed about the project by other Federal agencies, by state and local officials, by environmental groups, and by private citizens: A quantitative measure of this concern has not been attempted on these summary sheets, but highlights are given. We have substantial backup material in the files for each project.

4. Federal funding already committed to the project and the amount estimated to be required in the future to complete the project: Most of these projects are either in the early stages of land acquisition and construction or have not yet gone beyond the planning stage; all of them have some funds appropriated for FY '75 and all the projects will require very substantial Federal funds in the future if they are to be completed.

Some aggregate figures may be useful here: the total of Federal funds appropriated for these 20 projects for this fiscal year is \$180,560,000; the total additional Federal funds required to complete them, without adjusting for current escalating costs is over \$5 billion.



Some projects, which otherwise met the above criteria, have been omitted from this list because they are either too far down the road to completion or they are presently being restudied by the agencies and have no FY '75 appropriation (this was the case with the Tocks Island project -- the only FY '75 appropriation was for a study).

We are continuing to identify projects which meet the above criteria and will be able to provide such additional information before too long if you believe it would be useful.

CEQ, together with OMB, conducted a similar review of public works projects in 1972. At that time it was proposed that Federal funding of candidate projects would be suspended pending a one-year review by appropriate state and local officials and a redetermination of need by the Governors of the states in which projects were located. After having weighed the Governors' recommendations, the President would reach a final decision on whether or not to resume Federal funding. Although the 1972 proposal was not carried forward, a procedure similar to the one I have just described might be advisable, assuming that it could be integrated into the requirements of the new Budget Reform Act.

My staff is ready to assist yours in working out the details on this matter. I look forward to hearing from you.

Sincerely,



Russell W. Peterson
Chairman

Mr. Frank G. Zarb
Associate Director
Natural Resources, Energy,
and Science
Office of Management and Budget
Washington, D.C. 20503

Attachment



	Type and Purpose of Project	Latest EIS	FY '73 Appropriation (\$/10 ³)	Federal Funds to Complete After 1973 (\$/10 ³)	B/C Ratio	Adverse Impacts, Other Comments
Missouri-Tombigbee (Miss.) Corps	Navigation project: canal, locks, dams, channel development for improved shipping.	Final EIS 26 Apr. '71	217,900	\$548,248	1.6	Loss of 300 miles of free-flowing stream and of over 40,000 acres of forest agricultural land and wildlife habitat and scenic recreation areas.
Al Arizona (ct onna) BuRec	Diversion and storage of Colorado River water for irrigation and water supply.	Final 26 Sep '72	28,000	1,020,476	1.3	Inundation of nearly 20,000 acres of riparian Indian land and wildlife habitat; increased salinity in Colorado River; excessive water costs.
River Basin (sas) Corps	Flood control and improved drainage of river bottomlands	Revised draft 20 Dec '73	1,300	64,885	4.0	Project will induce clearing of up to 170,000 acres of productive hardwood forest, will destroy excellent fish and waterfowl stream and wetland habitat, degrade water quality.
on-Folsom South (ifornia) BuRec	Multipurpose dam, reservoir, and canal for water supply, power, irrigation, etc.	Final 13 Nov '72 supplement 6 Aug '73	12,950	527,349	0.5(?)	Elimination of 43 miles of river. 17 archeological sites, 22 historic sites, reduced flows will harm downstream fish, wildlife and aesthetic values.
Melones Lake (ifornia) Corps	Multipurpose reservoir on Stanislaus River for flood control, irrigation, recreation, development.	Final 12 Jul '72	15,500	126,988	1.6	Elimination of present popular recreation activities including white-water canoeing, riverside hiking, fishing, caving; reduction of trout and salmon fisheries.
al and South (ida) Corps	Multipurpose, including flood control, water supply, recreation.	Draft 21 Jun '71 Partial final 8 Nov '73	4,400	258,597	5.2	Loss of native vegetation and wildlife, increased transport of pollutants into Everglades National Park, flooding in and around Lake Okechobee.
and Dam #26 (nois) Corps	Navigation improvement by replacing older, smaller locks and dams.	Final 2 Jul '74	22,000	352,742	1.6	Would create pressures to deepen navigation channel, with resultant dredge spoil problems. Wisc. and Minnesota oppose.
nger (Oakley) Lake (nois) Corps	Multipurpose reservoir on Sangamon River for flood control, water, recreation.	Draft 18 Dec '73	300	82,539	1.06	7,000 acres inundated; disruption of Allerton Park by increased flooding; loss of locally scarce forest; increased agricultural drainage problems.
Pine Lake (ana) Corps	Multipurpose lake for flood control and recreation.	Draft 3 Jul '74	500	29,836	1.5	Destruction of scenic natural areas, floodplain forest and farmland, archeologic and historic sites; eutrophication problems.
River Lake (tucky) Corps	Multipurpose project for flood control, water supply, recreation.	Final 12 July '74	500	25,461	1.7	Destruction of scenic Red River Gorge containing rare and endangered plants and animals; reduction of present recreational and educational opportunities.
Mississippi River (center) (ssiana) Corps	Flood control of Mississippi River, channelization and levee improvement.	Draft due Dec '74	4,000	413,616	17.8(?)	Disruption of largest single inland wetland ecosystem in U.S.; adverse downstream effects due to flooding and sedimentation.
Mississippi River, (e Gene, Boeuf, Black (issiana) Corps	Expansion of existing navigation channels for local industries.	Final 15 Jan '74	4,300	6,077	1.1	Disruption of productive coastal marsh and wetland--adverse effects on commercial fisheries, wildlife water quality.
Ray-Lincoln School (ine) Corps	hydroelectric power project, also flood control and recreation.	None yet prepared	800	353,046	2.1 (est.)	Elimination of over 80,000 acres of timber-producing forest and big-game wildlife habitat, reduction of trout fishing.
Forest Park Lake (ssouri) Corps	Multipurpose lake on Meramec River for recreation, flood control, etc.	Final 26 Feb '71	4,600	74,612	1.3	Loss of present diverse natural recreation values following inundation of 12,600 acres of bottomlands and 47 miles of free-flowing streams.
Platte Mid-State (ssouri) BuRec	Three reservoirs to impound Platte River water for irrigation.	No draft yet.	449	103,043	1.2 (1967)	Alteration of 60 miles of river, damaging important rare waterfowl habitat and river fisheries.
Platte Unit (ssouri) BuRec	Dam and reservoir to store water for irrigation, provide recreation.	Final 22 Sep '72	550	111,714	1.2	Inundation of 6,300 acres of farm and ranchland, 19 miles of scenic river and tributaries; further reduction of several rare bird species.
Missouri Diversion (Stage I) (orth Dakota) BuRec	Very large irrigation project, diverting Missouri River via dam and canals.	Final 11 Jan '74	13,855	275,103	1.67	At least 73,000 acres of farm and ranchland to be taken for project purposes; large energy requirements, increased saline return flows to Canada and S. Dakota.
Missouri Diversion (Stage II) (orth Dakota) BuRec	Irrigation of farmland further diversion of Missouri River.	Final 17 Dec '73	5,535	303,360	1.28	Conversion of over 90,000 acres of presently productive land, destruction of 10,000 acres of wetlands, channeling 120 miles of Missouri River.
Missouri River (ssouri) TVA	Two dams and reservoirs to provide improved water supply and recreation.	Final 8 May '74	13,000	51,358	1.3	Obstruction and alteration of largest free-flowing stream in State; flooding of scenic, natural and recreational areas; relocation of 100,000 people.
Missouri River Project (ssouri) BuRec	Multipurpose project for irrigation, water supply, power production, etc.	Final 2 Aug '73	19,121	236,009	1.5 (1971)	Flooding of 17,000 acres of farm and ranchland, destruction of 10,000 acres of marsh and wetlands, habitat; downstream flooding.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

September 1974

TWENTY WATER RESOURCES PROJECTS WITH MAJOR
ADVERSE ENVIRONMENTAL IMPACTS

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Project: Tennessee-Tombigbee Waterway

State(s): Alabama and Mississippi

Agency: Corps of Engineers

EIS Status: draft 15 January 1971

final 26 April 1971

Total estimated
Federal cost: \$623,000,000

Benefit/cost ratio: 1.6

FY'75 appropriation: \$37,900,000 (\$7,900,000 over budget)

Federal funds needed to complete project after 1975: \$543,248,000

Project Description:

This is a navigation project to construct a canal linking the Tennessee and Tombigbee Rivers, with associated channel development and installation of locks and dams. The overall project will extend 253 miles, providing a more direct waterway between the eastern Gulf Coast and the mid-continental United States, to facilitate shipping of coal and other materials. The project will require 70,000 acres of land which is presently in forest and agricultural production. About 40,000 acres of water surface will be created by the project, and 190 miles of tributary streams and 140 miles of the main stem of the Tombigbee will be permanently impounded.

Adverse Environmental Impacts:

Major impacts include loss of over 300 miles of free-flowing stream and thousands of acres of forest and wildlife habitat; loss of cropland, reduction of fisheries resources, degradation of water quality, loss of wild and scenic areas on the Tombigbee River; relocation of approximately 230 families, loss of archeological and biological research sites. The project will require moving and disposal of over 250 million cubic yards of earth, creating major alterations in topography and as yet unevaluated changes in land use.

Additional Comments:

Improved rail transportation is the basic alternative available. The project has had strong congressional support; there have been critical comments from Alabama and Tennessee state agencies and from the EPA regional offices. The Environmental Defense Fund (EDF) and others have sought to enjoin the project and did so for nearly a year but a permanent injunction has been denied. Construction was initiated on 12 December 1972. Present national concern over energy shortages and effects of strip-mining for coal raise questions about the indirect extension of Federal subsidy of strip-mining for export which were not addressed; nor was the possible adverse impact of competition from a new government-built and maintained transportation route.

3
Project: Central Arizona Project

State(s): Arizona

Agency: Bureau of Reclamation

EIS Status: draft

final 26 Sept. 1972

Total estimated
Federal cost: \$1,050,000,000

Benefit/cost ratio: 1.3

FY'75 appropriation: \$28,000,000

Federal funds needed to complete project after 1975: \$1,020,476,000

Project Description:

The project would divert Colorado River water via a system of dams, aqueducts, and pumping stations nearly 400 miles long to metropolitan areas of Phoenix and Tucson for municipal, industrial, and agricultural uses. Over 18,000 acres of land and 50 miles of streams will be inundated.

Adverse Environmental Impacts:

Approximately 54,000 acres of land would be converted to the project. Reservoirs and other water impoundments would flood National Forest and Indian lands. Additional impacts include loss of stream fishery, increased river salinity (with possible repercussions from Mexico), disruption of present wildlife and recreation areas, and extensive unquantified secondary effects.

Additional Comments:

This water supply will be highly saline, and may cost city users 5-10 times what they pay now and 4-5 times more per acre-foot than irrigation users. Local surface and ground water is abundant according to USGS, but an overall state water plan is needed. EPA and others have commented on salinity problems; the Sierra Club actively opposes the project.



Project: Cache River Basin

State(s): Arkansas

Agency: Corps of Engineers

EIS Status: draft

final 8 Dec. '70 (project); 25 Sept. '72 (mitigation plan)
revised draft: 20 Dec. 1973

Total estimated

Federal cost: \$68,700,000

Benefit/cost ratio: 4.0

FY'75 appropriation: \$1,300,000 (\$1,000,000 over budget)

Federal funds needed to complete project after 1975: \$64,885,000

Project Description:

The proposed project consists of 232 miles of channel enlargement and realignment in the Cache River and tributaries including Bayou DeView in order to promote drainage and reduce flooding in about 790,000 acres of adjacent bottomlands. The project will result in the clearing of up to 170,000 acres of delta hardwood forest, and as a mitigation measure for fish and wildlife the Corps has sought additional congressional authorization for purchase of 30,000 acres in the basin.

Adverse Environmental Impacts:

The project will hasten clearing of one of the last remaining naturally productive hardwood forests in Eastern Arkansas. It will destroy presently excellent fish and waterfowl stream and wetland habitat including much of the most important wintering area for mallard ducks in North America. EPA has questioned the size and suitability of the mitigation measures and has predicted further degradation in water quality as a result of the project.

Additional Comments:

Numerous local, state, and national conservation organizations are opposing the project. Gov. Bumpers and the State Game and Fish Commission consider adequate mitigation measures to be essential. The project is presently enjoined under a court order obtained in 1973 by the Environmental Defense Fund. The State of Arkansas and seven other states have filed pleadings as amici in support of the the plaintiffs.



Project: Auburn-Folsom South Unit

State(s): California

Agency: Bureau of Reclamation

EIS Status: draft _____

final 13 Nov. 1972; (supplement filed 6 Aug. 1973)

Total estimated
Federal cost: \$657,676,000

Benefit/cost ratio: 0.5 (?)

FY'75 appropriation: \$12,950,000 (\$4,450,000 over budget)

Federal funds needed to complete project after 1975: \$527,349,000

Project Description:

The project is a multipurpose dam, reservoir, powerplant, and canal for water supply, power, flood control, irrigation and recreation. The project will inundate 10,000 acres of wildlife habitat and convert a total of 43,473 acres to project purposes.

Adverse Environmental Impacts:

The project will eliminate 43 miles of free-flowing river, 17 archeological sites and 22 historic sites. The reservoir will be subject to drawdowns of as much as 91 feet. The project will reduce downstream interim flows which will adversely affect fish, wildlife, and aesthetic values in the Bay-Delta area.

Additional Comments:

The draft EIS was heavily criticized by government agencies and private commenters. Claimed benefits from water supply and irrigation are dubious and so is repayment of reimbursable costs by beneficiaries.



Project: New Malones Lake

State(s): California

Agency: Corps of Engineers

EIS Status: draft
final 17 July 1972

Total estimated
Federal cost: \$225,000,000

Benefit/cost ratio: 1.6

FY'75 appropriation: \$15,500,000

Federal funds needed to complete project after 1975: \$126,988,000

Project Description:

The proposed multipurpose reservoir on the famed Stanislaus River would provide flood control, irrigation, recreation, and area development. It would permanently flood about 10,000 acres and 16 miles of free-flowing river; total land requirements are 25,059 acres. BuRec would manage the reservoir.

Adverse Environmental Impacts:

There are presently major recreational activities in and near the area, including white-water boating, riverside hiking, fishing, and caving which would be lost. Trout and salmon fisheries would be reduced and archeological, historical, and scenic sites would be inundated.

Additional Comments:

The California State Water Resources Control Board has barred filling the reservoir because of lack of demonstrated need for the water; there is a dispute over flow maintenance to the San Francisco Bay-Delta if water is to be diverted for irrigation. Congressmen McCloskey and Waldie are not in favor of the project; Governor Regan and Senator Tunney have urged mitigation measures which have not been adopted. EDF and the Sierra Club have sued unsuccessfully, however, a citizens group has gathered half a million signatures to stop the proposal by initiative referendum in the November election.



Project: Central and Southern Florida

State(s): Florida

Agency: Corps of Engineers

EIS Status: draft 21 June 1971 (partial revised draft 15 Dec. 1972)
final 8 Nov. 1973 on Okechobee section only

Total estimated
Federal cost: \$469,000,000

Benefit/cost ratio: 5.2

FY'75 appropriation: \$4,400,000

Federal funds needed to complete project after 1975: \$258,597,000

Project Description:

A project authorized for flood control, water supply, recreation and navigation -- the overall project covers 15,200 square miles in all or parts of 18 counties. The project is divided into four areas and includes levees, canals, locks and extensive channels.

Adverse Environmental Impacts:

There will be considerable loss of native wildlife due to widespread drainage and transport of fertilizers, pesticides and other pollutants into Everglades National Park. Lake Okechobee will be raised 1.5 feet and will inundate several existing adjacent recreation areas.

Additional Comments:

CEQ, Dept. of Interior and others have expressed considerable reservations over the project's potentially widespread environmental disruptions. Some of the ongoing work has already been suspended at the request of CEQ and Governor Askew.



Project: Locks and Dam #26

State(s): Illinois

Agency: Corps of Engineers

EIS Status: draft

final 2 July 1974

Total estimated
Federal cost: \$382,000,000

Benefit/cost ratio: 1.6 (1973)

FY'75 appropriation: \$22,000,000

Federal funds needed to complete project after 1975: \$352,742,000

Project Description:

The project is described as the replacement of existing Locks and Dam #26 on the Mississippi River at river mile 200 above the Ohio River, which have become "a significant bottleneck in the total Mississippi River navigation system." The twin locks and dam would inundate about 600 acres of bottomland habitats.

Adverse Environmental Impacts:

The project may result in extreme pressures to deepen the upstream navigation channel for increased river traffic, with resultant widespread adverse effects including dredging and spoil disposal problems, increased water pollution, loss of fish and wildlife, and secondary demographic and economic dislocations.

Additional Comments:

Several environmental groups, a railroad traffic association, and Interior have strongly criticized the final EIS on the above grounds, urging that the project be reconsidered as part of a master plan and that transportation alternatives be considered. State officials in Wisconsin and Minnesota are concerned about the project's implications.



Project: William L. Springer (formerly Oakley) Lake

State(s): Illinois

Agency: Corps of Engineers

EIS status: draft 18 December 1973

final _____

Total estimated

Federal cost: \$88,700,000

Benefit/cost ratio: 1.06 (in 1972)

FY'75 appropriation: \$300,000 (land acquisition) (not budgeted by Senate)

Federal funds needed to complete project after 1975: \$82,539,000

Project Description:

This is proposed multipurpose reservoir on the Sangamon River to provide flood control, water supply, recreation, and fish and wildlife benefits. The project will require 39,000 acres of which 7,000 will be permanently inundated.

Adverse Environmental Impacts:

The project would increase the depth and duration of flooding in Allerton Park, which contains well-developed bottomland forest and is held in the public trust for research recreation, and as a nature preserve by the University of Illinois. Flood control management would result in increased sedimentation, mud flat development, and bank erosion in the Park and increased drainage problems on agricultural lands, plus loss of over 1/3 of all the forested area within a 65-mile radius of the lake. EPA gave the draft EIS an "unsatisfactory" rating (their lowest).

Additional Comments:

The Environmental Defense Fund has filed suit; the project is also opposed by local citizens and some state officials. Senator Percy proposed money for a study but not for land acquisition (Senate appropriated no money, conference cut House money in half); Senator Stevenson has not yet opposed the project but his Republican opponent George Burditt has urged that the project "be abandoned entirely" and has made this a campaign issue.



Subject: Big Pine LakeAgency: Corps of EngineersState(s): IndianaStatus: draft 3 July 1974final

Total estimated

Federal cost: \$31,200,000Benefit/cost ratio: 1.5'75 appropriation: \$500,000 (not in budget or Senate appropriation)Federal funds needed to complete project after 1975: \$29,836,000

Project Description:

Multipurpose lake for flood control and recreation, located on Big Pine Creek three miles above Wabash River. The project would require 7,230 acres of forest and agricultural land of which 1,126 acres would form the seasonal pool. Seven miles of free-flowing stream with associated notable plant communities and aesthetic features would be lost; an additional 7 or more stream-miles would be periodically flooded.

Diverse Environmental Impacts:

The project would inundate and destroy "some of the most scenic and otherwise unique natural areas in the northwestern portion of Indiana" (EIS p. 11). Considerable floodplain forest and "farmland would be lost to production and archeologic and historical sites... would be altered.... The lake may be eutrophic ... minor valley silt slumping is possible... localized mudflats would occur seasonally." (EIS, p. b).

Additional Comments:

SCS and other agencies and individuals have urged more serious consideration be given to maintaining the area as a natural, scenic recreational site. A number of local and national conservation groups oppose the project; neither Senator Hartke nor Senator Bayh support it.



Project: Red River Lake

Agency: Corps of Engineers

State(s): Kentucky

EIS Status: draft

final 12 July 1974

Total estimated
Federal cost: \$27,600,000

Benefit/cost ratio: 1.7

FY'75 appropriation: \$500,000

(\$300,000 over budget)

Federal funds needed to complete project after 1975: \$25,461,000

Project Description:

Proposed lake is a multipurpose project for flood control, water supply, and recreation. It would control storm runoff from an area of 235 square miles, would require 5,755 acres of land of which 1/4 is part of Daniel Boone National Forest, and would eliminate 15 miles of free-flowing stream and associated ecosystems. Downstream flood damages from the Red, Kentucky, and Ohio Rivers would be reduced.

Adverse Environmental Impacts:

The project would destroy rare and endangered plant and animal species now present in the Red River Gorge and would reduce considerably the present recreational and educational opportunities currently available. It would eliminate agricultural and silvicultural uses of project lands and would induce presently unplanned development.

Additional Comments:

Projected project benefits have been critically questioned. A large number of scientists, conservationists, and local citizens have protested the proposed project. Senator Cook has raised a number of as yet unanswered questions. CEQ has requested that the Army delay action until after completing additional studies, and Secretary Callaway has agreed. The Corps has not contested a restraining order sought by an environmental group to that effect.



Project: Atchafalaya River Basin (center channel)

State(s): Louisiana

Agency: Corps of Engineers

EIS Status: draft Due December 1974

final _____

Total estimated

Federal cost: \$661,000,000

Benefit/cost ratio: 17.8 *

FY'75 appropriation: \$4,000,000

(1,000,000 over budget)

Federal funds needed to complete project after 1975: \$413,616,000

Project Description:

Although no EIS has been released, the project as presently planned would continue channelization of the Atchafalaya River in southern Louisiana to carry more of the anticipated flood flows from the Mississippi River to the Gulf of Mexico, reducing flood crests at Baton Rouge and New Orleans. Floodway levees would also be improved and raised, sediments would be more contained in the channel.

Adverse Environmental Impacts:

The project would seriously disrupt what is presently the largest single wetland habitat in the U.S. The artificial channel would drain associated wetlands and hardwood swamp forests, and would alter the natural nutrient and sediment fluxes which are presently poorly understood. Downstream and estuarine fisheries would be adversely affected; downstream flooding would be increased, particularly in and around Morgan City. Delivery of great quantities of sediment to the lower basin via this channel may require major additional Federal expenditures for maintenance dredging in the lower river basin and bay.

Additional Comments:

* The high benefit/cost ratio is artificial because it does not include the considerable cost of flood relief measures for the town of Morgan City below the project area, nor is it based on adequate studies of the present benefits being derived from the region. Interior and EPA have objected to any action without first completing in-depth baseline biological and hydrologic studies which are now underway. The National Wildlife Federation and other groups have promised litigation. The project badly needs funds for prior comprehensive land and water management studies rather than for precipitous construction and/or court battles.

Project: Atchafalaya River, Bayous Chene, Boeuf and Black

Agency: Corps of Engineers

State(s): Louisiana

EIS Status: draft _____

final 15 Jan. 1974

Total estimated
Federal cost: \$14,700,000

Benefit/cost ratio: 1.1

FY'75 appropriation: \$4,300,000

Federal funds needed to complete project after 1975: \$6,377,000

Project Description:

The project will expand existing navigation channels in the lower Atchafalaya and in Bayous Boeuf and Black. Most of the project benefit will accrue to two companies that build oil and gas exploration and drilling equipment and transport them via these channels to the ocean. Some flood control benefits are also claimed. All work to date (Sept. '74) has been in the lower Atchafalaya.

Adverse Environmental Impacts:

This project if continued will cut through the heart of Louisiana's most productive coastal wetland nursery for shrimp, oysters, menhaden, and other commercial fish and shellfish. Large amounts of dredge spoil would convert much of Louisiana marsh into dry land and would degrade existing water quality. Project completion would preempt most other land and water management options for the Atchafalaya River Basin which are presently being studied by the Department of the Interior and others.

Additional Comments:

The project is basically a Federal subsidy of a private industry; even so the net economic benefits are marginal. Interior and EPA have strongly criticized the project. The National Wildlife Federation has recently obtained an injunction against the marsh dredging pending review under Sec. 404 of the 1972 Water Act of the present spoil disposal site. Probable rejection of this site by EPA will require selection of another less destructive site which will significantly increase project costs. GAO has also questioned the project.



Project: Dickey-Lincoln School Lakes

Agency: Corps of Engineers

State(s): Maine

EIS Status: draft none, yet in preparation
final _____Total estimated
Federal cost: \$356,000,000Benefit/cost ratio: 2.1 (estim.)FY'75 appropriation: \$800,000 (for planning)Federal funds needed to complete project after 1975: \$353,046,000

Project Description:

This proposed project as currently envisioned would provide peak-demand hydroelectric power, flood control, flat-water recreation, and stimulus to area economic development via a pair of dams on the St. John River in northern Maine. The project lakes would back up the St. John and tributaries for more than 50 miles and would inundate nearly 90,000 acres.

Adverse Environmental Impacts:

The project would eliminate over 80,000 acres of timber-producing forest and big-game wildlife habitat, and would ruin prime white-water canoeing and trout-fishing streams. The project's power output is small in itself; it is described as "a foot in the door" for public hydroelectric power and associated regional development.

Additional Comments:

The project is supported in Congress by Democrats, including Senators Muskie, Kennedy and Hathaway and Rep. Harrington (D.-Mass.) and opposed by Republican Senators Brooke and Mathias and Reps. Conte and Giammo -- Conte (R.-Mass.) describes it as a "boondoggle". There is also organized local and national opposition including the Sierra Club, Wilderness Society, and Audubon Societies as well as private power companies -- litigation has been threatened.



Project: Meramec Park Lake

State(s): Missouri

Agency: Corps of Engineers

EIS Status: draft

final 26 Feb. 1971

Total estimated

Federal cost: \$93,000,000

Benefit/cost ratio: 1.3

FY'75 appropriation: \$4,600,000

(\$1,000,000 over budget)

Federal funds needed to complete project after 1975: \$74,612,000

Project Description:

This proposed multipurpose lake on the Meramec River is to provide recreation, flood control, water supply, and other benefits. The project would require over 23,000 acres of land, of which 12,600 acres would be permanently inundated, encompassing 47 miles of presently free-flowing streams. Land acquisition is currently underway. The project is the first in a series of dams being planned for the region.

Adverse Environmental Impacts:

The greatest adverse impacts would be the loss of the presently diverse natural recreation values derived from the river, bottomland hardwood forests, abundant fish and wildlife, scenic bluffs, and approximately 100 caves, all of which would be destroyed by the project and replaced by flat-water power-boat centered recreation which is already abundant across the state. The highly porous underlying rock could lead to large cost overruns from attempts to seal the reservoir as happened with the Gathright Dam in Virginia.

Additional Comments:

Conservationists are urging comprehensive river basin planning and the alternative of establishing a National Recreation Area in the flood plain. The Sierra Club has brought suit against the project - going to trial Sept. 30.



Project: Nebraska Mid-State Division

State(s): Nebraska

Agency: Bureau of Reclamation

EIS Status: draft none filed to date

final

Total estimated

Federal cost: \$105,550,000

Benefit/cost ratio: 1.2 (1967)

FY'75 appropriation: \$449,000 (for planning)

Federal funds needed to complete project after 1975: \$103,043,000

Project Description:

The present project represents a fall-back position to 3 reservoirs from the 1967 authorization which was for a system of 23 reservoirs on the Platte River to divert water for irrigation purposes, due to an ostensibly declining water table. Approximately 60 miles of the river would be directly altered by the project, as well as an as-yet undetermined area of associated wetlands.

Adverse Environmental Impacts:

The project would seriously damage by periodic drainage wildlife habitat for waterfowl, including the most important single seasonal resting place for migratory sandhill cranes, white-fronted geese, and the rare and endangered whooping cranes which are of national and international concern. Adverse effects on river fisheries and on water quality are also likely.

Additional Comments:

The economic justification for the project has been disputed in an independent study; irrigation benefits have been questioned and the project opposed by a local organization of farmers and landowners who report that groundwater is adequate and not declining. The U.S. Fish and Wildlife Service considers wildlife enhancement claims to be spurious. The project is strongly opposed by national conservation organizations and the interbasin water transfers have been opposed by the Nebraska State Legislature in a 1972 resolution. BuRad has delayed preparation of an EIS because of lack of local support by potential beneficiaries, many of whom have drilled their own wells.



Project: O'Neill

Agency: Bureau of Reclamation

State(s): Nebraska

EIS Status: draft 12 July 1971final 22 Sept. 1972Total estimated
Federal cost: \$112,464,000Benefit/cost ratio: 1.2FY'75 appropriation: \$550,000 (Planning)Federal funds needed to complete project after 1975: \$111,714,000

Project Description:

The proposed project includes the Norden Dam and Reservoir to store and regulate flow in the Niobrara River, and the 23-mile concrete O'Neill Canal. The project is designed to irrigate 77,000 acres and to provide recreation, fish and wildlife conservation, and (minor) flood control. Approximately 30,000 acres of land will be converted to project purposes.

Adverse Environmental Impacts:

The project reservoir will inundate 6,300 acres of farm and ranch land, and 19 miles of natural river and tributaries which is presently a scenic area providing excellent canoeing and other recreation opportunities (the river has been considered for inclusion in the Wild and Scenic Rivers System). Several rare bird species, including the endangered Greater Prairie Chicken, will be reduced; irrigation return flows will decrease existing water quality due to transport of added pesticides, fertilizers, etc.

Additional Comments:

Local individuals and groups have opposed the project; the Nebraska Game and Parks Commission withdrew its support for cost-sharing of recreation and fish and wildlife maintenance costs.



ject: Garrison Diversion Unit (Initial Stage)

te(s): North Dakota

Agency: Bureau of Reclamation

status: draft 23 April 1971; revised 5 April 1973

final 11 January 1974; supplement 3 May 1974

Estimated Federal cost: \$362,792,000 Benefit/cost ratio: 1.67 (1972)

1975 appropriation: \$13,855,000 (\$3,300,000 over budget)

General funds needed to complete project after 1975: \$275,103,000

Project Description:

The overall project is a massive diversion of water from the Missouri River in western North Dakota to large reservoirs via canals and thence to irrigate one million acres of land. The initial (authorized) phase now getting underway is designed to irrigate 250,000 acres, with irrigation return flows reaching the James and Souris Rivers. Recreation facilities and some fish and wildlife habitat will be provided.

Adverse Environmental Impacts: (Initial Phase Only)

An estimated 73,000 acres of land will be required for "project canals, drains, reservoirs, irrigation, and recreation facilities" (final EIS, summary page). Most of this land has been agriculturally productive without the project; many small family farmers are being displaced for project features, which will require rights-of-way totaling over 220,000 acres. Electric energy requirements for the project, including sprinkler irrigation, will exceed 150 million kilowatt hours annually. Serious questions have been raised by EPA and the Canadian Government regarding the excessive salinity and other problems with irrigation return flow waters.

Additional Comments:

Both major farmers' organizations in the state strongly oppose the project, as do many individuals and national environmental organizations. They raise additional concerns over the destruction of existing wetlands and wildlife habitat, the potential contamination of soils by salinization, and the lowering of the present water table near the Clusky Canal by 15 to 30 feet. There has been NEPA litigation, so far unsuccessful, by the Committee to Save North Dakota, seeking to join the project.



ject: Oahe Unit

te(s): South Dakota

Agency: Bureau of Reclamation

Status: draft 4 August 1972
final 17 Dec. 1973

al estimated
 Federal cost: \$315,000,000 Benefit/cost ratio: 1.28 (1971)
 75 appropriation: \$5,535,000 (\$1,000,000 over budget)
 leral funds needed to complete project after 1975: \$303,360,000

Object Description:

The initial stage of this project will provide for diversion of water from the Missouri River at Lake Oahe for the irrigation of 190,000 acres of land to the east and for municipal use, fish and wildlife developments, and recreation. The project will require about 110,000 acres for these purposes and will involve construction of about 200 miles of main supply canals and 4,800 miles of smaller canals, laterals and drains. Three major reservoirs will be constructed and channel modification of the James River will reduce about 120 river-miles to miles.

Diverse Environmental Impacts:

This is in many ways a companion project to the Garrison Diversion (q.v.). It will consume over 90,000 acres of presently productive land, will displace small farmers in favor of capital-intensive agribusiness, consume electricity for pumping and irrigation, destroy nearly 10,000 acres of wetlands and seriously disrupt 120 miles of natural river system, lower water tables, and increase downstream salinity and flooding potential.

Additional Comments:

Rare and endangered species inhabit the project area, including golden and bald eagles and the peregrine falcon. The National Wildlife Federation and the two major farmers' organizations in the state are opposing the project. United Family Farmers, Inc. has filed suit supported by considerable expert testimony and has called for a thorough review of the Oahe project in the context of other Missouri River Basin projects, and interactions with the Garrison project specifically. Congressional support for the project, once high, is declining and opposition becomes widespread.



Project: Duck River Dams

State(s): Tennessee

Agency: Tennessee Valley Authority

EIS Status: draft

final 8 May 1972

Total estimated
Federal cost: \$78,500,000

Benefit/cost ratio: 1.3

FY'75 appropriation: \$13,000,000

Federal funds needed to complete project after 1975: \$51,858,000

Project Description:

The project consists of two units, the Columbia and Normandy dams and reservoirs, on the Upper Duck River. Primary purposes, expressed as benefits, are economic expansion through improved water quality and supply, flat-water recreation, and present urban area water supply. The project would require 41,000 acres and the impoundment of 71 miles of river into two reservoirs totaling 16,000 surface acres.

Adverse Environmental Impacts:

The project will obstruct the longest free-flowing stream in Tennessee (268 miles) and would inundate waterfalls, caves, and scenic areas containing unusual plant and animal associations. A number of endangered species are threatened by the dams, as are prehistoric archeological sites. Existing fisheries would be impaired, as would a wide variety of present recreational uses including fishing, hiking, canoeing, camping, spelunking, and picnicing, all of which have not required Federal money. The project would require relocation of 396 families.

Additional Comments:

The claimed economic benefits of the project have been widely attacked as exaggerated, dependent on disallowed services such as low-flow augmentation, and not balanced against present environmental and economic benefits. USGS data show that present water supplies are superabundant. The Draft EIS was criticized for some of the above by EPA, Agriculture, HUD, Interior, and many individual citizens.



Project: Central Utah Project, Bonneville Unit

State(s): Utah

Agency: Bureau of Reclamation

EIS Status: draft 14 August '72final 2 August '73Total estimated
Federal cost: \$498,567,000Benefit/cost ratio: 1.5 (? 1972)FY'75 appropriation: \$10,121,000 (\$1,000,000 over budget)Federal funds needed to complete project after 1975: \$386,709,000**Project Description:**

The Bonneville Unit is a major part of the Central Utah Project's initial phase; it is a multi-purpose project for irrigation, municipal and industrial needs, power production, recreation, flood control, water quality control, and area redevelopment benefits. Major features are 10 new reservoirs and enlargement of two others, over 140 miles of aqueducts, tunnels, and canals, and 3 power plants. The Unit would provide 313,000 acre-feet annually for project purposes.

Adverse Environmental Impacts:

Total land acreage required for the project is unclear. 22,000 acres (10% cropland, 90% rangeland) will be inundated by the reservoir. 25,000 acres of existing marsh area would be drained for agricultural uses. Fluctuations in reservoirs would eliminate most of the existing fisheries, as would sometimes severe flow reductions in nearly 200 miles of streams. Beaver ponds, waterfowl nesting areas, and moose and deer habitat would be destroyed. Forest Service wilderness lands would be inundated.

Additional Comments:

The Project would increase salinity in the already highly saline Colorado River, and could spur further congestion and urbanization in the Bonneville Basin, although these secondary impacts have not been fully explored and there is no foreseeable regional water shortage to justify the project. The Sierra Club is seeking an injunction under NEPA in the U.S. Court of Appeals.



THE WHITE HOUSE
WASHINGTON

file
corps

October 2, 1974

MEMORANDUM FOR:

NORM ROSS

THROUGH:

MAX FRIEDERSDORF *m.b.*

FROM:

GENE AINSWORTH *ga*

SUBJECT:

Lake Whitney, Texas - Rep. W.R. Poage

As you know, the Corps of Engineers is prepared to begin a survey to identify properties which are not utilized or underutilized. This process which will include Lake Whitney is being held up by negotiations between the Corps and GSA as to which agency will actually perform the survey and assessment functions. I would hope that you could intervene in these negotiations, to see that they are expedited and that the survey commence as soon as possible.



Oct 7-

[2/75]

File

FACT SHEET

REGION: Great Lakes

BASIN: Eastern Lake Erie

PROJECT: Sandridge Lake, New York, Ellicott Creek - Combination Major Channel Improvement and Diversion Channel.

AUTHORIZATION: 1970 Flood Control Act (PL. 91-611) and 1974 Water Resources Development Act (PL. 93-251).

LOCATION AND DESCRIPTION: The proposed project is located on the downstream portion of Ellicott Creek in the Town of Amherst, Erie County. The project consists primarily of widening, straightening, and deepening of about 4.4 miles of Ellicott Creek Channel and the existing by-pass channel in Ellicott Creek Park and construction of a mile long diversion between Maple Road and Millersport Highway and about one-half mile diversion through Pfhol Park. This Combination Major Channel Improvement/Diversion Channel project is referred as "Plan E".

SUMMARIZED FINANCIAL DATA: (August 1976 Base)

Estimated Total Appropriation Required	\$6,100.000
Estimated Total Federal Cost	6,100.000
Estimated Non-Federal Cost	<u>2,180.000</u>
Total Project Cost	8,280.000
Preconstruction Planning Estimate	790.000
Allocation prior to Current Year	180.000
Allowance Current FY (Conference Allowance)	135.000
FY 1976 Capability	195,000
Capability for 1976 Transition Quarter with \$195.000 in Budget Year	70.000
Capability for 1976 Transition Quarter with \$0 in Budget Year	40.000

The present estimate, \$6,100.000 to be submitted for review and approval under separate cover in February 1975, is a combination of Major Channel Improvement/Diversion Project that was developed in response to the 1970 Flood Control Act that required restudy of all possible alternatives prior to construction of the Sandridge Lake Project. This Major Channel Improvement/Diversion Channel Project (designated Plan "E") was agreed to on 26 November 1974 by the Commissioner, State of New York, Department of Environmental Conservation who requested the Corps to



". . . proceed with your planning for the downstream reach of the improvement to enable construction to begin as soon as possible." In addition the Commissioner stated, "we have reviewed the five alternative plans of improvement of Ellicott Creek and have determined that of the five alternatives presented Plan "E" would best meet the needs of Non-Federal interest. The State through this Department intends to participate in the project and will provide the necessary agreement of local cooperation at the appropriate time."

JUSTIFICATION:

The Combination Major Channel Improvement/Diversion Channel (Plan "E") will alleviate flooding in the Town of Amherst from Sheridan Drive to Niagara Falls Boulevard. The area to be protected consists primarily of residential homes, the State of New York University of Buffalo now under construction and new housing development being planned and constructed by the Urban Development Corporation.

BENEFIT-TO-COST RATIO: 1.83 to 1.

Average Annual Benefit - Flood Control -	\$803,000
Recreation -	- 307,000
Total Benefits	\$1,110,000



FACT SHEET

Study: Westchester County Streams, New York and Byram River, Connecticut

Authorization: Senate Committee Resolutions dated 9/14/55 and 11/14/55,
and House Committee Resolutions dated (2) dated 6/13/56

Summarized Financial Data:

Total Estimated Cost	580,000
Allocations thru FY 1974	176,000
Allocation for FY 1975	35,000
Budget Request for FY 1976	85,000
Budget Request for 1976 Transition Quarter	20,000
Balance required after September 1976	264,000

Status of Reports:

Yonkers, Saw Mill River - A local protection project along the Saw Mill River at Yonkers, New York, was authorized in 1965. Construction at the upper reach of the project began September 1974.

Ardsley, Saw Mill River - An Interim Survey Report for local protection works along the Saw Mill River at Ardsley, consisting of channel improvement of mainstream, and levees and floodwalls along the left bank is currently being reviewed by the Office of the Chief of Engineers prior to submission to OMB and the Congress.

Elmsford and Greenburgh, Saw Mill River - An Interim Survey Report is being reviewed by the Office of the Chief of Engineers prior to submission to the State and Federal agencies for comments. This report considers flood control measures at locations along Saw Mill River which were not being investigated under separate authorities. The report considers local flood protection at Elmsford and Greenburgh, New York, consisting of a combination of channel modifications, levees, and floodwalls.

The following areas are to be studies in the next several years, subject to the level of funding - Bronx River (Bronxville, White Plains), Hutchinson River Basin, Mamaroneck River (Village of Mamaroneck) and Sheldrake River (Town and Village of Mamaroneck). Other streams may be included as the study progresses.



DAEN-CWB-E

Study: Westchester County Streams, New York and Byram River, Connecticut

Activities under authority of Section 205 of the 1948 Flood Control Act (small flood control projects) not requiring specific authorization by Congress:

Chappaqua, Saw Mill River - A local protection project along the Saw Mill River at Chappaqua, New York, was authorized in 1965. Contract plans and specifications are being prepared. On the Chappaqua project some of the delays have been due to lack of timely local cooperation and estimated costs exceeding statutory limitations.

Irvington, Barney Brook, Sunnyside Brook - Two Reconnaissance Reports within the Village of Irvington, along Barney Brook and Sunnyside Brook, are underway, and are scheduled for completion in 1975.

Larchmont (Pine Brook), Village of Ossining (Killbrook) - Reconnaissance Reports for Pine Brook, and Killbrook are scheduled to begin in FY 1975.

Nepera Park at Yonkers, Saw Mill River - A favorable Reconnaissance Report investigating the feasibility for local protection works along Saw Mill River at Nepera Park was completed in February 1974. The study is currently entering the pre-construction planning phase - Phase I Detailed Project Report underway.

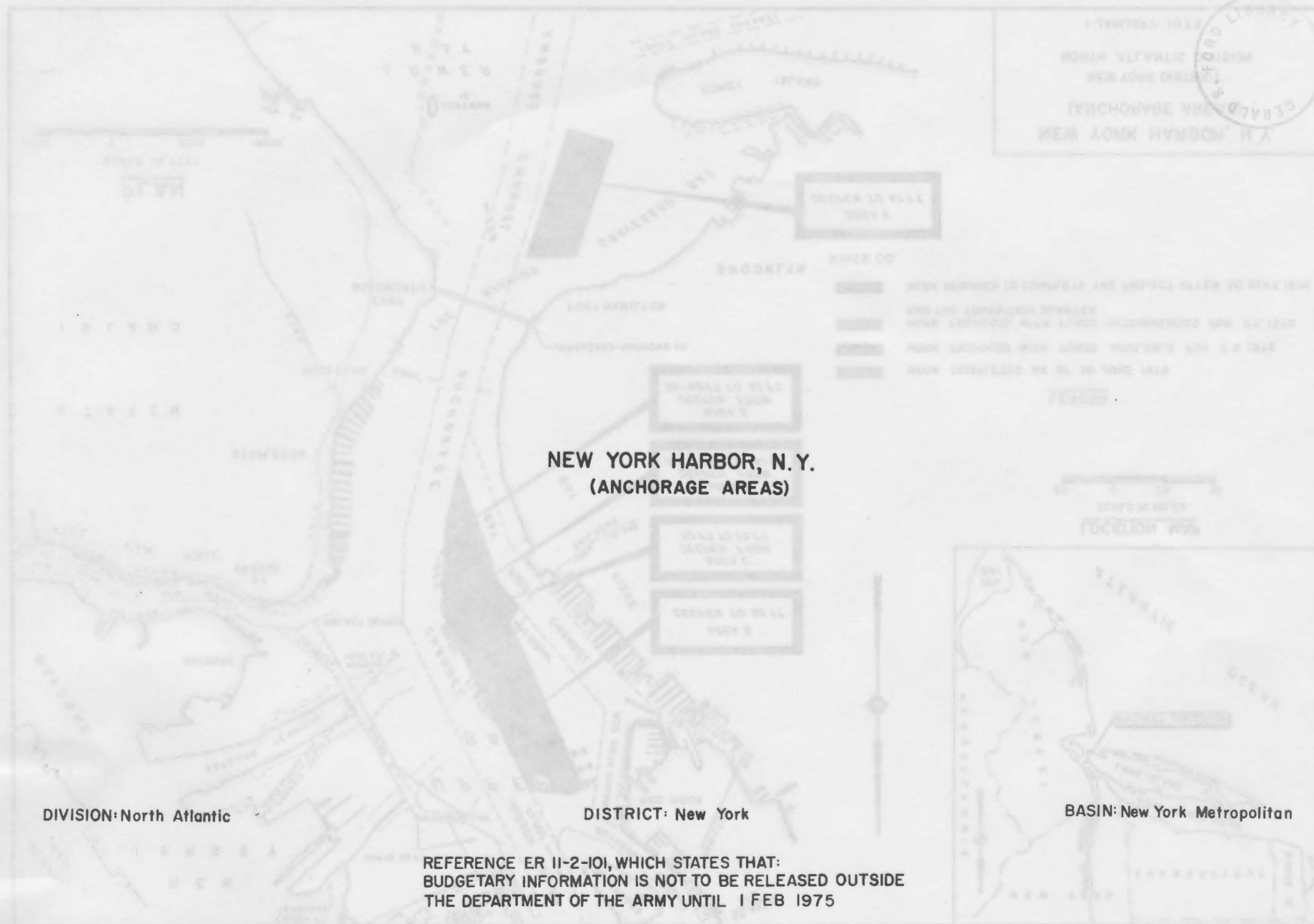
Port Chester, New York, and Greenwich, Connecticut, Byram River - Reconnaissance Report completed May 1973. Phase I of a Detailed Project Report, investigating alternative local protection plans, is scheduled for completion in March 1975.

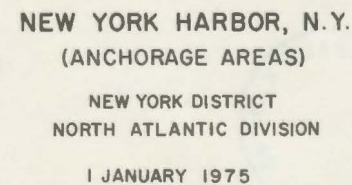
White Plains, Fulton Brook - Favorable Reconnaissance Report completed in July 1974. Work on Detailed Project Report will be scheduled to begin FY 1976.

Causes of Delay:

1. A reevaluation of requirements and increased scope of work to evaluate the effects of Tropical Storm Agnes.
2. Additional cost and effort to implement the Water Resource Council's "Principles and Standards".
3. Less than optimum funding levels in prior years.
4. Additional efforts and cost to prepare Environmental Impact Statements and associated studies.









APPROPRIATION TITLE: Construction, General - Channels and Harbors (Navigation)

PROJECT: New York Harbor (Anchorage Areas), N.Y. (Continuing)

LOCATION: In New York Harbor, Anchorages Area ABC&D (Red Hook Flats) are in the upper bay between Anchorage Channel and Bay Ridge - Red Hook Channels. Anchorage Area E (Gravesend Bay) is in the lower bay east of Ambrose Channel and just south of the Narrows.

AUTHORIZATION: 1965 River and Harbor Act.

Accum.
% of Est.
Fed. Cost

BENEFIT-COST RATIO: 2.7 to 1

SUMMARIZED FINANCIAL DATA

Estimated Federal Cost (CofE)	\$31,400,000
Estimated Federal Cost (USCG)	40,000
Estimated Non-Federal Cost	0
Total Estimated Project Cost	\$31,440,000
Allocation to 30 June 1974	\$18,629,400
Conference Allowance for FY 1975	5,000,000
Allocation for FY 1975	5,000,000 ^{1/}
Allocation to Date	23,629,400
Appropriation Requested for FY 1976	1,600,000
Appropriation Req. for 1976 Transition Qtr	1,100,000
Balance to Complete after 30 September 1976	5,070,600

Status (1 January 1975)	Percent Complete	Completion Schedule
Area A-1	100	Jul 1969
Area A-2	100	Apr 1971
Area B-1	100	Apr 1971
Area B-2	100	Dec 1973
Area C	-	May 1975
Area D-1	100	Jul 1971
Area D-2	100	Jun 1973
Area D-3	100	Feb 1973
Area D-4a	100	Oct 1973
Area D-4b	100	Sept 1974
Area D-5	4	Sept 1975
Area E-1	100	Apr 1972
Area E-2	100	June 1973
Remainder	-	Oct 1977

^{1/} Includes \$500,000 of FY 75 Program Deferral to be utilized in FY 1976.

PHYSICAL DATA

ANCHORAGES: Deepen Area AB&C (482 acres) from 30 and 40 feet to 35, 40 and 45 feet. Expand Area D to 446 acres and deepen from 14+ feet to 35 feet. Deepen Area E (334 acres) from 30 feet to 47 feet.

JUSTIFICATION: The anchorages are an integral part of the Harbor project. There are 19 anchorages located in the inner and outer harbor. Fifty-eight percent of total harbor area had depths less than 18 feet below MLW. Available anchorages were inadequate for projected vessel activity and because of insufficient

Division: North Atlantic

District: New York

Region: Middle Atlantic
New York Harbor (Anchorage Area), N. Y.

3 FEB 1975

depth. Use of larger tankers with drafts of 34 and 38 feet has continued to increase. This has caused serious congestion and has contributed to groundings and collisions. The tributary area (NY Metropolitan) is pre-eminent in commercial and industrial activities. About 15% of the total waterborne and 13% of foreign commerce of the United States are handled by the Port of New York. By 1990 (Midpoint of the 50 year economic life), estimated deep-draft commerce is expected to reach 132,000,000 tons, an increase of 42% over 1960-61 commerce. Total commerce for the Port of New York has increased from 153,800,000 tons in 1965 (authorization year) to 216,900,000 tons in 1973. The improvement will provide increased space and depths which will produce savings in transportation costs and reduce the number of accidents.

The project is located in the vicinity of Hudson and Essex counties (NJ) and Manhattan and Kings Counties (NY) which are eligible or have been designated as redevelopment areas under PL 89-136 on the basis of substantial unemployment. The project is within reasonable commuting distance from at least 10 other New York and New Jersey counties which are eligible or have been designated as redevelopment areas under PL 89-136. Average annual benefits to navigation are estimated at \$3,843,000.

FISCAL YEAR 1976 and 1976 Transition Quarter: The requested amounts will be applied as follows:

<u>Channels</u>	<u>FY 1976</u>	<u>1976 Transition Qtr.</u>
Complete Construction of Area D-5	\$ 478,500	-
Initiate and Continue Construction of Area D-6	900,000	\$1,020,000
Engineering and Design	85,000	10,000
Supervision and Administration	136,500	70,000
Total	\$1,600,000	\$1,100,000

COMPLETED MODIFICATIONS: Work under fully completed modifications consists of: Main Ship and Bayside-Gedney Channels to 30 feet (R&H Act of 1884); Ambrose Channel to 40 feet (Act of 1899); Anchorage Channel (Act of 1917); Channel between Staten Island and Hoffman and Swinburne Islands (Act of 1917); removal of Craven Shoal (Act of 1917); relocation of southerly section of Anchorage Channel (Act of 1930); deepening Bayside-Gedney Channel to 35 feet (Act of 1935); dredging south end of Red Hook Flats, Liberty Island Anchorage, and channel along New Jersey Pierhead Line (Act of 1935); deepening Ambrose and Anchorage Channels to 45 feet (Act of 1937); deepening Ocean-Bayside Channel to 35 feet (Act of 1958). Cost of completed modifications \$19,035,000.

New York Harbor (Anchorage Areas), N.Y.

3 FEB 1975



NON-FEDERAL COSTS: Prior to construction, local interests must agree to: a. provide without cost to the United States all lands, easements and rights-of-way required for construction and maintenance of the project and aids to navigation upon the request of the Chief of Engineers; b. hold and save the United States free from damages that may result from construction and maintenance of the project including submarine structures; c. accomplish without cost to the United States removal or relocation of pipelines and other utilities, if necessary.

STATUS OF LOCAL COOPERATION: Assurances of local cooperation were executed by the City of New York on 13 September 1968, and accepted by the District Engineer 29 October 1968.

COMPARISON OF FEDERAL COST ESTIMATES: The current Federal cost estimate of \$31,400,000 is a decrease of \$3,500,000 over the latest estimate (\$34,900,000) submitted to Congress. The change includes increases of \$714,000 for higher price levels offset by a decrease of \$3,724,000 for channels based on actual costs for completed areas, recent surveys and a revised estimate of quantities in remaining areas, and decreases of 180,000 in Engineering and Design and \$310,000 in Supervision and Administration based on actual costs to date and estimated costs of remaining work.

BENEFIT TO COST RATIO: The benefit to cost ratio last presented to Congress (FY 1975) was 2.3. The current benefit to cost ratio is 2.7. The benefit to cost ratio is based on the incremental benefits and costs associated with this project modification.

STATUS OF ENVIRONMENTAL IMPACT STATEMENT: The final Environmental Impact Statement was filed with CEQ 3 March 1973.

OTHER INFORMATION: Funds to initiate construction were appropriated in FY 1968.

New York Harbor (Anchorage Areas), N.Y.

3 FEB 1975

LIBRARY
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LEGEND
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NEW YORK HARBOR COLL. & REM. OF DRIFT, N.Y.

DIVISION: North Atlantic

DISTRICT New York

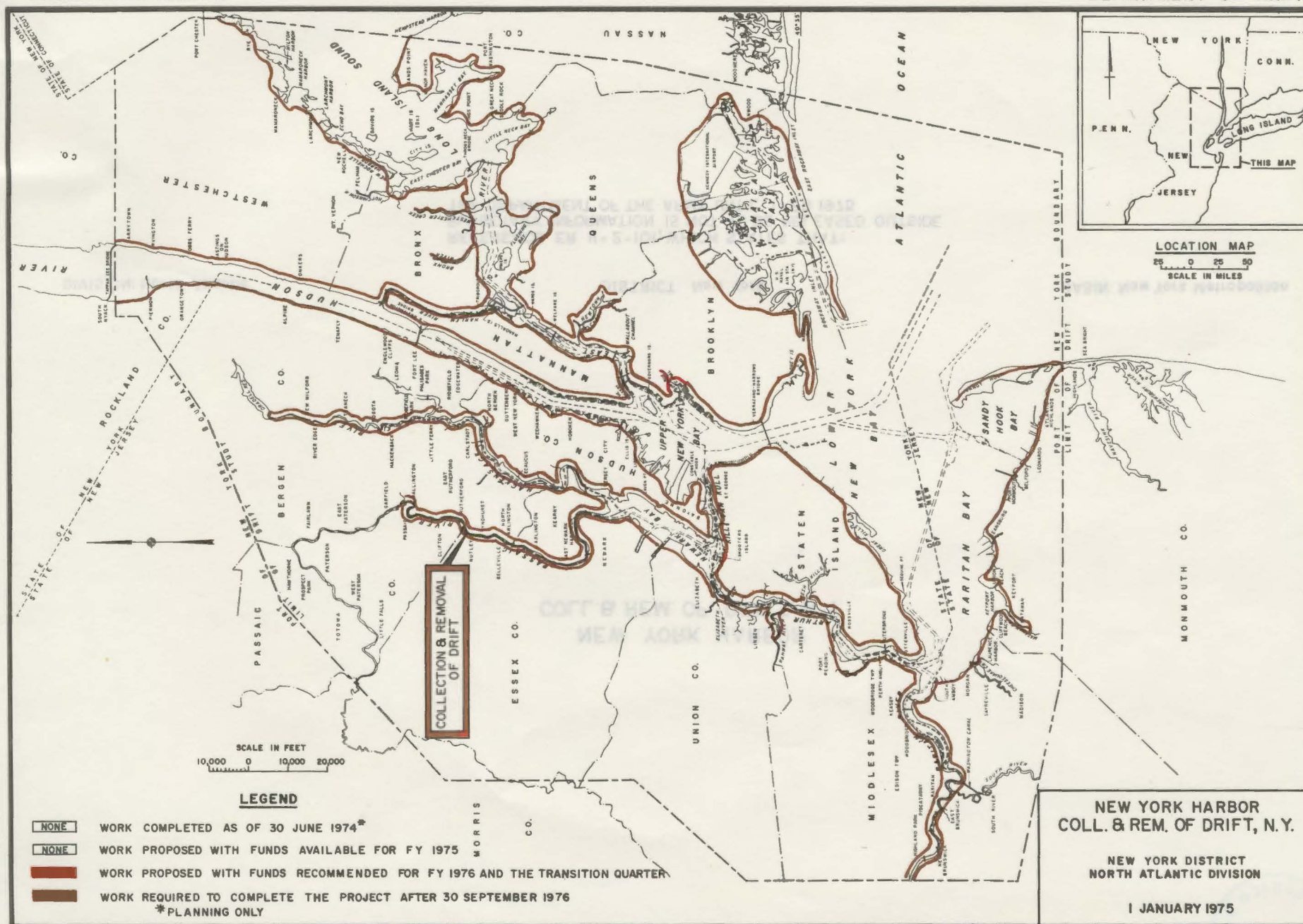
BASIN New York Metropolitan

REFERENCE ER 11-2-101, WHICH STATES THAT:
 BUDGETARY INFORMATION IS NOT TO BE RELEASED OUTSIDE
 THE DEPARTMENT OF THE ARMY UNTIL 1 FEB 1975



CONTOUR OF ELEVATION

CONTOUR OF ELEVATION





APPROPRIATION TITLE: Construction, General - Channels and Harbors (Navigation)

PROJECT: New York Harbor Collection and Removal of Drift, N.Y. (Continuing)

LOCATION: The project covers all of the Port of New York including shores and tidal tributaries of Sandy Hook and Raritan Bays, Raritan River, Arthur Kill, Kill Van Kull, Lower New York Bay, Passaic and Hackensack Rivers, Upper New York Bay, Lower Hudson River, Harlem and East Rivers, western part of Long Island Sound and Jamaica Bay. It encompasses 8 New Jersey and 7 New York Counties. The port embraces about 1,500 square miles. It has a frontage of 755 miles, measured along the shorelines of its navigable waters of which 460 miles are in New York and 295 miles in New Jersey.

AUTHORIZATION: Water Resources Development Act of 1974

BENEFIT-COST RATIO: 5.7 to 1

SUMMARIZED FINANCIAL DATA		Accum. % of Est. Fed. Cost	Status (1 January 1975)	Percent Complete	Completion Schedule
Estimated Federal Cost	\$25,700,000		Contract 1	0	August 1976
Estimated Non-Federal Cost	27,800,000		Remainder	0	June 1986
Cash Contribution	\$12,900,000				
Other Costs	14,900,000				
Total Estimated Project Cost	\$53,500,000				
Allocation to 30 June 1974	\$ 80,000				
Conference Allowance for FY 1975	330,000				
Work Allowance for FY 1975	330,000	1/			
Allocation to Date	410,000	2			
Appropriation Request for FY 1976	900,000	6			
Appropriation Req. for 1976 Transition Qtr	500,000	8			
Balance to Complete after 30 September 1976	\$23,890,000				

PHYSICAL DATA

Channels: Collect and remove about 29.2 million cubic feet of drift in NY Harbor from 1,972 derelict vessels, 149 deteriorated piers and wharves, other deteriorated non-repairable structures, debris lying along the shores, 182 repairable piers and wharves, and other repairable shore structures.

1/ Includes \$165,000 of FY 1975 Program Deferral to be utilized in FY 1976.

Division: North Atlantic

District: New York

Region: Middle Atlantic

New York Harbor Collection & Removal of Drift, NY

3 FEB 1975



JUSTIFICATION: In spite of the existing Federal program for collection and removal of drift in navigable harbor waters, an estimated 10,000 commercial, public and recreational vessels collide annually with drift causing damage to propellers, shafts, and hulls. The cost of repairing such damage plus other economic losses in 1963 exceeded \$5,900,000. In 1963, nine recreational vessels collided with drift and sank jeopardizing the lives of operators and passengers. Drift clutters recreational shores menacing swimmers, and spreads marine borer infestation. The sources of drift deface the waterfront, prevent optimum use of property and depress property values. Fire hazards would be reduced by removing more than 100 unused deteriorated piers and other structures which contain much inflammable material. Uncontrolled burning of inflammable material adds to an existing air pollution problem. Elimination of drift sources from derelict vessels, deteriorated shore structures and debris along shores would contribute to reducing water pollution by decreasing the available amount of organic material in harbor waters. The 200 piers currently in use which would be repaired or if unrepairable would be removed under the improvement, presently constitute a hazard to employees working on these structures. Almost 2,000 derelict vessels in shoal waters and over 100 unused deteriorated piers are an unattractive nuisance and are a potential area for injuries or loss of life.

The project would improve existing navigation conditions in the harbor and meet to immediate and future needs of commercial vessels and recreational boating. The existing Federal laws do cover removal and prevention of obstructions to navigation. Existing applicable local laws in the project area are not geographically inclusive and are almost entirely lacking in New Jersey municipalities. Upon completion of improvements in political or physical subdivisions of the improvement area, local interests would be responsible for enacting and enforcing laws controlling sources of drift.

The project is located in the vicinity of Hudson and Essex counties (NJ) and Manhattan and Kings counties (NY) which are eligible or have been designated as redevelopment areas under PL 89-136 on the basis of substantial unemployment. The project is within reasonable commuting distance from at least 10 other New York and New Jersey counties which are eligible or have been designated as redevelopment areas under PL 89-136.

Breakdown of Average Annual Benefits

Commercial and Public Vessels (damages prevented)	\$10,548,000
Recreational Boats (damages prevented)	6,307,000
Real Estate Enhancement	496,000
Removal of drift in water under existing Federal project	102,000
Removal of drift from recreational beaches	2,155,000
Detrimental effect from removal of deteriorated shore structures in use	-753,000
Total	\$18,855,000

New York Harbor Collection and Removal of Drift, NY

3 FEB 1975



FISCAL YEAR 1976 and 1976 Transition Quarter: The requested amount will be applied as follows:

<u>Channels and Canals</u>	<u>FY 1976</u>	<u>1976 Transition Qtr.</u>
Initiate and complete construction of Contract 1	\$ 570,000	\$ 153,400
Initiate construction of Contract 2	200,000	273,300
Engineering and Design	105,000	33,300
Supervision and Administration	125,000	40,000
Total	900,000	\$ 500,000

NON-FEDERAL COST: Prior to construction, local interests must agree to: a. Provide without cost to the United States all lands, easements, rights-of-way required for implementation of the considered improvement upon the request of the Chief of Engineers. b. Hold and save the United States free from damage that may result from the considered improvement and from any subsequent maintenance work or activities in connection with the improvement. c. Enact and enforce local legislation during and after completion of work in political or physical subdivision of the improvement area to prevent creation of sources of drift and debris, such as derelict vessels, deteriorated structures and drift along shores to supplement existing Federal legislation. d. Contribute cash in the amount of one third of the actual cost of the work to be performed by the Federal Government for the considered improvement, presently estimated as \$12,900,000 based on July 1974 price levels. The funds will be contributed at the start of work at a rate in proportion to the Federal allotment of funds. e. Make necessary repairs to deteriorated structures in use that would be satisfactory to the Chief of Engineers so as to eliminate them as a source of drift, at estimated first cost (July 1974 prices) of \$14,900,000 to be performed simultaneously with the work to be done by the Federal Government. The material removed in connection with the repairs will be disposed of at cost to local interests in the facility provided by the Federal Government for Federal work.

The estimated costs to local interests are:

Cash Contribution	\$12,900,000
Repair and Disposal of Deteriorated Shore Structure in use	14,900,000
	\$27,800,000

STATUS OF LOCAL COOPERATION: Required assurances from the responsible local agencies are scheduled for execution incrementally as separable portions of the project are initiated in respective political jurisdictions.

New York Harbor Collection and Removal of Drift, NY

3 FEB 1975



COMPARISON OF FEDERAL COST ESTIMATES: The current Federal cost estimate of \$25,700,000 is an increase of \$1,870,000 over the latest estimate (\$23,830,000) submitted to Congress (FY 1975). The change is due entirely to price level increases.

BENEFIT TO COST RATIO: The benefit to cost ratio last presented to Congress (FY 1975) was 6.3. The current benefit to cost ratio is 5.7. The benefit to cost ratio is based on project functioning independently.

STATUS OF ENVIRONMENTAL IMPACT STATEMENT: The draft EIS is scheduled for submission to CEQ in the third quarter of FY 1975. Final EIS scheduled for submission in the fourth quarter of FY 1975.

OTHER INFORMATION: Funds (\$80,000) appropriated to initiated planning in FY 1972 were allotted in FY 1974 upon passage of the Water Resources Development Act of 1974.



FIRE ISLAND INLET TO MONTAUK POINT, N.Y.

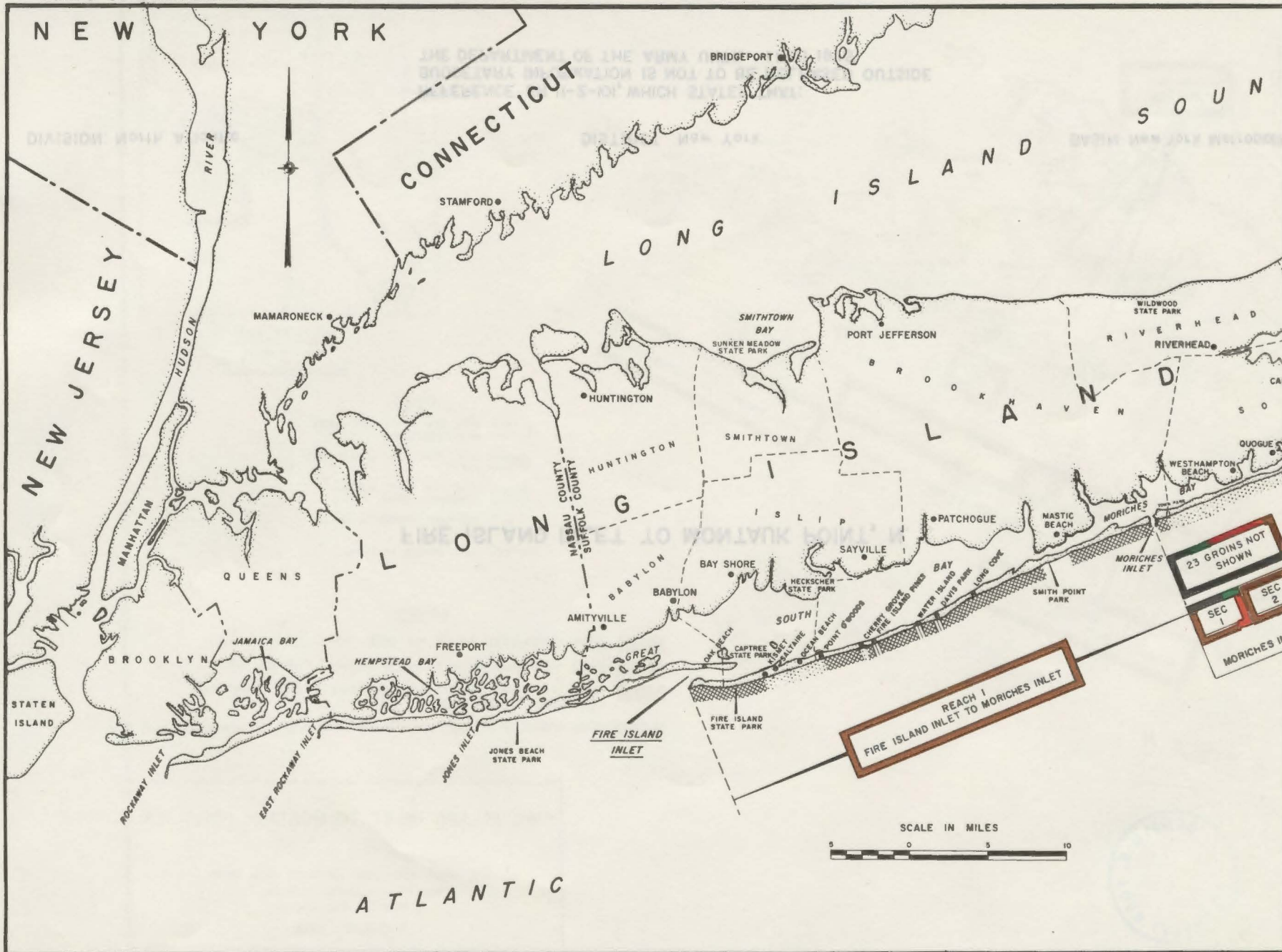
DIVISION: North Atlantic

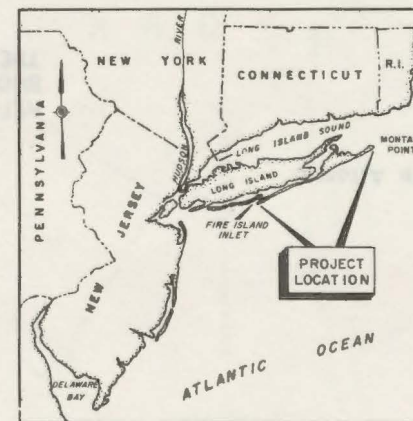
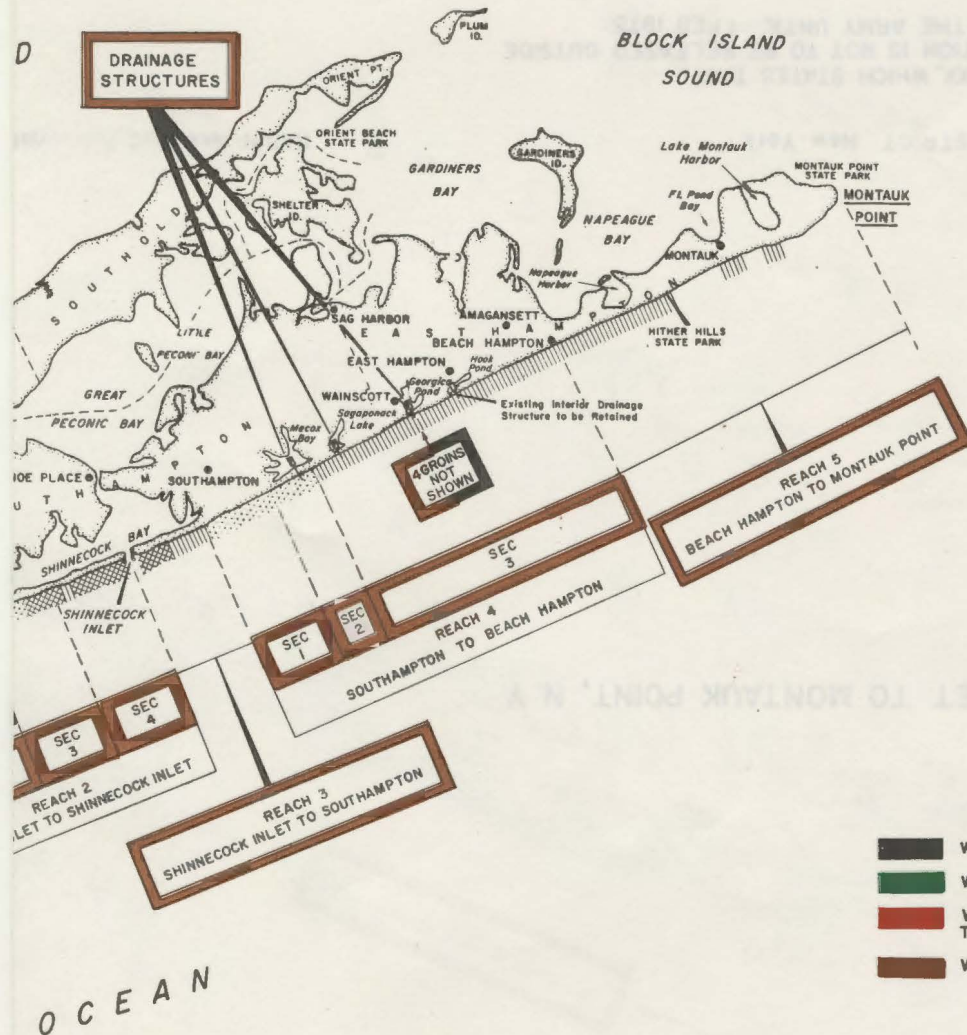
DISTRICT New York

BASIN: New York Metropoli

REFERENCE ER 11-2-101, WHICH STATES THAT:
BUDGETARY INFORMATION IS NOT TO BE RELEASED OUTSIDE
THE DEPARTMENT OF THE ARMY UNTIL 1 FEB 1975

CORPS OF ENGINEERS





VICINITY MAP

SCALE IN MILES
50 0 50

SYMBOL

- DUNE AND BEACH FILL ALONG DEVELOPED AREAS
- DUNE FILL ALONG UNDEVELOPED AREAS
- DUNE FILL ALONE ALONG DEVELOPED AREAS
- PROPOSED INTERIOR DRAINAGE STRUCTURE
- (NOT SHOWN) FIFTY GROINS AS NEEDED

LEGEND

- WORK COMPLETED AS OF 30 JUNE 1974
- WORK PROPOSED WITH FUNDS AVAILABLE FOR F.Y. 1975
- WORK PROPOSED WITH FUNDS REQUESTED FOR F.Y. 1976 AND THE TRANSITION QUARTER
- WORK REQUIRED TO COMPLETE THE PROJECT AFTER 30 SEPTEMBER 1976

FIRE ISLAND INLET TO MONTAUK POINT, N.Y.

U. S. ARMY ENGINEER DISTRICT, NEW YORK
NORTH ATLANTIC DIVISION
CORPS OF ENGINEERS
1 JANUARY 1975



APPROPRIATION TITLE: Construction, General - Local Protection Projects (Flood Control)

PROJECT: Fire Island Inlet to Montauk Point, N.Y. (Continuing)

LOCATION: The project area, extending from Fire Island Inlet easterly to Montauk Point along the Atlantic Coast of Suffolk County, is about 83 miles long and comprises about 70 percent of the total ocean frontage of Long Island. Fire Island Inlet is located about 50 miles by water east of the Battery, New York City. Other inlets along the project area are Moriches Inlet and Shinecock Inlet, 30 and 45 miles east of Fire Island Inlet, respectively.

AUTHORIZATION: 1960 River and Harbor Act as modified by the Water Resource Development Act of 1974.

BENEFIT-COST RATIO: 2.4 to 1

SUMMARIZED FINANCIAL DATA		Accum. % of Est. Fed. Cost	STATUS (1 January 1975)	PERCENT COMPLETE	COMPLETION SCHEDULE
Estimated Federal Cost	\$ 76,700,000		Reach 2 - 15 Groins	100	Nov 1970
Estimated Non-Federal Cost	39,300,000 <u>1/</u>		6 Groins	0	Jun 1977
Cash Contribution	\$28,440,000		Dune/Bch Fill - 15.4 mi.	100	Sep 1982
Other Costs	10,860,000				
Total Estimated Project Cost	\$116,000,000		Reach 4		
Allocation to 30 June 1974	\$ 4,400,500		2 Groins	100	Sep 1965
Conference Allowance for FY 1975	2,800,000		Dune/Beach Fill		
Work Allowance for FY 1975	2,806,700 <u>2/</u>		(Incl Drain Struct - 18.4 mi.)	0	Jun 1982
Allocation to Date	7,207,200	9	Balance to Complete		
Appropriation Requested for FY 1976	1,350,000	11	Dune/Beach Fill-39.7 mi.	0	Dec 1984
Appropriation Req. for 1976 Transition Qtr	400,000	12	Groins - 27	0	Dec 1984
Balance to Complete after 30 September 1976	\$ 67,742,800		Entire Project	6	Dec 1984

1/ In addition, local interests have expended over \$5,000,000 for prior corrective action.

2/ Includes \$1,400,000 of FY 1975 Program Deferral to be utilized in FY 1976 and a transfer of \$6,700 into the project.

PHYSICAL DATA

Dunes: Raise to elevation 20 feet above mean sea level

Beaches: Widen to minimum width of 100 feet

Dunes and Beach Replenishment: 73 miles

Interior drainage structures: 3 gated culverts

Groins: 50 maximum

Periodic nourishment: 480,000 cubic yards annually

Division: North Atlantic

District: New York

Region: Middle Atlantic

Fire Island Inlet to Montauk Point, N.Y.

3 FEB 1975

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JUSTIFICATION: The shore from Fire Island Inlet to Montauk Point affords a residential and recreation area for an increasing tributary population, presently more than 5 million persons. Erosion of the shore front is a serious threat to present use and future development of the shore area. The hurricane problems are related to tidal flooding. Storm tides created by high winds and low barometric pressure, have broken through the dunes and barrier reefs along the shore, causing a heavy loss of life and extensive property damage on both the ocean front and on the mainland along the inner bays. A recurrence of the hurricane tide of record (September 1938) when 45 lives were lost, would cause inundation and wave damage estimated at \$222,900,000 (July 73 price level). About \$180,000 would be due to ocean damages (on barrier island and oceanfront areas) and \$42,900,000 would be due to damages on mainland shores of inner bays.

During the 6 March 1962 storm, severe wave action accompanied by high tides and winds caused major inundation and erosion of beaches, dunes and high ground along the barrier beaches and mainland of Long Island, and widespread damage to properties and homes. (Estimated at \$16,500,000). Severe erosion of the beach and dunes occurred at about 75 locations. The major breakthrough, located in the Moriches Inlet to Shinnecock Inlet Reach, developed into a new inlet approximately 2,000 feet wide and about 20 feet deep (at its deepest point) joining the Atlantic Ocean with Moriches Bay at Westhampton. The December 1965 storm caused damages estimated at \$3,000,000. Storms in January and April 1967 caused appreciable damage to beaches and dunes. After the 20-22 Mar 73 storm, extensive erosion was reported west of groins at Westhampton and damage was reported at Robins Rest (Fire Is) and Amagannett (E. Hampton). Suffolk County placed sand from Shinnecock Inlet on County park shore adjacent to west jetty. The most recent storm occurred in December 1974.

The project is located in Suffolk County which is eligible for designation as a redevelopment area under PL 89-136 on the basis of substantial unemployment. The project is within reasonable commuting distance from Nassau, Manhattan (Part), Bronx, and Kings counties which have been designated or are eligible for designation as redevelopment areas under PL 89-136.

Breakdown of Average Annual Benefits

Beach Erosion	\$ 1,808,700
Recreation	3,278,700
Flood Control (Hurricane Protection)	7,950,800
Damage to Shellfish Resources	-229,600
	<u>\$12,808,600</u>

Fire Island to Montauk Point, NY

3 FEB 1975

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FISCAL YEAR 1976 and 1976 TRANSITION QUARTER: The requested amounts will be applied as follows:

	<u>FY 1976</u>	<u>1976 Transition Qtr</u>
Continue Construction, Reach 2, Section 1b		
Breakwaters = 6 groins	360,000	100,000
Levees - dunes	460,000	100,000
Beach Replenishment	280,000	120,000
Engineering and Design	120,000	50,000
Supervision and Administration	130,000	30,000
	<u>\$1,350,000</u>	<u>\$400,000</u>

NON-FEDERAL COSTS: Under authorizing legislation, local interests were required to: a. provide all rights-of-way required for construction, including borrow areas; b. provide all alterations and relocations of buildings, streets, storm drains, utilities and other structures required by the construction; c. bear 47% of total first cost, consisting of items in a and b above plus a cash contribution; d. hold and save United States free from damage due to construction; e. maintain all works and undertake periodic nourishment after completion, except for first 10 years when United States contributes estimated \$35,000 annually; f. maintain continued public ownership and continued availability for public use of privately owned shore; g. provide for preservation of dunes and their protective vegetation; h. control water pollution to safeguard health of bathers; i. obtain prior approval of Corps of Engineers for construction of beach protection if Federal participation is planned; j. contribute in cash the amount of increased Federal cost of hurricane protection resulting from separate construction of beach protection under item i. The 1974 Water Resources Development Act, (PL 93-251, Sec 31) modified the original authorization to provide that non-Federal interests shall (1) contribute 30 per centum of the first cost of the project, including the value of lands, easements, and rights-of-way; now estimated at \$32,670,000 and cash contribution now estimated at \$28,440,000, (2) hold and save the United States free from damages due to the construction works; and (3) maintain and operate the improvements in accordance with regulations prescribed by the Secretary of the Army. Total non-Federal investment is broken down as follows:

Raising dunes: initial beach fill; groin construction (total cash contribution)	\$ 28,440,000
Lands, relocations of buildings and other structures	4,230,000
Beach nourishment for a period of 10 years	<u>6,630,000</u>
Total	<u>\$ 39,300,000</u>

Local interests have expended over \$5,000,000 since 1938 for limited beach erosion control and hurricane protection. During FY 1967, Suffolk County performed emergency anti-erosion work on Reach 1, including an experimental sandbag dike at Pt. O-Woods. New York State performed emergency dune and beach restoration in May 1967 at Westhampton Beach (estimated cost \$100,000). Estimated average annual non-Federal expenditure for groin Fire Island Inlet to Montauk Point, NY

3 FEB 1975

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maintenance will be \$703,300 and the annual expenditure for beach nourishment (excluding the first 10 years after completion) is \$698,000.

STATUS OF LOCAL COOPERATION: The agency responsible for local cooperation is the New York State Department of Conservation. Assurances of local cooperation were executed by the State on 14 August 1963 and accepted by the Federal Government on 20 August 1963. All planning for Reach 2 was completed in October 1963. Local interests objected to beach replenishment. The Corps of Engineers concurred with the State of New York request to construct initially 11 groins (Reach 2), and 2 groins (Reach 4) with beach fill to be added as necessary not sooner than 3 years after groin completion. On 17 April 1964 the State executed supplementary assurances and construction of the groins was initiated.

In recognition of the critical condition of the beaches due to earlier storms, the Chief of Engineers recommended to the State in June 1967 that the 3 year observation period be waived and that construction of urgent hurricane protection be resumed. The State concurred and requested that work be undertaken on additional groins, replacement of beach fill and dunes in Reach 2 as well as construction of groins, drainage structures and dune fill in Reach 4. Suffolk County, however, did not endorse the placement of beach and dune fills.

Continuing negotiations during FY 1969 resulted in agreement on a plan for construction for certain groins, drainage structures, beach fill and dunes to an interim height of 16 feet in Reaches 2 and 4. Local interests furnished necessary rights-of-way for construction in Reach 2 of four additional groins., and beach fill and dunes in Section 1a. Construction contracts were awarded in 1969 and local interests contributed funds to match Federal appropriations through FY 1971.

Preliminary plans for the next increment of work for 9,000 feet of sand fill and 6 groins (Reach 2, Sec 1b) were furnished local interests. On 23 February 1971, the Suffolk County legislature passed a resolution which included the County's estimated share of the funds for this increment in their Capital Budget (based on the tentative cost-sharing). The State indicated that participation was unlikely unless the 70-30 cost-sharing was applied. In November 1971, the State of New York indicated that non-Federal funds (for the next increment) would not be available in the foreseeable future. Subsequently, the Water Resource Development Act of 1974 (Section 31) provided for the 70-30 cost-sharing.

In December 1973 the State requested planning for Reach 2, Sec 1b and Reach 4, Georgica Pond, indicating that it would provide funds. Planning resumed and assurances for Sec 1b were requested from State in October 1974. In the meantime strong opposition developed from Suffolk Co. Executive and Environmental Groups, The County Legislature subsequently refused to provide County support. Coordination is continuing with the State to resolve outstanding issues.



COMPARISON OF FEDERAL COST ESTIMATES: The current Federal cost estimate of \$76,700,000 is an increase of \$22,700,000 over the latest estimate (\$54,000,000) submitted to Congress. The change is due to price level increases of \$4,760,000; an increase of \$15,570,000 due to an adjustment of cost sharing in accordance with Section 31 of the Water Resources Development Act of 1974; a net increase of \$660,000 in Engineering and Design due to price levels and cost sharing adjustment and a net increase of \$1,710,000 in Supervision and Administration due to price levels, a recomputation of the cost for rental of GSA furnished office space and cost sharing adjustment.

STATUS OF ENVIRONMENTAL IMPACT STATEMENT: The draft statement is scheduled for submission to CEQ in the 1st Quarter of FY 1976 and the final statement is scheduled for the 2nd Quarter of FY 1976.

BENEFIT TO COST RATIO: The benefit to cost ratio last presented to Congress (FY 1975) was 2.4. The current benefit to cost ratio is 2.4. The benefit to cost ratio is based on the project functioning independently.

OTHER INFORMATION: Initial planning and construction funds were appropriated in FY 1963. Project start has been continually delayed because of lack of local cooperation. "See Status of Local Cooperation".

Fire Island Inlet to Montauk Point, NY

3 FEB 1975

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18 February 1975

File
Corps of Engineers

Dear Norm:

I am inclosing the attached two letters for your information. They pertain to the matters we discussed on the plane last Friday concerning expansion of the Corps of Engineers regulatory functions.

The letter from Secretary Callaway to Mr. Ash concerns the more difficult issue -- should the Corps issue permits for dredge and fill in and along all of the waters of the United States. This includes inland waters as well as coastal waters, although the latter are emphasized since that is where current interest is most vocal.

The letter from Governor Bowen of Indiana concerns one of about one thousand studies we are making of navigable (historically, presently, or future potential) rivers to see if our 1899 Rivers and Harbors Act permit authority should be exercised thereon. We are receiving letters of concern from several states and their Congressmen. We are stepping up our public affairs efforts and I think eventually this problem will be resolved.

I thoroughly enjoyed our mutual trip to the Cross Florida Barge Canal and am looking forward to working with you on this and other issues (hopefully less controversial ones).

Sincerely,

KENNETH E. MCINTYRE
Brigadier General, USA
Deputy Director of Civil Works

2 Inclosures
As stated



Mr. Norman E. Ross, Jr.
Domestic Council Staff
Room 218, Executive Office Building
17th and Pennsylvania Avenue
Washington, DC 20500



SECRETARY OF THE ARMY
WASHINGTON

5 FEB 1975

Honorable Roy L. Ash
Director
Office of Management and Budget
Executive Office Building
Washington, D. C. 20503

Dear Mr. Ash:

The Department of the Army, acting through the Chief of Engineers, recently has become involved in a controversy with the Environmental Protection Agency (EPA) and the Department of Justice that involves issues of major importance to the Administration land use planning program.

The basic issues are whether Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. § 1344) extends the Department of the Army's jurisdiction to those upper wetland areas beyond the limits of the federal navigational servitude that are only occasionally or never inundated by tidal waters, and whether the Department of the Army can or should extend its jurisdiction as a practical matter. The EPA and the Department of Justice have both opined that the Department of the Army regulatory jurisdiction under Section 404 does and should extend to these areas, while the Corps of Engineers has taken the opposite position. Copies of correspondence between EPA and the Corps involving this disagreement are enclosed.

It is the opinion of the Department of the Army that this issue requires resolution by your office. An argument can be made that the legislative history of the Act indicates that the EPA's expansive definition of "navigable waters" is correct. The problem, however, must be reviewed in totality. The Corps' historical role and present policy considerations may cast doubt on any expansive interpretation and, more importantly, those considerations cast

DAEN-GCZ-A ✓



doubt on the viability and, indeed, the possibility of implementation of an expanded permit system. A position paper is enclosed that discusses these issues in detail.

A change in regulatory jurisdiction, even if mandated by the Act, would result in a significant change in the Administration's present land use planning program as envisioned by proposed land use planning legislation and the Coastal Zone Management Act, with its ongoing grant-in-aid program administered by the Department of Commerce. These programs encourage and rely upon state regulation. In addition, this assertion of regulatory authority over these areas would also bring the activities of other federal agencies, such as the Department of the Agriculture Soil Conservation Service, under the review authority of the Department of the Army. Thus, the Department of the Army involvement in these intertidal areas beyond the boundaries of the federal navigational servitude might result in a duplication of federal effort and expenditure.

The major problem, however, is one of available resources. The Chief of Engineers has made a preliminary field inquiry as to the costs that would be necessary if Department of the Army authority under Section 404 is expanded. This inquiry has revealed the need for an estimated 1,750 additional personnel and \$53 million (annual allocation) to administer an expanded program. Thus, the crux of the issue is the implementation of what would be, in effect, a new program of enormous scale.

The problem is in need of immediate resolution. The Natural Resources Defense Council has brought suit in the District Court for the District of Columbia against the Secretary of the Army, the Chief of Engineers, and the Administrator of the EPA. The NRDC asks the court to order the Corps to revoke and rescind its present regulations on navigability and publish amended regulations that accord with EPA's definition of "navigable waters."

This matter has already been the subject of intensive discussions between the Corps of Engineers, the Environmental Protection Agency, and the Department of Justice. The Department of Justice, recognizing its responsibility to assist EPA in its administration and enforcement of the Act and the difficulties that it is experiencing in this effort



because of the split in federal agency positions, has recently expressed its desire to have the President resolve this matter. The Department of the Army joins in this recommendation and is prepared to assist in the resolution.

Sincerely,

(SIGNED) BO CALLAWAY

Howard H. Callaway

Enclosures
As Stated



POSITION PAPER

SUBJECT: Extent of Department of the Army regulatory authority under Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U. S. C. § 1344)

PURPOSE: To discuss the issues that have recently surfaced concerning the exercise of the Department of the Army's regulatory authority under Section 404 to the disposal of dredged or fill material in navigable waters of the United States.

Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (FWPCA) gives the Corps of Engineers the responsibility of issuing permits for the deposit of dredged and fill material into the "navigable waters" of the United States. The Corps defines "navigable waters" as "those waters of the United States which are subject to the ebb and flow of the tide, and/or are presently, or have been in the past, or may be in the future susceptible for use for purposes of interstate or foreign commerce." 33 C.F.R. § 209.120 (d)(1). 30 C.F.R. § 209.260 expands upon the definition; the "ebb and flow of the tide" is limited to areas below the mean high-water mark of the tide.

The EPA defines the same term, for the purposes of its permit system in regulating the discharge of pollutants under the FWPCA, as follows:

- a. All navigable waters of the United States;
- b. Tributaries of navigable waters of the United States;
- c. Interstate waters;
- d. Intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes;
- e. Intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce; and
- f. Intrastate lakes, rivers, and streams which are utilized for industrial purposes by industries in interstate commerce.

40 C.F.R. § 125.1 (o).



The term is defined only once in the FWPCA, in Section 502(f): "The term 'navigable waters' means the waters of the United States, including the territorial seas."

In United States v. Holland, 373 F. Supp. 665 (M. D. Fla. 1974), the court held that Section 301 of the Act, which makes unlawful the discharge without permit of any pollutant into navigable waters, extended to activities in waters above the mean high-water mark where the pollutants from those activities would be conveyed into the navigable waters.^{1/} The decision contained much dicta indicating that the scope of Section 301 extended to all waters in the United States. The Holland decision was cited in United States v. Ashland Oil Co., 364 F. Supp. 349 (W.D. Ky. 1973), aff'd, _____ F.2d _____ (5th Cir. 1974), which extended the jurisdiction of the Act to tributaries of navigable waters.

The Holland case subsequently became the subject of correspondence between EPA, the Department of Justice, and the Corps (Incl. 2), with both Justice and EPA urging the Corps to commence processing permits for wetlands above the mean high-water mark. In addition, the Committee on Government Operations of the House of Representatives, published a report on October 1, 1974 (H. R. 93-1396), that, among other things, urged the Corps and EPA to develop a uniform regulation that complies with the congressional mandate that the term "be given the broadest possible constitutional interpretation" rather than "old, narrow definitions of navigability."

The Holland decision continued to gain recognition and on August 16, 1974, the Natural Resource Defense Council and the Natural Wildlife Federation filed a suit against the Secretary of the Army, the Chief of Engineers, and the Administrator, EPA, in the District Court for the District of Columbia and requested an order to revoke and rescind those aspects of the jurisdictional limits described in the Corps' permit regulations pertaining to regulatory jurisdiction under Section 404, and requested an order to require the republication of amended regulations that accept the full regulatory mandate of the FWPCA.

^{1/} Thus, the Holland decision can be read as merely extending the rationale of cases that have held that federal dominion extends to areas that affect nearby navigable waters. E. g., United States v. Perma Paving Co., 332 F. 2d 754, 756-7 (2d Cir. 1964); Tatum v. Blackstock, 319 F.2d 397, 399 (5th Cir. 1963); United States v. Underwood, 344 F. Supp. 486, 491 (M. D. Fla. 1972).

DISCUSSION: Thus, the battle lines are clearly drawn. Unfortunately, prior treatments of the problem, including the Holland decision, have not developed its complexity; the parameters of the problem have never been clearly outlined. As a preliminary matter, it should be noted that a narrow resolution of the legal issue does not resolve the practical problem. And the complexity of the problem, as a whole, dictates that both be looked at together.

The legislative history^{2/} and the geographical definition given by Section 502(7),^{3/} by themselves, indicate that the Act broadly defines navigable waters. And it should be noted that Congress does have the power to enact an expansive definition under its commerce power. Congress may regulate those spheres of life that have a substantial effect on interstate commerce. Perez v. United States, 402 U. S. 146 (1970); Heart of Atlanta Motel, Inc. v. United States, 397 U. S. 241 (1964). Water resources regulation certainly falls within this rule. Zabel v. Tabb, 430 F.2d 199, 204 (5th Cir. 1970), cert. denied, 401 U. S. 910 (1971). But that is only a starting point; the legislative history must be placed in its total perspective.

The scope of the Corps' historical jurisdiction bears on the issue. Section 10 of the River and Harbor Act of 1899, 33 U. S. C. § 403, requires a Department of the Army permit for the performance of work or placement of structures in or affecting navigable waters of the United States. Section 10 was generally administered as a means to protect the navigable capacity of commercially navigated waterways. On 18 December 1968, the Department of the Army formally revised its policy so that permits thereafter would be based on the totality of the public interest. This was in response to new environmental legislation and to an awareness that limited "navigational" review would not fully protect the public interest within the Corps' traditional jurisdiction.

^{2/} Sen. Rep. No. 92-1236, 92d Cong., 2d Sess. (1972), at 144; Senate Consideration of the Report, in 1 Congressional Research Service, Library of Congress, 93d Cong., 1st Sess., A Legislative History of the Water Pollution Control Act Amendments of 1972, at 178; House Consideration of the Report, id. A Legislative History, id., at 250-51; H. R. Rep. No. 92-911, 92d Cong., 2d Sess. (1972), at 141; Sen. Rep. No. 92-414, 92d Cong., 1st Sess. (1971), at 77; House Debate on H. R. 11896, in A Legislative History, supra, at 591

^{3/}"Sec. 502. (7) The term 'navigable waters' means the waters of the United States, including the territorial seas."

The existence of Section 10 as a valuable federal tool to protect waters other than those that were presently used to transport interstate commerce became increasingly apparent, and in 1972 the Corps of Engineers expanded its administrative definition of "navigable waters of the United States" to not only include those waters currently used to transport commercial traffic, but also all intrastate or interstate waters that were used in the past, were presently used, or are susceptible to use as a means to transport interstate commerce and all waters that are subject to the ebb and flow of the tide. In addition, jurisdiction extended "to the entire surface and bed of these waterbodies to the ordinary high water mark in nontidal waters and to the mean high water mark in tidal waters." 33 C.F.R. Part 209.260(k)(2), published in the Federal Register on 9 September 1972. Thus, the Corps had developed a regulatory structure that, when carried over to implement Section 404 of the FWPCA, was able to protect fully all aspects of the public interest in areas that had been traditionally under federal control, and were subject to the federal navigational servitude.

The statements made concerning "navigable waters" in the legislative history of the FWPCA must also be put in perspective. First, there is the unfortunate statement of Congressman Dingell that "(n)o longer are the old, narrow definitions of navigability, as determined by the Corps of Engineers, going to govern matters covered by this bill." House Consideration of the Report of the Conference Committee, reprinted in 1 Congressional Research Service, Library of Congress, 93d Cong., 1st Sess., A Legislative History of the Water Pollution Control Act Amendments of 1972, at 250-51. However, that statement could have merely reflected the Congressman's unawareness of the Corps' recent change in definition as the remark came within a month of the 1972 change that expanded jurisdiction (September 9, 1972-October 4, 1972). Note that when Congressman Dingell indicated that the new definition of "navigable waters" in the FWPCA "is in line with more recent judicial opinions which have substantially expanded that limited view -- of navigability derived from the Daniel Ball case, "he cited cases that supported the Corps' September 9, 1972 definition of "navigable waters."

Second, there are statements in the debates and reports that the term "navigable waters" is to be given the broadest possible constitutional definition. See note 2, supra. It is possible, however, that despite the unitary definition of the term in the Act, the Congress

did not intend to include Section 404 within the broader mandate it intended for the EPA's permit program. There is no mention of Section 404 in any of the legislative history of "navigable waters." Additionally, Section 404 was added at the last moment, indicating a desire to have the Corps assume a unique responsibility. And in explaining the last minute addition of Section 404 Senator Muskie indicated that the Joint Committee intended to continue the "process by which dredge and fill permits are presently handled." Senate Consideration of the Report of the Conference Committee, in A Legislative History, supra, at 177. Thus, the action of the Congress and Senator Muskie's statement at least cast doubt on an expansive definition of "navigable waters" with respect to section 404.

With respect to those areas above the mean high water mark, there is already extensive state regulation. E.g., Maine rev. stat. ann. tit. 12, § 4702; Florida stat. ann. § 253.123(2)(b). See generally The Fifth Annual Report of the Council on Environmental Quality, at 49. And there is presently federal legislation that, through a grant-in-aid program, encourages states to develop such programs. Coastal Zone Management Act, 16 U.S.C. § 1453 et seq. In addition, jurisdiction by the Department of the Army into these areas will directly impact on the activities of federal agencies in these areas, such as the Department of Agriculture's Soil Conservation Service Programs. Last, the EPA, through its FWPCA permit program, does regulate the discharge of pollutants into these waters.

The cost of expansion by the Corps sheds light on the intent of the FWPCA and on the practicality of presently implementing any new program. First, there may be incidental costs with respect to occasional takings of private property. Regulation of a wetland often leaves no alternative commercial use to the owner. So long as the Corps operated under its mean high-water mark definition, private persons were not entitled to reimbursement at all as the United States had a dominant navigational servitude over these areas. E.g., United States v. Rands, 389 U.S. 121 (1967). The safety of the servitude is left behind, however, when the mean high-water mark is crossed. But there still is not always a taking in all cases where agencies preclude a particular activity for under either the federal commerce power or the state police power all land regulation does not amount to a taking.

Most recent state court decisions have upheld state wetland legislation and regulation even when the property involved had no other alternate use. Potomac Sand and Gravel Co. v. Mandell, 266 Md. 364 (1972); Just v. Marinette County, 56 Wis. 2d 7, 17, 201 N.W. 2d 761, 768 (1972); Turnpike Realty Co. v. Town of Dedham, 284 N.E. 2d 891 (Mass. 1972). There are decisions within the last five years, following the old line of cases, that have held that such prohibitions are, in fact, takings. Mac-Gibbon v. Board of Appeals, 356 Mass. 635, 255 N.E. 2d 347 (1970); Maine v. Johnson, 265 A. 2d 711 (Maine 1970). The newer decisions, however, indicate what is and will be the law. Thus, under the state police power wetland regulation is now looked upon as welfare regulation that prevents harm to others, and not as the taking of property without compensation for public benefit.

While it seems that the same rationale would apply to federal action under the analogous commerce power, recent federal cases demonstrate a reluctance to address the issue. E.g., Zabel v. Tabb, 430 F. 2d 199 (5th Cir. 1970), cert. denied, 401 U.S. 910 (1971); United States v. Stoeco Homes, Inc., 498 F. 2d 597 (3rd Cir. 1974). Thus, the law with respect to wetland regulation, while favorable in the state courts, is unclear in the federal courts.

The major cost involved, however, is that of setting up, in effect, a new, large federal agency. A preliminary field study by the Corps indicates that an expanded jurisdiction will require at least 1,750 personnel spaces and an additional federal expenditure of over \$52,000,000 per year.

Essentially, this cost and the present overlapping jurisdiction are the crux of the issue. It seems that, absent discussion in Congress of a large new bureaucracy there may have been no intent to expand the Corps' jurisdiction. Indeed, Senator Muskie stated that "[t]he conferees were uniquely aware of the process by which dredge and fill materials permits are presently handled and did not wish to create a burdensome bureaucracy in light of the fact that a system to issue permits already existed." Senate Consideration of the Report of the Conference Committee, in A Legislative History, supra, at 177. Additionally, EPA can delegate its FWPCA permit responsibilities to the states while the Corps

cannot. In light of present extensive state regulation and the Coastal Zone Management Act, which encourages such participation, it seems disingenuous to find that Congress intended to expand the Corps jurisdiction without a delegation authority similar to EPA's.

Most importantly, even if the legal issue is resolved against the Corps by the President, OMB, or the courts, the issues of cost, overlapping jurisdiction, and the proper role of the federal government in regulation of wetlands above the mean high tide water mark still exist. An adverse legal decision will require the aid of OMB in obtaining either funding for the new, expanded permit program or in obtaining amending legislation to the FWPCA that will limit the jurisdiction of the Corps.

RECOMMENDATION: It is the recommendation of the Department of the Army that the matter be forwarded to the President for resolution of the dispute. The Department of Justice concurs in this recommendation.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JUN 19 1974

THE ADMINISTRATOR

Dear General Gribble:

As you are undoubtedly aware, on March 15, 1974, the U.S. District Court for the Middle District of Florida issued a Memorandum Opinion in United States v. Holland. In that case, the United States sought to enjoin disposal without a permit of dredged material in wetlands which were above the mean high water line but were periodically inundated by tidal waters. The court held, inter alia, that wetlands above the mean high water line are subject to Federal jurisdiction under Section 404 of the Federal Water Pollution Control Act, as amended (the "FWPCA") and that discharges of dredged material into such areas "constituted discharges entering 'waters of the United States'."

The result reached in U.S. v. Holland is a jurisdictional milestone under the FWPCA. Wetlands above, and below, the mean high water line are of vital importance to our environment. The Corps has taken an admirably firm position to protect wetlands below the mean high water line. Recently issued Corps regulations stated that: "As environmentally vital areas, [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 CFR Section 209.120(e)(3). Our concern is that similar protections be provided for wetlands above the mean high water line.

We believe that the Holland decision provides a necessary step for the preservation of our limited wetland resources. Moreover, we are firmly convinced that the court properly interpreted the jurisdiction granted under the FWPCA and Congressional power to make such a grant.

Notwithstanding the decision in U.S. v. Holland and the recognized importance of wetlands to the environment, we have been informed that the Corps has declined to acquiesce in the Holland decision and has advised Corps installations not to accept applications for permits under FWPCA Section 404 for dredge and fill disposal in those areas. The Department of Justice has taken the position that it will not bring enforcement action against persons disposing of dredged or fill material in wetland areas without Section 404 permits so long as the Corps refuses to issue such permits. As a consequence, wetland areas above the mean high water line are presently unprotected from the irreparable damage caused by the disposal of dredged and fill materials.

So that this important and irreplaceable part of the environment will not go unregulated, I strongly urge the Corps of Engineers to reconsider its position and to commence processing Section 404 permits for wetlands above the mean high water line immediately. I would appreciate the opportunity to discuss this matter with you at your earliest convenience.

A separate but related matter also requires attention. On April 3, 1974, the Corps of Engineers promulgated final regulations with respect to Corps permits for various activities in navigable or ocean waters. 39 Federal Register 12115. Among other things, these regulations set forth certain procedures for the issuance of permits for the disposal of dredged or fill material under Section 404 of the FWPCA.

Of particular concern to the Environmental Protection Agency is the definition of "navigable waters" set forth in these regulations, 33 CFR Section 209.120(d)(1). In proposed regulations published on May 10, 1973 (38 Federal Register 12217), the Corps proposed to define the term "navigable waters" to mean "waters of the United States, including the territorial sea," in accordance with the definition of "navigable waters" in the FWPCA. The final regulations promulgated on April 3, 1974, deleted the previous definition of "navigable waters" and substituted therefor the following:

"The term 'navigable waters of the United States' and 'navigable waters,' as used herein mean those waters of the United States which are subject to the ebb and flow of the tide, and/or are presently or have been in the past, or may be in the future susceptible for use for purposes of interstate or foreign commerce (See 33 CFR 209.260 for a more complete definition of these terms)."

The preamble to the final regulation discusses the Corps' reasons for changing the definition and makes it clear that the term "navigable waters of the United States" as used in the River and Harbor Act of 1899 and the term "navigable waters" as defined in the FWPCA are to be "treated synonymously." The preamble and the reference to the Corps' definitional regulation at 33 CFR 209.260 make it clear that the Corps intends to delineate FWPCA Section 404 jurisdiction on the basis of court decisions and Corps' interpretations of "navigability." Our interpretation of "navigable waters" within the meaning of the FWPCA does not conform to the Corps' recently issued regulation. We firmly believe that the Conference Committee deleted "navigable" from the FWPCA definition of "navigable waters" in order to free pollution control from jurisdictional restrictions based on "navigability." Indeed, as the Conference Report



states with respect to the modified definition of "navigable waters": "The conferees fully intend that the term 'navigable waters' be given the broadest possible constitutional interpretation unencumbered by agency determinations which have been made or may be made for administrative purposes." S. Rep. 92-1236, 92d Cong., 2d Sess. at 144. Perhaps a meeting of the appropriate personnel of the Corps and of EPA should be scheduled to resolve these discrepancies.

Sincerely yours,

/s/ John Quarles, *Deputy*

for Russell E. Train
Administrator

Lt. General W. C. Gribble, Jr.
Chief, Corps of Engineers
DAWN-2A
Forrestal Building
Washington, D. C. 20314





DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20314

REPLY TO
ATTENTION OF:
DAEN-GCZ-C

0 9 AUG 1974

Honorable Russell E. Train
Administrator
United States Environmental Protection Agency
Washington, D.C. 20460

Dear Mr. Train:

This is in reply to your letter of June 19, 1974 in which you raise several issues concerning the interface of the Memorandum of Opinion of the U.S. District Court for the Middle District of Florida in United States v. Holland with the regulatory permit program administered by the Corps of Engineers under Section 404 of the Federal Water Pollution Control Act and the national recognition and need to protect ecologically valuable wetlands.

I have been briefed on the Holland decision by my counsel, and while the Corps of Engineers did not have the benefit of the personal knowledge available to your agency on it because the Corps did not participate in the prosecution of the case, I shall attempt to reveal our interpretation of this case based on the facts which are available to us. Since I believe our basic differences with respect to this case, if any, lie primarily in whether the Federal Government can regulate areas landward of the traditional mean high water mark under the FWPCA, particularly in mangrove wetland areas which are subject only to periodic inundations by tidal waters, I shall confine my remarks primarily to that aspect of the case.

I do not question that Congress has the right under the Commerce clause of the Constitution to control all activities which pollute the waters of the Nation and thereby impact on the free movement of interstate and foreign commerce within the Nation. Nor do I question the right of the Congress to extend the arm of its commerce authority beyond the traditional limits of navigable waters of the United States and their mean and ordinary high water marks in order to control water pollution, particularly at its source. That this concept is unique to the FWPCA; and as you have noted, that the decision in the Holland case is a resultant "jurisdictional milestone" by recognizing this concept appears to overstate the point, however. Many statutes and many judicial precedents have recognized the



0 9 AUG 1974

DAEN-GCZ-C

Honorable Russell E. Train

Federal Government's right to control, under the Commerce clause, almost every activity in this Nation.

In this regard, I note, in particular, Section 13 of the River and Harbor Act of 1899, the forerunner to your NPDES Permit Program, which makes it unlawful to deposit any material of any kind on the bank of any navigable water or tributary thereof where it is likely to be washed into the water either by ordinary or high tides, storms, floods, or otherwise. Under this section, therefore, according to the facts in the Holland case ("even the occasional lapping of the bayou waters has conveyed these pollutants into waters of the United States"), the same result could have been achieved. Likewise, Section 10 of the same Act makes it unlawful, unless authorized by the Corps of Engineers, to excavate, fill, alter or modify the course, location, condition or capacity of any navigable water of the United States, and it is this provision of Section 10 which forms the jurisdictional basis for the Corps assertion of regulatory authority over the connection of upland canals which are dredged above the mean high water mark.

Bearing this in mind, therefore, we have examined the provisions of the FWPCA in conjunction with the holding of the Holland case. In this light, we note that Section 301 of the FWPCA makes it unlawful to discharge any pollutant from any point source into a navigable water unless it is performed in compliance with Sections 302, 306, 307, 318, 402, and 404 of the Act. Thus, the statutory scheme is identical to Section 10 of the River and Harbor Act of 1899, for it offers an opportunity to purge the discharge of a pollutant from its illegality by the issuance of a permit under Sections 402 or 404; however, it also provides, like Section 13 of the 1899 Act with respect to deposits on banks of a navigable water, that discharges which do not fall within the purview of Section 404 cannot be so cleansed, and therefore are subject to the enforcement provisions of Section 309 of the Act.

An examination of Section 404 of the FWPCA reveals that the Secretary of the Army, acting through the Chief of Engineers, is given the discretionary authority to establish a regulatory permit program and to issue permits which authorize the discharge of dredged or fill material into navigable waters; an authorization which would serve to remove the illegality of such discharges from the provisions of Section 301. Unlike an enforcement program which envisions a systematic approach, a regulatory permit program like that envisioned by Section 404 must be universally applicable to all activities within its established purview. Likewise, it must be molded within constitutionally permissible standards, for, to quote the recent case of U.S. v. Stocco Homes, Inc., ___ F.2d ___ (3rd Cir., 1974), "though the Congressional power over the regulation of commerce is far-reaching, that power is limited by the due-process and taking clauses of the Fifth Amendment."



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Honorable Russell E. Train

These considerations were foremost in our minds as we developed our regulatory permit program, the final regulations for which were published in the Federal Register on 3 April 1974. We were also acutely aware that dredge and fill activities of the type envisioned by Section 404 were the principal causes of destruction of wetlands, and that it was necessary to formally adopt a wetlands policy as part of this regulation which would be used in our evaluation of these types of activities which would focus on the need to uniformly curtail this type of destruction. I particularly appreciate your recognition in your letter that the Corps has played an aggressive role in preventing encroachments in valuable wetlands by adopting such a policy, and I am pleased to note that this policy has also been adopted with respect to our own navigation projects involving the water disposal of dredged matter by regulations published in the Federal Register on 22 July 1974.

It must be emphasized, however, that this wetlands policy is a strong one, and it will mandate the denial of many permit applications for proposed work in ecologically valuable wetlands. Since wetlands of this type are often economically valueless to their owners if precluded from development, we can anticipate a substantial number of claims which challenge the Federal Government's constitutional authority to take such action, since the effect will be, in many cases, to deprive landowners of the beneficial use of their lands. In this regard, we must rely on the existence of the Federal navigational servitude which the Corps administers as a public trust by prohibiting any activities therein not found to be in the public interest. This servitude is recognized as being dominant over property rights, for, to quote the Stocco case, "it is clear that for purposes of the Fifth Amendment the fee owner's interest is valued subject to the navigational servitude, regardless of the purpose of the federal taking." It was primarily for this purpose, therefore, that we, in our promulgation of our 1974 permit regulation, chose to develop a permit program pursuant to Section 404 which is limited to the disposal of dredged or fill material in navigable waters of the United States over which this navigational servitude extends.

I cannot foresee how our position will in any way jeopardize the overall objective of the FWPCA, as echoed by the Holland decision, to control pollutants at their "source" from being "conveyed" or "introduced" from "land" above the mean high water line into waters of the United States, nor can I foresee how this position will jeopardize the enforcement effort of the Department of Justice. Curtailment of pollution may be accomplished by the issuance of permits with appropriate terms and conditions, by the denial of permit applications, and by the institution of vigorous enforcement efforts. Certainly this situation did not preclude prosecution under the Holland case, where the Court held that the defendant's filling activities



DAEN-GCZ-C

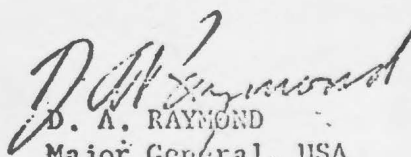
Honorable Russell E. Train

0 9 AUG 1974

in these periodically inundated wetland areas above the mean high water mark were discharges entering the waters of the United States by coming into contact with the occasional lapping of the bayou waters, and since done without a permit, were thus in violation of Section 301 of the FWPCA. Likewise, the unavailability of a permit program to cover discharges on the banks of navigable waters of the United States has not curtailed the Department of Justice in their enforcement efforts against this type of activity, most notably with the recent case of United States v. White Fuel ____ F.2d ____ (1st Cir. 1974), which upheld a prosecution under Section 13 for this type of activity.

I have sought to outline the basis on which the Corps of Engineers has taken its position with respect to the Holland decision, particularly since I feel that its exclusion during the prosecution of this case prevented it from being adequately heard on these issues at that time. I do not believe that our position is at variance with this decision, however. If after reviewing my response you feel that a useful purpose would be served by further discussions between Corps and EPA personnel on these issues, members of my staff are available to meet at your convenience.

Sincerely yours,



D. A. RAYMOND
Major General, USA
Acting Chief of Engineers



OFFICE OF THE GOVERNOR
INDIANAPOLIS, INDIANA 46204

ERIC W. HOWEN, M.D.
GOVERNOR

February 3, 1975

The Honorable Howard H. Callaway
31718 Pentagon
Washington, D.C. 20310

Dear Secretary Callaway:

It has come to my attention that the Corps of Engineers, Department of the Army, is actively pursuing a nation-wide program to administratively assert that a very great number of rivers and streams are "navigable waters of the United States" and thereby subject to extensive regulatory authority of the Corps of Engineers.

The basis for such administrative assertion of navigability is set forth in Engineer Regulation 1165-2-302, which was promulgated without public notice of rule-making. The bases laid down therein for assertions of navigability are so broad, general and ambiguous that it appears obvious that a "determination of navigability" may be made with respect to virtually every river, stream or rivulet in the United States at the sole discretion of the Chief of Engineers.

The nature and scope of the regulatory authority which is being imposed is set forth in the Department of Army Permit Program, published in the Federal Register on April 3, 1974.

It is patently clear, on the basis of available information as to those streams on which the Corps of Engineers has--or plans to--assert navigability, that such streams are not commercially navigable but are absolutely unsuited for such navigation, both from the standpoint of the costs required to render them so and from the obvious lack of any economic reason to justify it.

One can only conclude that this program does not stem in any sense from any concern or need for the protection, preservation or expansion of commercial interstate navigation. It is rather a plan to utilize the camouflage of "navigability" to provide a vehicle for expanding the regulatory authority of the Corps of Engineers, with the attendant impositions of yet another set of

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Secretary Callaway

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February 3, 1975

bureaucratic and time-consuming permit requirements upon the people of Indiana and other states for the purpose of "assuring that our country's water resources are used in the best interest of the people".

In this vein, I would call to your attention that the Corps of Engineers has taken upon themselves the prerogative of determining the location and extent of the "navigable waters of the United States" a function which I believe is in the sole province of the Federal courts. The Corps has asserted, in effect, that it is their function to determine what uses of our water resources are in "the best interest of the people" through strict regulation of every type of activity in such waters. There is expressly inherent within this assumption of regulatory authority the power to regulate or deny the use of such waters by riparian owners when, in the Corps' judgment, such use would impact adversely on the alleged "navigability" of the stream or would not be in "the best interest of the people".

This latter function involves Federal intervention in water rights, a matter which is one of State law. Quite frankly, we in Indiana cannot escape the uneasy feeling that this assumption of water rights control is perhaps a major underlying cause for this entire program.

As governor, I wish to express the strong opposition of the State of Indiana to this program of the Corps of Engineers and to solicit your active efforts to take the necessary steps to terminate the program and reverse the assertions of navigability made to date. In brief, the program is unwarranted, unnecessary, and represents a totally repugnant intrusion into the State's management of its water resources and water rights.

Kindest personal regards,



Otis R. Bowen, M.D.
Governor

ORB:lkd





SECRETARY OF THE ARMY
WASHINGTON

*file with
downstairs -
it was done 2-21-75
memo -*
26 MAR 1975

Dear Mr. Ross:

This is in further response to your letter of February 21, 1975, concerning the regulatory authority of the Corps of Engineers over the Little River in Indiana.

Inclosed is a letter of transmittal to Mr. Sweet and an Explanation Paper which describes the background and reasons for extending the Corps's authority.

Please let me know if you have any further questions.

Sincerely,

Bo Callaway
Howard H. Callaway

Incl
as

Mr. Norman E. Ross, Jr.
Assistant Director
Domestic Council
The White House
Washington, D. C. 20500



Dear Mr. Sweet:

The Army has prepared the inclosed Explanation Paper which outlines the reasons for extending the Corps of Engineers regulatory authority over many previously unregulated waters in Indiana, including the Little River.

In administering this national regulatory program, neither the Army nor the Corps wants to usurp any role of the States in regulating the use of their waters. However, they must carry out their statutory responsibility and national policy as expressed in the National Environmental Policy Act. This requires them to regulate all activities in or affecting all navigable waters of the United States, even though some of those waters may be subject to concurrent State regulatory jurisdiction.

We welcome your views on this important regulatory program. Thank you for taking the time to write to the President.

Sincerely,

Norman E. Ross, Jr.
Assistant Director
Domestic Council

Mr. William L. Sweet, P.E., L.S.
Allen County Surveyor
One Main Street, 6th Floor
Fort Wayne, Indiana 46802



EXPLANATION PAPER

DEPARTMENT OF THE ARMY ADMINISTRATION OF ITS REGULATORY PERMIT PROGRAM

The Department of the Army's regulatory permit program has, until only recently, been based entirely on the requirements of the 1899 Act, and since this Act was enacted originally to protect navigation and the navigable capacity of navigable waters of the United States, Army permits were only required as a matter of policy for activities performed in or affecting waters which were presently used to transport interstate commerce. The recent enactment by Congress of environmental and public interest legislation, such as The National Environmental Policy Act of 1969 (42 USC 4321-4347), the Fish and Wildlife Coordination Act (16 USC 661-666c), the Federal Water Pollution Control Act (33 USC 1151), the Marine Protection, Research and Sanctuaries Act of 1972 (16 USC 1361 et seq.), the Coastal Zone Management Act of 1972 (16 USC 1451 et seq.) and the Endangered Species Act of 1973 (16 USC 668dd et seq.), impose additional factors to be considered in the evaluation of any Federal permit application. These Acts also made it abundantly clear to the Department of the Army, acting through the Corps of Engineers, that it had a congressional mandate to expand its limited "navigational" review over activities performed in navigable waters of the United States to encompass a broader public interest review. Likewise, it became equally apparent that there was a similar mandate to no longer limit the administration of the 1899 Act to only those activities performed in waters presently used to transport interstate commerce. Indeed, the national concern for the protection of all of its natural resources, as expressed by Congress in these recent Acts, made it clear that the Corps must administer its regulatory authority over all navigable waters of the United States rather than only over those waters which were presently used to transport interstate commerce.

For this reason, therefore, the Corps of Engineers undertook an exhaustive legal analysis of all cases which have judicially defined the term "navigable waters of the United States." This analysis subsequently formed the basis for the Corps revised administrative definition of "navigable waters of the United States" which was published in the Federal Register on 9 September 1972 and is now codified in Section 209.260 of Title 33 of the Code of Federal Regulations. Since this definition merely reiterates the judicial definitions which have been given to this term by various Supreme Court decisions over the years, and since it was an interpretation of the general applicability of our regulatory authorities, notice of proposed rule making and the applicable procedures were not required by the Administrative Procedures Act. The revised Corps definition of "navigable waters of the United States" indicates that a water body falls within this category not only if it is presently used to transport interstate commerce, but also if it was so used in the past, or if it has a susceptibility to such use in its natural state or by reasonable improvement. Additionally, waters which are subject to the ebb and flow of the tide also fall within this definition. As previously indicated, the definition is founded on solid judicial precedent, most notably The Steamer Daniel Ball v. United States, 77 U.S. (10 Wall) 557 (1871);

U.S. v. Appalachian Electric Power Co., 311 U.S. 377 (1941); Economy Light and Power Co. v. U.S., 256 U. S. 113 (1921).

Following its promulgation of this revised administrative definition, Corps District Engineers commenced studies within their respective Districts in order to identify those waters which fall within our regulatory jurisdiction. The Corps regards any navigability study of a water body to be a very serious matter. An administrative determination of navigability does not represent the final position on the issue of the navigable status of a water body since that decision can always be challenged judicially. The Corps, however, recognizes that courts often place heavy weight on an agency's determination of navigability, and for this reason, the Corps strives to accumulate all available information on the navigable status of the water before any position is taken.

The Corps navigability studies and determinations serve to place riparian owners on notice of the requirement for Federal permits for any activities performed in these waters. In this regard, it must be emphasized that all of the laws under which the Corps of Engineers regulates activities in or affecting navigable waters of the United States impose severe criminal and/or civil penalties as well as injunctive relief, including the removal of such work or structures, where these activities are performed without a Department of the Army permit. Thus, if the Corps administratively ignores its regulatory role over certain navigable waters of the United States, riparian owners located on these waters will be given a false sense of security, and could ultimately become subject to the imposition of severe criminal and civil penalties, as well as litigation brought to seek removal of their unauthorized structures from the waterways. This problem becomes particularly acute in view of the citizens suit provisions in the FWPCA and the resultant opportunities of environmental and other public interest groups to seek judicial redress against unauthorized structures and work in these waters even though many of these waters are no longer capable of supporting any commercial navigation.

Atchafalaya River and Bayous Chene, Boeuf,
and Black, Louisiana*

1. Description: A proposed Corps of Engineers navigation channel through Louisiana's coastal wetlands.
2. Impact: It will cover 7,000 acres of coastal wetlands with spoil during construction, and an additional 3,500 acres every 3 years, for 50 years, for maintenance. It will also bisect (and pollute) a state-declared wild and scenic river of the highest water quality in the state. The commercial and recreational fish and wildlife resources of these wetlands are estimated in excess of \$3 million annually.
3. Economics: a. Benefit/cost ratio 1.2:1 using 3 1/8% discount rate. Using 1974 Federal discount rate, project falls below 1:1.
b. No mitigation is planned to offset fish and wildlife loss. Any mitigation plan would put the project below 1:1.
4. Reaction: Considerable local and national opposition; of 23 formal comments submitted on the Corps' draft impact statement, 18 have been critical and adverse -- including those of:

Department of Commerce (commercial fisheries, salt water intrusion)

Department of Interior (fish and wildlife losses, studying Atchafalaya Basin piecemeal)

Environmental Protection Agency (salt water intrusion, pollution)

Louisiana Advisory Commission on Coastal and Marine Resources (coastal resources)

Louisiana Wildlife and Fisheries Commission (fish and wildlife losses)

Louisiana State University, Department of Architecture, Department of Environmental Design

National Audubon Society

Sierra Club

National Wildlife Federation

local citizens

Police Jury, Iberia Parish, La.

Police Jury, Terrebone Parish, La. (originally a major project sponsor, Terrebone has rescinded its authorization of the project and withdrawn its agreement to absolve the federal government from liability.)

The City of Houma, Louisiana (the late Senator Ellender's hometown).

* All data from Corps documents, except fish and wildlife figures.

The Government Accounting Office has reviewed the project and found it a classic failure in consideration of fish and wildlife values, GAO Report March 8, 1974. By letters of January 19, 1973 and March 20, 1974, respectively, EPA and the Department of Interior have reaffirmed their opposition to the project.

5. Alternatives: 1. The project is justified as providing two local manufacturers with a route to get oil rigs to the Gulf. The same manufacturers presently get the same rigs to the Gulf -- but assemble them in deeper water. Existing alternative routes abound, such as from New Orleans on the lower Mississippi, or from Galveston, Corpus Christi or Mobile.

2. The Corps, Interior and EPA are jointly studying the whole Atchafalaya Basin at the State's request to develop a comprehensive management plan. This project should await the outcome of that study.
6. Current Status: The city of Houma, local citizens and conservation organizations have brought suit in Louisiana to enjoin the project. Construction has been halted pending further hearings, probably in January 1975. As of December 1974, channel work has been done in the bay, mainly to keep an outlet for Morgan City (to which no one objects). Channelization in the marsh, the focus of the opposition, has not begun.
7. Summary: In the face of increasing state and national emphasis on comprehensive coastal zone management, this project is the classic problem. It has been economically unjustifiable for years, it will destroy nationally-important wetlands, and there is a better way to get the job done.



April 25, 1975

MEMORANDUM FOR

ELISKA HASEK

FROM:

NORM ROSS

SUBJECT:

Presidential Message

On May 2 the Corps of Engineers is having their annual dinner at Fort Belvoir to officially open the Bicentennial year.

They will also be celebrating the Corps 200th anniversary. I feel it would be an appropriate time to have the President express his appreciation through a Presidential Message to these people.

Attached is a draft message. Would you please take appropriate action and let me know what is the final outcome? If you have any questions I can be reached on extension 6554.

Many thanks.

Attach~~ment~~

neross/ee

check up on this - 4-28

Vets it - it is the Army's anniversary too and what we do for me we have to do for everyone this was the recommendation of Eliska Hasek



TO THE MEN AND WOMEN OF THE U. S. ARMY CORPS OF ENGINEERS

On behalf of the people of the United States, I extend to you my greetings and congratulations on the occasion of your 200th Anniversary.

It is fitting indeed, that the 200th birthday of the Corps of Engineers precedes the Bicentennial of the United States as the Corps has been the pathfinder for this Nation from Bunker Hill through the development and preservation of our water resources. Your great accomplishments in opening our rivers and mapping the frontier paved the way for the migration West. The other half of your dual mission of engineering and building for the defense and security of the United States at home and abroad has also recorded many splendid performances carried out in a highly dedicated and professional manner.

The best wishes and support of our Nation go with you as you embark on your next 200 years--years which promise even greater challenges in your mission to preserve our water resources and national security.

GERALD R. FORD





DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20314

REPLY TO
ATTENTION OF:

DAEN-PA

14 April 1975

Miss Erlynn Ensign
Room 218
Executive Office Building
Washington, D. C. 20503

Dear Erlynn:

Following your kind offer of assistance and guidance, we submit this version of a 200th Anniversary message proposed for signature by the President.

If possible, we would very much appreciate having this for the Annual Engineer dinner at Fort Belvoir on May 2, which will officially open our Bicentennial year.

As always, your good efforts on behalf of the Corps of Engineers are appreciated.

Warm regards,

RAYMOND G. LEONARD
Chief Public Relations and
Information Division
Public Affairs Office

1 Incl
As stated

