

# Federal, State, Judicial, and Scientific Views of the St. Johns Bayou and New Madrid Floodway Project

## U.S. DEPARTMENT OF THE INTERIOR

### 2011 Letter to the Assistant Secretary of the Army (Civil Works)<sup>1</sup>—

“Unless the purpose and alternatives for the New Madrid project have changed since the last evaluation, the Department does not believe that it is in the public interest to engage in yet more environmental analysis of this project.”

“Altering the hydrologic regime of the floodway produces a suite of complex and **unsolvable challenges** in providing adequate mitigation for the wetland, fishery, and floodplain impacts.”

The Corps’ mitigation plans for the project **“are at odds with contemporary understanding of wetland and floodplain science and agency mitigation guidance.** This science emphasizes the critical importance of natural hydrology, spatial extent, and landscape position. The science recognizes the importance to habitat values of subtle features of hydrology, including depth, velocity, and timing of flooding and the relationship of one habitat to another. The Corps wetland mitigation guidance specifically endorses these principles.”

## U.S. FISH AND WILDLIFE SERVICE

### 2006 Fish and Wildlife Coordination Act Report<sup>2</sup>—

The Mississippi River-New Madrid Floodway “connection is absolutely vital to maintaining a healthy, sustainable fishery in this section of the Mississippi River. Completing the closure of the New Madrid Floodway will eliminate a major area of river-floodplain connectivity in this region of the River and the very last area of its kind in the State of Missouri.”

“The exceptional value of backwater areas of the Mississippi River to the River’s regional fishery and on-going threats to these backwater areas requires that we continue to explore and implement mitigation measures that avoid and minimize further losses. **The Service is unaware of any feasible mitigation techniques that can provide in-kind replacement to offset the permanent loss of this habitat and associated ecological processes.** . . . “The Services’ position on this issue has not changed from our previous FWCA Reports.”

### 2002 Fish and Wildlife Coordination Act Report<sup>3</sup>—

The project **“will result in significant losses of regionally and nationally important fish and wildlife resources which can not be adequately mitigated due to project design and economic objectives.”**

The project “will significantly reduce the duration and frequency of flooding on 130,000 acres of Mississippi River floodplain, adversely impact a regionally important fishery (including an economically viable commercial fishery) by eliminating the last remaining connection of the

Mississippi river with its historic floodplain in Missouri, result in the elimination or major degradation of over 18,000 acres of wetland habitat and their ecological functions, and cause further decline in the biological and ecological integrity of a federally designated National Natural Landmark. . . . The project, as presently formulated, provides only superficial consideration of fish and wildlife resources . . . ."

"The proposed project design actions and changes **do nothing to avoid** fish and wildlife resource losses and the minimization features are nominal considering the significant scope and magnitude of these losses."

**2000 Fish and Wildlife Coordination Act Report<sup>4</sup>—**

Even with mitigation the project "**would cause substantial, irretrievable losses of nationally significant fish and wildlife resources, and greatly diminish rare and unique habitats in southeast Missouri.**"

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

**2011 Email from EPA Region 7 Watershed Planning & Implementation Branch Manager<sup>5</sup>—**

"The St. Johns Bayou/New Madrid Floodway project, located in southeast Missouri, is a Civil Works Project by the Corps of Engineers. **The project could potentially have the largest negative impact on wetlands and streams of any project ever proposed in Region 7.** The proposed plan will close a 1,500 ft. levee gap along the New Madrid Floodway, the last levee gap for the Mississippi River in Missouri."

**MISSOURI DEPARTMENT OF CONSERVATION**

**2002 Letter to the U.S. Fish and Wildlife Service<sup>6</sup>—**

"We concur with your comment that levee closure and gate operation 3-1B [the alternative selected by the Corps] is unacceptable given that it makes no more than a token effort to mitigate fish and wildlife losses."

**2001 Letter to the Corps of Engineers<sup>7</sup>—**

"The loss of connectivity between the floodplain and the Mississippi River is the single most significant project feature and its loss cannot, in reality, be mitigated."

"As stated previously, the single most significant project impact to the aquatic resources is the major reduction in the magnitude of seasonal flooding and connectively to the Mississippi River. Levee closure in the New Madrid Floodway and pump operations will eliminate backwaters from covering the floodway and bayou basins. Connectivity between the Mississippi River and the floodplain provides important ecological interactions and **cannot be mitigated for** in this project. Many species of fish move from the river into the floodplain in the spring to spawn. The gap closure will prevent that exchange."

The project "will cause major declines in wetlands, their functions and inhabitants; fish spawning and rearing; mussels, birds and waterfowl feeding sites during migration."

### INDEPENDENT EXPERT DR. JOY ZEDLER, PH.D

Professor of Botany and Aldo Leopold Chair in Restoration Ecology, University of Wisconsin Chair, National Research Council Panel on  
*Compensating for Wetland Losses Under the Clean Water Act*

#### 2006 Report on the Mitigation Proposal for the Project<sup>8</sup>—

The claim that the proposed mitigation for the St. Johns - New Madrid Floodway Project "fully offsets project impacts on aquatic resources is ***completely inconsistent with scientific understanding*** of wetland functioning, wetland replacement, wetland restoration, and mitigation of other aquatic areas, as well as inconsistent with established practice under the Section 404 program. ***The claim is so outside the range of reasonable scientific understanding that it cannot be seriously advanced as science-based.*** It therefore should be disregarded."

"The Corps' claim for this project that the loss of a vast area of seasonally flooded aquatic habitat could be replaced by unnaturally extended flooding on a small area of already existing wetlands would be ***an extreme example of what the NRC report recommended against.***"

For the St. Johns New Madrid Floodway Project, "the Corps has proposed to do the opposite of [the National Academy of Sciences recommendations on mitigation]. It would dramatically reduce or eliminate flooding according to a relatively natural pattern on tens of thousands of acres of wetlands and other valuable floodplain areas, and replace them primarily by artificially manipulating the hydrology on a small number of acres of already existing wetlands. ***According to established understanding, that mitigation should itself be viewed as harmful, and according to accepted scientific understanding, it cannot offset the impacts of this project.***"

### INDEPENDENT EXPERTS EXTERNAL PEER REVIEW PANEL

#### 2010 External Peer Review Report, Phase 2<sup>9</sup>—

"The panel believes that the New Madrid Floodway is unique because, in context, it is the last remaining connection between the Mississippi River and its floodplain in the State of Missouri. Therefore, it plays a much larger role in providing natural floodplain services than the other areas. If the other originally connected areas had not been disconnected, the Floodway would be playing a proportionally smaller, and less important, role in maintaining the natural ecosystem. ***The loss of this last remaining connection and its ecosystem functioning would be the "straw that broke the camel's back" in terms of the total cumulative impact.*** That is, not all incremental impacts are equal and it is the impact that exceeds a threshold that is significant. In this case, the adverse impact of removing the last floodplain connection, once the other connections have already been removed, is disproportionately high."

### **2011 Final External Peer Review Report<sup>10</sup>—**

“The Panel is not convinced that the investigations presented in the DEIS adequately demonstrate if the project is environmentally acceptable and economically justified. The environmental and economic issues governing project feasibility are complex, and the analyses necessarily involve great uncertainties. ***The Panel’s review of the DEIS identified significant concerns regarding the breadth and detail of the environmental and economic studies and the development of compensatory mitigation plans.*** The Panel also has concerns regarding the adequacy of the DEIS in addressing uncertainties in plan formulation and alternative evaluation.”

The Panel identifies 16 “High Significance” concerns in the latest Draft Environmental Impact Statement, including multiple issues associated with: the economic justification for the project, the environmental impacts of the project, and the feasibility and adequacy of the proposed mitigation for the project. A “High Significance” concern: “Describes a fundamental problem with the project that could affect the recommendation, success, or justification of the project. Comments rated as high indicate that the Panel analyzed or assessed the methods, models, and/or analyses and determined that ***there is a ‘showstopper’ issue.***”

### **U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

#### **2007 Decision Rejecting the Corps’ 2006 Environmental Study for the Project<sup>11</sup>—**

“[T]he Corps of Engineers has resorted to arbitrary and capricious reasoning - manipulating models and changing definitions where necessary – to make this project seem compliant with the Clean Water Act and the National Environmental Policy Act when it is not.”

“The Corps’ manipulation of its habitat model in analyzing fish mitigation gives new meaning to the phrase ‘result-oriented decision-making.’ The Corps has obviously worked backwards from the mitigation dollars it could afford, tweaking several of its original, fundamental understandings of its mitigation obligations so as to make the project appear to return a positive benefit-cost ratio. Many mitigation decisions seem to have been based on cost alone, with a troubling disregard for the fundamental assumptions of the HEP team model and HEP team member judgment. Several elements discussed above lack factual support or substantial evidence, but, more disturbingly, ***the Corps has demonstrated its willingness to do whatever it takes to proceed with this project - change definitions, abandon core assumptions - even if it means ignoring serious environmental impacts.*** The Corps’ conclusion that its proposal would fully mitigate adverse impacts on fisheries was neither ‘rational [nor] based on consideration of the relevant factors.’”

### **U.S. ARMY CORPS OF ENGINEERS OFFICIALS**

#### **2002 Email from the Corps’ Legislative Management Branch Chief<sup>12</sup>—**

The St. Johns New Madrid project is an “economic dud[] with huge environmental consequences.”

**2000 Email from a Recently Retired Corps Employee<sup>13</sup>—**

“Of course, the closure of the [St. Johns New Madrid] Mainline Levee is a bad project. Period. . . You just can’t find enough economic justification to build the essential parts of the project, let alone pay a reasonable amount of mitigation of the environmental losses.”

**ILLINOIS STATE LEGISLATORS**

**2012 Letter from Illinois State Senator Gary Forby<sup>14</sup>—**

The St. Johns New Madrid Levee Project “is not only wrong, but also reckless.”

“In a time of major fiscal challenges, to throw \$200 million at a project that has generated much conflict and controversy, one that does nothing to promote the security of Southern Illinois families, is absolutely ill conceived. The project deviates from the Corps’ duty to protect the interests of all Americans. In my estimation, this levee fails to honor that promise to the people of Southern Illinois and leaves us open to great catastrophic damage if our existing floodway is compromised.”

**2012 Letter from Illinois State Representative Brandon Phelps<sup>15</sup>—**

“The safety and well-being of citizens in Alexander County is at risk because [the St. Johns New Madrid] levee would eliminate the existing flood protection.”

**Endnotes**

<sup>1</sup> August 26, 2011 Letter from Acting Assistant Secretary for Fish Wildlife and Parks to Assistant Secretary of the Army for Civil Works (emphasis added).

<sup>2</sup> March 15, 2006 U.S. Fish and Wildlife Service Supplemental Fish and Wildlife Coordination Act Report (included at pages 510-515 of the Revised Supplemental Environmental Impact Statement Number 2 for the St. Johns Bayou-New Madrid Floodway Project) (emphasis added).

<sup>3</sup> June 6, 2002 U.S. Fish and Wildlife Service Supplemental Fish and Wildlife Coordination Act Report at E-2, E-9 (Consolidated 2009 NEPA Appendix E 11) (emphasis added). The Consolidated 2009 NEPA Appendix is available at

[http://www.mvm.usace.army.mil/stjohns/2009\\_update/IEPR\\_Documents/4f\\_App\\_E\\_FWCAR.pdf](http://www.mvm.usace.army.mil/stjohns/2009_update/IEPR_Documents/4f_App_E_FWCAR.pdf).

<sup>4</sup> May 2000 U.S. Fish and Wildlife Service Fish and Wildlife Coordination Act Report at v (Consolidated 2009 NEPA Appendix E 63) (emphasis added).

<sup>5</sup> February 23, 2011 Email from EPA Region 7 Watershed Planning & Implementation Branch Manager.

<sup>6</sup> July 15, 2002 Letter from John Hoskins, Director of the Missouri Department of Conservation to Charles Scott, Field Supervisor, Missouri Ecological Services Field Office, U.S. Fish and Wildlife Service.

<sup>7</sup> December 15, 2001 Letter from Jerry Conley, Director Missouri Department of Conservation to Colonel Scherer, Memphis District Engineer, U.S. Army corps of Engineers (emphasis added).

<sup>8</sup> January 2006 Report of Dr. Joy Zedler on the Mitigation Proposal for the St. Johns Bayou/New Madrid Floodway Project at 3, 5, 7 (emphasis added).

<sup>9</sup> November 5, 2010, Battelle Memorial Institute, Addendum to Final Independent External Peer Review Report St. Johns Bayou and New Madrid Floodway, Missouri Project Work Plan, Phase 2 Environmental, Economic, and Hydrologic and Hydraulic Review at B-43 (emphasis added) (available at

[http://www.mvm.usace.army.mil/stjohns/PeerReview/SJNM\\_TCN09150\\_Addendum%20to%20Final%20IEPR%20Report.pdf](http://www.mvm.usace.army.mil/stjohns/PeerReview/SJNM_TCN09150_Addendum%20to%20Final%20IEPR%20Report.pdf).

<sup>10</sup> December 8, 2011, Battelle Memorial Institute, Final Independent External Peer Review Report for St. Johns Bayou and New Madrid Floodway, Draft Environmental Impact Statement (DEIS), Phase 3 at iv-v, 10 (emphasis added).

<sup>11</sup> *Environmental Defense Fund v Corps of Engineers*, 515 F.Supp.2d 69, 74, 85 (D.DC 2007) (citation omitted) (emphasis added).

<sup>12</sup> December 27, 2002 Email from Chief, Legislative Management Branch, U.S. Army Corps of Engineers.

<sup>13</sup> September 11, 2000 Email from recently retired Corps employee.

<sup>14</sup> July 5, 2012 Letter from Illinois State Senator Gary Forby (59<sup>th</sup> District).

<sup>15</sup> July 13, 2012 Letter from Illinois State Representative Brandon Phelps (118<sup>th</sup> District).



For more information, please contact the National Wildlife Federation  
Melissa Samet, Senior Water Resources Counsel, [sametm@nwf.org](mailto:sametm@nwf.org), 415-762-8264  
George Sorvalis, Water Resources Coalitions Manager, [sorvalisg@nwf.org](mailto:sorvalisg@nwf.org), 202-797-6617