

October 13, 2020

Submitted via [MRL-SEIS-2@usace.army.mil](mailto:MRL-SEIS-2@usace.army.mil)

Colonel Robert A. Hilliard  
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Re: Draft Supplemental Environmental Impact Statement (SEIS) II to the 1976 Final Environmental Impact Statement and 1998 SEIS I, Mississippi River and Tributaries Project, Mississippi River Mainline Levees

Dear Col. Hilliard:

The undersigned 56 conservation, civic, and faith organizations and businesses appreciate the opportunity to comment on the above-referenced Draft Supplemental Environmental Impact Statement (SEIS II). The SEIS II provides a critical opportunity for developing meaningful, comprehensive long-term flood damage reduction solutions that can both protect Mississippi River communities and restore vital wildlife habitat. However, instead of examining such opportunities, the draft SEIS II rubber stamps a decades-old approach to the Mississippi River Mainline Levee project that fails to comply with basic legal requirements. Our organizations urge the US Army Corps of Engineers (Corps) to go back to the drawing board and develop a comprehensive approach to reducing flood damages along the Mississippi River based on an SEIS II that complies with the nation's critically important environmental laws.

#### **Recommendations for a Meaningful Analysis of Alternatives**

Our organizations recognize the importance of the Mississippi River Mainline Levee system and the need to address deficiencies in that system. However, providing meaningful, long-term flood damage reduction requires use of modern solutions that address the underlying causes of flood risks. To develop these solutions—and comply with the National Environmental Policy Act—the SEIS II should carefully analyze the full suite of activities that have fundamentally changed the form and function of the Mississippi River and its floodplain and coastal wetlands, the extensive body of science and data developed since the 1998 SEIS I; and the significant implications of our rapidly changing climate.

The Corps should then consider a full array of solutions to address those underlying causes, including natural and nature-based flood damage reduction measures, levee setbacks, ecosystem restoration actions, and improved navigation management actions—virtually of all which can be carried out under existing Congressional authorities. In developing this approach, the Corps should carefully assess a combination of at least the following actions:

- (1) Obtaining all levee and berm construction material from non-wetland locations.** Wetlands are a vital national resource that provide multiple benefits to people and wildlife, including reducing flood damages. Wetlands should not be destroyed for use as construction material, and obtaining construction material from non-wetland sources should be mandatory for this project.

- (2) Realigning segments of the levee system farther away from the river and using other natural infrastructure approaches wherever possible.** Levee setbacks give a river more room to spread out during flood events. Such setbacks have been used along the Mississippi River to reconnect at least 50,000 acres of land to the River.<sup>1</sup> The Corps should assess these and other natural infrastructure approaches, including restoring floodplain and coastal wetlands to protect vulnerable communities, and expanding and restoring wetland buffers on the riverside of the levees to improve the integrity and effectiveness of the levee system.
- (3) Modifying management of the Mississippi River & Tributaries floodways to reduce flood risks.** The MR&T floodways are designed to be used during large flood events to reduce flood risks and flood damages. The SEIS II should examine whether the MR&T floodways can be operated more regularly to reduce flood risks and create fish and wildlife habitat, and should examine whether an alternative approach to the current 70/30 split of flow between the Mississippi and Atchafalaya Rivers could assist in reducing flood risks associated with increased sedimentation below the Old River Control Structure.
- (4) Utilizing sediment diversions to reduce flood risks and advance coastal wetland restoration.** Sediment and freshwater diversions can reduce flood risks and are an important tool for restoring coastal wetlands. The SEIS II should examine whether new sediment and freshwater diversions could be implemented in the future, and whether existing and planned structures could be better utilized to reduce flood risks and advance coastal wetland restoration. The SEIS II should also examine options for transporting sediment from the stretch below the Old River Control Structure to use in rebuilding coastal wetlands.
- (5) Modifying and/or removing targeted river training structures to reduce flood risks.** River training structures (wing dikes, bendway weirs, and chevrons constructed to reduce navigation dredging costs) have significantly increased flood heights in broad stretches of the Mississippi River while also destroying important fish and wildlife habitat. The SEIS II should evaluate options for removing and modifying some of these structures to reduce flood risks, which the Corps has acknowledged could be done at some locations without impacting navigation.

Given the significance of the SEIS II to public safety and the environment, the Corps should engage the National Academy of Sciences to carry out the independent external peer review required by 33 U.S.C. § 2343. This peer review should include an evaluation of the long-term effectiveness of the alternative recommended by the Corps; whether the selected alternative will protect and restore the functions of the Mississippi River and its floodplain and coastal wetlands; and whether the proffered skeleton mitigation plan will be ecologically successful.

#### **Critical Problems with the Draft SEIS II**

The draft SEIS II does not comply with the National Environmental Policy Act, the Clean Water Act, the mitigation requirements for civil works projects, or the Independent External Peer Review Requirements. The SEIS II also fails to comply with the longstanding National Water Resources Planning

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<sup>1</sup> “Numerous levee setbacks have been required through the years because of the evermoving Mississippi River. Since 1915, levee setbacks have continually increased acreages to lands between the Mississippi River mainline levees. To date, the approximate cumulative total is 50,000 acres of land added between the levees. A 1996 study of levees in the Vicksburg District indicated that 17 major levee setbacks since 1915 have resulted in 43,000 acres being added to the riverside flood plain.” 1998 Supplement I, Project Report at 10.

Policy, which requires that all water resources projects protect and restore the environment, including by protecting and restoring the functions of natural systems. 42 USC 1962–3. The many failings of the SEIS II include, but are not limited to, the following:

- (1) The draft SEIS II fails to meaningfully evaluate alternatives. Instead of evaluating long-term flood damage reduction solutions that can both protect communities and restore vital wildlife habitat, the SEIS II rubber stamps use of the same approach that was adopted in 1998 for at least the next 50 years.<sup>2</sup> This approach—identified in the SEIS II as the “avoid and minimize” alternative—establishes criteria for ranking potential locations that will be dug up so the soil can be used for construction material, based on land use and locations that could avoid and minimize the adverse environmental effects resulting from excavating the soil. Critically, however, this approach does not require that construction material be obtained from non-wetland areas. While our organizations appreciate the establishment of criteria to attempt to avoid and minimize adverse impacts to wetlands, efforts to avoid and minimize adverse impacts to wetlands and other aquatic resources are required as a matter of law under Clean Water Act § 404. As a result, such avoid and minimize efforts must be carried out regardless of the alternative selected.<sup>3</sup>
- (2) The draft SEIS II fails to meaningfully evaluate impacts. Despite identifying the precise locations of 146 proposed work items, the SEIS II provides only the most general assessment of possible impacts to wetlands and wildlife. For example, despite the Mississippi River’s role as a critical migration corridor for “more than 40 percent of the waterfowl that breed in North America,” the SEIS II bases its entire assessment of waterfowl impacts on just one species of waterfowl—the mallard. SEIS II at 36, 80, and Appendix 2. The SEIS II must assess all “reasonably foreseeable” direct, indirect and cumulative environmental impacts, and may not delay that obligation until the development of site-specific environmental assessments.<sup>4</sup>
- (3) Our organizations appreciate the care that has gone into developing a mitigation framework for the project, however this framework does not satisfy the mitigation requirements applicable to civil works projects. 33 U.S.C. § 2283(d). The SEIS II must include a specific mitigation plan (that must include specific activities, ecological success criteria, a monitoring plan and a contingency plan if the mitigation is not successful). The SEIS II also must identify specific mitigation lands

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<sup>2</sup> SEIS at 21. “Based on traditional funding allocations, these Work Items would likely begin in 2020 or 2021 and extend beyond 50 years.”

<sup>3</sup> The only other alternative examined in any level of detail—the “traditional construction” alternative—would obtain construction material from the nearest possible location, regardless of impacts to wetland resources. This alternative was rejected in the 1998 SEIS I and would violate the explicit requirements of Clean Water Act § 404 because it would take no steps to avoid and minimize adverse impacts to wetlands and other aquatic resources.

<sup>4</sup> 40 C.F.R. § 1508.8 (this citation is to the original CEQ NEPA regulations which are fully applicable to this project); e.g., *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1072 (9th Cir. 2002); *Save Our Ecosystems v. Clark*, 747 F.2d 1240, 1246 n. 9 (9th Cir.1984) (“Reasonable forecasting and speculation is . . . implicit in NEPA, and we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as ‘crystal ball inquiry,’” quoting *Scientists’ Inst. for Pub. Info., Inc. v. Atomic Energy Comm’n*, 481 F.2d 1079, 1092 (D.C. Cir.1973)); *City of Davis v. Coleman*, 521 F.2d 661, 676 (9th Cir. 1975) (“the purpose of an [EIS] is to evaluate the possibilities in light of current and **contemplated** plans and to produce an informed estimate of the environmental consequences. . . . Drafting an [EIS] necessarily involves some degree of forecasting.” (emphasis added)).

and provide the basis for the Corps' determination that those lands will be available. 33 U.S.C. § 2283(d). None of these details are included in the draft SEIS II.

- (4) Our organizations have been unable to locate any reference to an independent external peer review being carried out for the SEIS II, despite the fact that such a review is mandatory for this project. 33 U.S.C. § 2343. The draft SEIS II proposes 143 work items across portions of seven states that will be carried out over the next 50 years at a cost to taxpayers of at least \$2.08 billion. SEIS II at iv, 21. Independent external peer review is mandatory for all project studies (including environmental impact statements) examining projects that will cost more than \$200 million, including mitigation costs. 33 U.S.C. §§ 2343(a)(3), 2343(l)(1).
- (5) The Corps' timeline for completing the SEIS II precludes a legitimate consideration of comments on the draft submitted by Federal and State agencies, Tribes, or members of the public. At the October 1, 2020 virtual public hearing on the draft SEIS II, the Corps announced that the final SEIS II would be released on or about October 30—just 13 working days after the close of the public comment period on October 13. It is not possible to consider public comments and make necessary changes to the draft SEIS II under this timeline.

Our organizations and businesses urge the Corps to go back to the drawing board and develop a comprehensive approach to reducing flood damages along the Mississippi River based on an SEIS II that complies with the nation's critically important environmental laws.

Sincerely,

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