

**American Rivers ♦ Clean Water Action ♦ Conservation Federation of Missouri
Defenders of Wildlife ♦ Environmental Defense Fund ♦ Environment America
Friends of the Earth ♦ Great Rivers Environmental Law Center
Great Rivers Habitat Alliance ♦ Missouri Coalition for the Environment
Missouri Chapter of the Sierra Club ♦ National Audubon Society
National Wildlife Federation ♦ Natural Resources Defense Council ♦ Sierra Club**

August 11, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (Mail Code 1101A)
Washington, D.C. 20460

Re: St. Johns Bayou and New Madrid Floodway Project

Dear Administrator McCarthy:

We appreciate this Administration's strong commitment to protecting wetlands and conserving wildlife, as recently demonstrated by release of the vitally important proposed Clean Water Protection rule which our organizations strongly support. On behalf of the millions of members and supporters of our national and Missouri conservation organizations, we ask you to take an essential step towards achieving those objectives by personally ensuring initiation of a Clean Water Act section 404(c) veto for the St. Johns Bayou and New Madrid Floodway project should the U.S. Army Corps of Engineers (Corps) insist on recommending its construction, as we expect it will. We also ask to meet with you to discuss the importance of this veto.

This project cannot be reconciled with the Clean Water Act or with this Administration's commitment to wetlands protection and wildlife conservation, as most recently demonstrated by release of the vitally important proposed Clean Water Protection rule. First dreamt up more than 60 years ago, this project would cut off the last remaining area where the Mississippi River connects to its backwater floodplain in the state of Missouri. This would eliminate the vital fish and wildlife habitat created when the river regularly spreads out into this floodplain area and cause the greatest loss of wetlands in the history of EPA Region 7 of any single project.

It is clear that this project would have "an unacceptable adverse effect on . . . fishery areas (including spawning and breeding areas), wildlife, or recreational areas," giving EPA the authority – and the responsibility – to veto this project.¹ For example:

- EPA has concluded that the project would "cause the greatest loss of wetlands function in EPA Region 7's history" the vast majority of which would be to "distinctive bottomland hardwood wetlands, which provide critical watershed functions" and represent "some of the most diverse, complex, and productive freshwater wetlands in the Nation." The loss of connectivity to the Mississippi River would cause "significant impacts to the area's aquatic ecosystems" including "significantly altering fish and wildlife resources of regional and national importance."²

¹ Clean Water Act § 404(c), 33 U.S.C. § 1344(c).

² U.S. Environmental Protection Agency, Region 7, Comments on the Draft Environmental Impact Statement for the St. Johns Bayou New Madrid Project (November 25, 2013) (November 2013 Region 7 Comments).

- The Department of the Interior has concluded that the project would degrade or eliminate up to 53,556 acres of functional wetlands, and creates “a suite of complex and unsolvable challenges in providing adequate mitigation for the wetland, fishery, and floodplain impacts.”³
- The U.S. Fish and Wildlife Service has concluded that the project “would cause substantial, irretrievable losses of nationally significant fish and wildlife resources, and greatly diminish rare and unique habitats found in southeast Missouri.”⁴
- The Missouri Department of Conservation has concluded that the “New Madrid Floodway portion of the project should not be constructed” because the “loss of Mississippi River connectivity to the New Madrid Floodplain will result in significant impacts that cannot be addressed through mitigation,” including elimination of fish spawning and migratory bird habitat.⁵
- Independent experts charged by the Corps with reviewing the project study have concluded that the loss of the last remaining connection between the Mississippi River and its floodplain in the state of Missouri and its ecosystem functioning “would be the ‘straw that broke the camel’s back’” for the river’s long term health and sustainability.⁶

As noted above, these significant adverse impacts *cannot* be mitigated. Your agency has appropriately determined that the project, as proposed, is prohibited by the Clean Water Act 404(b)(1) Guidelines.

Moreover, as EPA and other resource agencies have found, the mitigation that has been proposed by the Corps is “at odds with contemporary understanding of wetland and floodplain science and agency mitigation guidance”⁷ and fails to comply with the important mitigation requirements established by statute and regulation.⁸ While the project will stop the natural, regular inundation of more than 75,000 acres of floodplain and backwater habitat, the proposed “mitigation” does not re-inundate any land that is not already frequently inundated. That is directly contrary to the established principles of mitigation that focus on reestablishing natural hydrology in an area at least comparable to the area being drained. The mitigation instead is centered on manipulating vegetation or artificial manipulation of water on just a fraction of the lands drained by the project, and the bizarre assumption that fish will somehow swim through closed metal grates to spawn and grow on dry land.

The project will increase – not decrease – flood risks in the region by promoting more intensive agricultural development in the New Madrid Floodway, an area that, by law, must be flooded to protect Cairo, Illinois and other towns during large Mississippi River floods. This will lead to increased flood damages in the Floodway itself and will make it even more difficult to activate the floodway in a timely

³ United States Department of the Interior, Comments on the St. Johns Bayou and New Madrid Floodway Project (November 18, 2013); Letter from Acting Assistant Secretary for Fish Wildlife and Parks to Assistant Secretary of the Army for Civil Works (August 26, 2011) (August 2011 DOI Letter).

⁴ U.S. Fish and Wildlife Service, Fish and Wildlife Coordination Act Report on the St. Johns Bayou New Madrid Floodway Project (July 2013) at vii.

⁵ Missouri Department of Conservation, Comments on the St. Johns Bayou and New Madrid Floodway Project (November 20, 2013).

⁶ U.S. Army Corps of Engineers, Draft EIS on the St. Johns Bayou and New Madrid Floodway Project, Volume 3 Part 3, Phase 2 IEP at B-43.

⁷ *E.g.*, August 2011 DOI Letter.

⁸ 33 USC § 2283; 33 C.F.R. 325 and 332; 40 C.F.R. Part 230; November 2013 Region 7 Comments.

manner to protect Cairo and other towns. Delays in activating the floodway in 2011 have been implicated in the disastrous flooding of Olive Branch, Illinois. Though touted as providing protection for East Prairie, Missouri, the Corps' own analysis shows that the project will not reduce the flooding frequency in East Prairie. Small scale, low impact solutions are available to reduce flooding in East Prairie and should be pursued in a separate process.

EPA has appropriately given the Corps' draft environmental impact statement a rating of EU-2 (environmentally unsatisfactory, such that the project must not proceed as proposed-insufficient information), one of the lowest ratings possible. Instead of conducting a legitimate environmental review, the Corps has simply proposed a project that is virtually identical to the one thrown out by the U.S. District Court for the District of Columbia in 2007.

The conservation community and independent scientists strongly oppose the project, and more than 20,000 members of the public have already called on EPA to issue a veto. Local community leaders also oppose the project because it would make it more difficult to protect communities like Cairo from catastrophic flooding.

At a time when the federal government is focused on increasing resiliency to climate change and is spending billions of dollars to reverse the devastating impacts of Corps projects on the Mississippi River, coastal Louisiana, and the Everglades, it makes no sense to spend \$165 million taxpayer dollars to cause even more damage that will reduce the ability of river communities and wildlife to withstand the impacts of climate change.

We urge you to veto the St. Johns Bayou-New Madrid Floodway project should the Corps insist on recommending construction, and hope you will meet with us to discuss the importance of that veto.

Sincerely,

Wm. Robert Irvin
President
American Rivers

Robert Wendelgass
President and CEO
Clean Water Action

Brandon Butler
Executive Director
Conservation Federation of Missouri

Jamie Rappaport Clark
President and CEO
Defenders of Wildlife

Fred Krupp
President
Environmental Defense Fund

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Margie Alt
Executive Director
Environment America

Erich Pica
President
Friends of the Earth

Kathleen Henry
President
Great Rivers Environmental Law Center (MO)

James T. Blair, IV
Chairman
Great Rivers Habitat Alliance (MO)

Heather Navarro
Executive Director
Missouri Coalition for the Environment

David Yarnold
President and CEO
National Audubon Society

Collin O'Mara
President and CEO
National Wildlife Federation

Peter Lehner
Executive Director
Natural Resources Defense Council

Michael Brune
Executive Director
Sierra Club

John Hickey
Director
Sierra Club, Missouri Chapter

cc: Sally Jewell, Secretary of the Interior
Jo-Ellen Darcy, Assistant Secretary of the Army (Civil Works)
Rachel Jacobson, Acting Assistant Secretary for Fish and Wildlife and Parks
Daniel Ashe, Director, U.S. Fish and Wildlife Service
Lt. Gen. Thomas P. Bostick, Commanding General and Chief of Engineers
Michael Boots, Acting Chair, Council on Environmental Quality
Kenneth Kopocis, Principal Deputy Assistant Administrator, Environmental Protection Agency
Karl Brooks, Regional Administrator, Environmental Protection Agency