



March 14, 2017

Col. Michael Clancy  
District Engineer  
New Orleans District  
U.S. Army Corps of Engineers  
c/o Mark Lahare  
7400 Leake Avenue  
New Orleans, LA  
Email: [mark.h.lahare@usace.army.mil](mailto:mark.h.lahare@usace.army.mil)

**Re: Comments on the Mississippi River, Baton Rouge to the Gulf of Mexico, Mississippi River-Gulf Outlet, Louisiana, New Industrial Canal Lock and Connecting Channels Project, Draft General Reevaluation Report and Draft Supplemental Environmental Impact Statement**

Dear Col. Clancy:

The Lower 9<sup>th</sup> Ward Homeownership Association (L9WHA) appreciates the opportunity to comment on the Mississippi River, Baton Rouge to the Gulf of Mexico, Mississippi River-Gulf Outlet, Louisiana, New Industrial Canal Lock and Connecting Channels Project, Draft General Reevaluation Report and Draft Supplemental Environmental Impact Statement (the "Report").

The L9WHA is a signatory to the group letter initiated by Citizens Against Widening the Industrial Canal and the Water Protection Network. We support the letter in its entirety and hope the Corps will address the concerns laid out in the letter.

We have additional concerns not included in the aforementioned letter. In particular, we are concerned about the Corps' ongoing refusal to take responsibility for the harm it has caused our community.

In *Re Katrina Canal Breaches Litigation*, 696 F.3d 436 (2012), the Fifth Circuit Court of Appeals found:

*"Decades ago, the Army Corps of Engineers (the "Corps") dredged the Mississippi River Gulf Outlet ("MRGO"), a shipping channel between New Orleans and the Gulf of Mexico, and levees alongside the channel and around the city. **When Hurricane Katrina struck in 2005, MRGO's size and configuration greatly aggravated the storm's effects on the city and its environs. . . .***

*The Corps' delay in armoring MRGO allowed wave wash from ships' wakes to erode the channel considerably, destroying the banks that would have helped to protect the Reach 2 levee (in the Chalmette Area Unit [protecting the 9<sup>th</sup> Ward and St. Bernard Parish]) from frontside wave attack and loss of height. The increased channel width added more fetch as well, allowing for a more forceful frontal wave attack on the levee. **MRGO's expansion thus allowed Hurricane***

***Katrina to generate a peak storm surge capable of breaching the Reach 2 levee and flooding the St. Bernard polder.*** (Citations omitted; emphasis added.)

Hundreds of lawsuits were filed against the Army Corps of Engineers for damages resulting from MRGO, relying in part on the Federal Tort Claims Act, 28 USC Sec. 2674. This statute provides that the United States is liable for tort claims “in the same manner and to the same extent as a private individual under like circumstances.”

However, 28 U.S.C. Sec. 2680 creates an exception for a claim based upon the performance or failure to perform of a “discretionary function.” Rather than taking responsibility for the damages it had caused, the Corps claimed that it was not liable, based on the discretionary function exception. The case was heard in federal district court in Louisiana and Judge Stanwood R. Duval, Jr., found that some of the plaintiffs were entitled to relief. The Corps appealed. The Circuit Court upheld the plaintiffs’ claims. The Corps requested a rehearing *en banc*. A new hearing was granted before a three-judge panel of the 5<sup>th</sup> Circuit. Finally, on the Corps’ third attempt, the agency was successful in denying all claims by individuals harmed by the Mississippi River Gulf Outlet.

Now the Corps releases its latest iteration of its Lock Replacement Project in the IHNC, which could threaten our lives. Quite naturally, we look for reassurance that this time, the Corps will take responsibility for any damages it may cause.

At the Corps’ March 7, 2017 meeting in the Lower 9<sup>th</sup> Ward, Rev. Willie Calhoun, President of the Lower 9<sup>th</sup> Ward Stakeholders Coalition asked the Corps:

“Who would be responsible if the project failed?”

Lead Planner Shawn Mickal replied:

“There is no defined party.”

M.A. Sheehan, Director House the 9 Program of the Lower 9<sup>th</sup> Ward Homeownership Association, asked a follow up question:

“Will the Corps waive sovereign immunity?”

Lead Planner Shawn Mickal replied:

“No.”

The Corps assures us that this new project does not threaten the safety of our neighborhood. If the Corps is so sure that we are not in danger, then the Corps should agree to take responsibility for any harm caused by this project.

We understand that waiving a right to assert immunity is not normally done, and there is a reluctance to set a precedent. But this isn’t a normal situation. Barely ten years ago, this neighborhood was *devastated* by the failure of the Army Corps of Engineers to keep us safe from MR-GO. To now ask us to trust that this won’t happen again is beyond cruel. More than 1,000 people *died* because the Corps wasn’t trustworthy. More than 60% of L9W households still aren’t home because the Corps wasn’t

worthy of our trust. And no one received compensation because the Corps refused to accept responsibility for its failures by hiding behind the discretionary function exception. It was the residents of the Lower 9<sup>th</sup> Ward and St. Bernard Parish and New Orleans East who bore the costs of the Corps' failures, while the shipping industry and the Corps itself reaped the benefits.

We refuse to be put in this vulnerable position again. We are adamantly opposed to this project. Should it go forward, we call on the Army Corps of Engineers to enter into a binding agreement not to shield itself from liability by asserting the "discretionary function" exception, immunity under the Flood Control Act, or any other provision that relieves a government agency from bearing the costs of its actions. The Army Corps of Engineers should have strict liability for any harm caused by this project.

We also have the additional concerns:

- The Community Impact Mitigation Plan was developed in 1997 – twenty years ago. A lot has changed since then – Hurricane Katrina, the failure of the levees (due to the Corps' faulty construction and maintenance) and the closing of the Mississippi River Gulf Outlet (MRGO);
- There is no mention of the project's effect on property values in the affected neighborhoods;
- The Corps does not provide their methodology or evidence to back up their claims of excessive transit/wait times in the IHNC, which is the basis of their argument for the proposed new lock. The L9WHA and 10 additional Lower 9<sup>th</sup> Ward organizations submitted a Freedom of Information Act (FOIA) request for this information on March 7, 2017; (See [here](#).)
- The Corps' Report and attachments total 2,296 pages. The Corps has not allowed adequate time for the public to fully review this highly technical tome;
- The Corps' has not made the full report available for public review. Two of the links to appendices on the Corps' Website are broken. Appendix B Annex 2 gives an error message. (See [here](#).) Appendix B Annex 6 goes to an ad for Adobe. (See [here](#).)

Given the issues laid out in this letter as well as those in the aforementioned group letter with Citizens Against Widening the Industrial Canal and the Water Protection Network and others, the Lower 9<sup>th</sup> Ward Homeownership Association respectfully requests the Corps:

1. Expedite the processing of the FOIA request, as the proposed project can reasonably be expected to pose an imminent threat to life and physical safety;
2. Waive all fees, as the disclosure of the requested information is in the public best interest;
3. Extend the official public comment period beyond the current March 14 deadline - for a minimum of 30 days after the receipt of the requested FOIA documents to allow time for independent and public review and to ensure these reviews are included in the official record;
4. Conduct a new Community Impact Mitigation Plan *before* the environmental impact of the project is determined and a new EIS is considered; and
5. Conduct a new and full EIS that considers the detrimental impacts to public safety, the community and the environment and that considers alternative sites for the proposed lock.

Sincerely,

Linda Jackson  
Founder & Executive Director