

Immediate Action is Required to Stop the Yazoo Pumps

The Trump Administration Has Waived the 2008 Clean Water Act Veto and Approved Construction of the Yazoo Pumps in a Last-Minute Push to Build this Destructive and Dangerous Project

In 2008, the Environmental Protection Agency used its Clean Water Act 404(c) authority to veto the Yazoo Pumps to prevent “unacceptable damage” to “some of the richest wetland and aquatic resources in the nation.”¹ This veto has ensured protection of 200,000 acres of hemispherically important wetlands for more than a decade—wetlands that support 450 species of birds, fish and wildlife; are used by 29 million migrating birds each year; and include tens of thousands of acres of federal, state, and privately-owned conservation lands.

But in a reckless about-face, the Trump Administration’s EPA waived application of the veto in a scant two paragraphs tucked within EPA’s November 30 comments on the Yazoo Pumps’ new draft supplemental environmental impact statement (SEIS). This decision contravenes the veto’s extensive factual findings and was issued without the required public notice and comment. The Corps of Engineers has already finalized the SEIS and is poised to sign the Record of Decision approving the Yazoo Pumps on January 14.

The Biden Administration can quickly restore protections for these hemispherically significant wetlands by immediately vacating EPA’s insupportable veto waiver, reconfirming that the veto applies to the Corps’ plan, and withdrawing the Corps’ deeply flawed record of decision.

Each of these actions is fully supported by an extensive factual record.

EPA’s unprecedented decision to exempt the Yazoo Pumps from the 2008 veto is insupportable. EPA’s exemption contravenes the explicit and extensive findings in its own veto, and was issued without obtaining public input or providing a rational explanation for this unprecedented decision. Instead, EPA waived application of the veto in two paragraphs tucked within EPA’s otherwise scathing comments on the Yazoo Pumps draft SEIS. Indeed, EPA made its decision knowing full well that the SEIS relies on the same flawed wetland assessment methodologies decisively rejected by EPA in the veto because they severely underestimate and obscure the pumps’ significant, unacceptable impacts. But even the severe underestimate of impacts in the SEIS demonstrates that the veto covers the proposed pumps. The veto explicitly prohibits variations of the Yazoo Pumps that would harm more than 28,400 acres of wetlands; the SEIS acknowledges that a minimum of 38,744 acres of wetlands will be damaged.²

The Corps of Engineers’ SEIS and Record of Decision are equally insupportable. The SEIS recommends construction of the already vetoed Yazoo Pumps despite acknowledging that the pumps are so ineffective they will leave 82% to 89% of flooded lands underwater, and will take weeks to months to drawdown floodwaters on the remaining lands.³ The fundamentally flawed SEIS ignores the U.S. Fish and Wildlife Services’ strong opposition to the project;⁴ EPA’s scathing critique and determination that the project is prohibited by the Clean Water Act 404(b)(1) Guidelines;⁵ and highly detailed technical comments and overwhelming opposition from the conservation community, scientific community, and the public.⁶ The Corps issued the final SEIS just 4 days after the close of the public comment period on the draft, and is poised to sign the Record of Decision as **early as January 14, 2020.**

- **The SEIS Recommends a Project That is Prohibited by the 2008 Veto:** The SEIS recommends construction of the same 14,000 cfs pumping station whose purpose, structure, operation, and impacts fall squarely within the scope of the 2008 veto—which explicitly prohibits plans that would harm more than 28,400 acres of wetlands.⁷ The SEIS, which severely underestimates wetland impacts, acknowledges that the pumps will degrade more than 38,744 acres of wetlands.⁸
- **The SEIS Recommends a Project That is Prohibited by the Clean Water Act 404(b)(1) Guidelines:** The Yazoo Pumps are clearly prohibited by the 404(b)(1) Guidelines because they: (1) are not the least environmentally damaging practicable alternative; (2) will clearly cause significant—and conclusively unacceptable, as documented in the EPA veto—degradation of the aquatic ecosystem; (3) rely on a wholly conceptual mitigation proposal that is woefully inadequate and infected by the very same fatal flaws identified by EPA in the veto; (4) will cause or contribute to violations of state water quality standards; and (5) will jeopardize the continued existence of the federally endangered pondberry. EPA’s comments on the draft SEIS highlight many of these failings.
- **The SEIS Recommends a Project That Threatens Public Safety:** The vetoed Yazoo Pumps could create significant flood risks for communities in north Vicksburg and the Yazoo Backwater Area—concerns raised repeatedly by the conservation community and EPA. Operation of the Yazoo Pumps would put downstream communities on the receiving end of an additional 9 billion gallons of water a day when the Yazoo River is already at flood stage. Communities in the Yazoo Backwater Area could flood if that massive influx of water overtopped or damaged the Yazoo Backwater Levee, which is at risk of crevassing and is so low that it is not accredited to handle a 100-year flood.⁹ Collapse of this levee would flood the very communities the pumps are purported to protect. The SEIS dismisses these concerns out of hand in a brief analysis¹⁰ based on a model that an independent expert found to be so flawed that it “cannot be trusted to get a correct answer” regarding the impact of the Yazoo Pumps on flood levels in the Yazoo River.¹¹ The SEIS makes no effort to address this expert analysis.
- **The SEIS Does Not Look at Even a Single Alternative to the Vetoed Yazoo Pumps:** The SEIS does not consider even a single alternative to the vetoed Yazoo Pumps, in direct violation of the National Environmental Policy Act, the Clean Water Act, and modern floodplain management techniques. The SEIS makes no mention of repeated requests to consider alternatives, including from EPA and conservation organizations whose scoping and draft SEIS comments proposed [a suite of proven, low-cost, natural infrastructure and non-structural measures](#) that would provide effective, sustainable, and environmentally sound relief to communities in the Yazoo Backwater Area.
- **The SEIS Ignores a Wide Array of Devastating Impacts to Hemispherically Significant Wetlands:** The SEIS dramatically understates wetland impacts by looking only at some types of impacts to a small subset of wetlands, and by relying on scientifically unsound methodologies that were decisively rejected by EPA in the 2008 veto. The SEIS arbitrarily and severely restricts its review of wetland impacts to changes in the duration of inundation to the small subset of wetlands located within the 2-year floodplain that receive ≥ 14 consecutive days of flooding. These severe, scientifically unsound restrictions cause the SEIS to significantly understate impacts to wetlands and aquatic habitat, as made clear in the 2008 veto. Even this severe underestimate acknowledges degradation to at least 38,774 acres of wetlands in the 2-year floodplain.

- The SEIS Ignores Critical Impacts to the Many Rivers and Streams in the Project Area:** The SEIS does not assess impacts to the project area’s many hydrologically-connected streams, even though the Pumps-induced wetland losses will likely reduce flows and increase sedimentation and nutrient pollution in those streams. These wetland losses could also reduce groundwater recharge in the project area, exacerbating low stream flows and the already-significant declines in the Mississippi Alluvial Plain aquifer.
- The SEIS Ignores Critical Impacts to a Vast Array of Fish and Wildlife:** The SEIS fails to assess critical impacts to a vast array of fish and wildlife, including by failing to fully evaluate the pumps’ adverse impacts to internationally significant aquatic resources. For example, the SEIS does not fully evaluate the pumps’ adverse impacts to internationally significant aquatic resources evaluate how many acres would no longer flood to a depth of 1 foot for 8 consecutive days with the Pumps in place, even though the SEIS makes clear that all fish spawning habitat would be lost in such areas. The entire analysis of waterfowl impacts is based on a single duck species even though more than 40 percent of the nation’s waterfowl migrate through the project area twice each year, including more than 30 species of waterfowl that rely on bottomland hardwood wetlands. The shorebird analysis is limited to a few vague paragraphs even though up to one million shorebirds migrate through the project area twice each year, as highlighted in the 2008 veto. The U.S. Fish and Wildlife Service opposes the SEIS plan, and the Corps has refused to adopt recommendations that could alleviate some of the Services’ concerns.¹² The Corps also has not completed the required Endangered Species Act consultations, despite committing to do so before signing the Record of Decision.¹³
- The SEIS Mitigation Is Wholly Inadequate and Ignores Longstanding Legal Requirements:** Because the SEIS does not assess the full extent of the pumps’ adverse impacts to hemispherically significant aquatic resources and wildlife, it cannot assess the amount of mitigation needed to offset those impacts. The SEIS also repeats the same mitigation errors identified in the 2008 veto by failing to identify specific mitigation sites, provide a detailed mitigation plan, and ensure adequate mitigation even for the severe underestimate of 38,744 acres of wetland impacts. Relying on the same functional assessment rejected in the 2008 veto precisely because it significantly understates lost wetland functions and significantly overstates mitigation outcomes,¹⁴ the SEIS proposes just 2,405 acres of reforestation of yet-to-be-identified frequently flooded lands as in-kind mitigation.¹⁵ This is 8,257 fewer acres of mitigation than proposed by the Corps in 2007; the SEIS also eliminates 52,900 acres of additional restoration that was a much-touted component of the Corps’ 2007 proposal.
- The SEIS Does Not Provide an Estimate of the Project’s Costs and Benefits:** The SEIS does not provide any information on the costs or benefits of the Yazoo Pumps, and as a result cannot demonstrate that the project’s benefits will exceed the project’s costs, as required by law. Construction costs have increased substantially since the last estimate provided by the Corps in 2007, and the SEIS proposes massive new construction at the Deer Creek location that has never been accounted for in a cost estimate; these changes have likely pushed the cost of construction to well over \$450 million. The SEIS does make clear that the pumps will provide little if any flood damage reduction benefits, acknowledging that 82% to 89% of the project area will still flood even with the Pumps in place, and the pumps will take weeks to months to drawdown floodwaters on the remaining lands.¹⁶ The SEIS also highlights the extremely limited potential for agricultural benefits, noting that “agricultural crop acres benefited are expected to be 28,700 acres per year over the life of the project.”¹⁷ In 2007, the Corps acknowledged that 80% of project benefits would come from agricultural intensification.

- **The SEIS Has Not Undergone the Mandatory Independent External Peer Review:** The SEIS does not include a report—or account for the findings of—an Independent External Peer Review (IEPR) panel. The SEIS also makes no references to such a review being conducted, even though IEPR improves project planning and is required for this project as a matter of law.¹⁸
- **The SEIS Does Not Respond to Public Comments:** The SEIS responds to just one set of comments submitted by the public. In a scant five paragraphs that response dismisses more than 100 pages of detailed technical comments and an expert analysis denouncing the model used by the Corps to assess downstream flood impacts. The SEIS provides no response to any of the other 55,000 comments submitted by citizens, scientists, and public interest groups from Mississippi and across the country, including detailed technical comments submitted by more than 110 scientific professionals, the Society of Wetland Scientists, the Society of Freshwater Science, the North American Lake Management Society, the American Fisheries Society, more than 120 conservation and social justice organizations, and others.¹⁹

Endnotes

¹ The 2008 Clean Water Act 404(c) Final Determination garnered overwhelming support from the Department of the Interior, more than 120 conservation organizations, 540 independent scientists, the Society of Wetland Scientists, the Association of State Wetland Managers, a former EPA Administrator, four former EPA Assistant Administrators for Water, a former Deputy Assistant Secretary of the Army for Civil Works, and 99.9% of the 48,000 comments submitted on the veto including 90% of comments submitted by Mississippi residents.

² SEIS, Appendix F-5 (Wetlands) at 33, 90; Final Determination of the U.S. Environmental Protection Agency's Assistant Administrator for Water Pursuant to Section 404(C) of the Clean Water Act Concerning the Proposed Yazoo Backwater Area Pumps Project, Issaquena County, Mississippi (August 31, 2008).

³ SEIS, Appendix C (Tables) at Table 5.3; SEIS, Appendix G (Engineering) at 135, Table 2-26.

⁴ SEIS, Appendix M-2 (U.S. Fish and Wildlife Coordination Act Report).

⁵ SEIS, Appendix E (Public Comments) at 34-44.

⁶ More than 55,000 citizens, scientists, and public interest organizations from Mississippi and across the country submitted comments opposing the project during the draft SEIS public comment period, including more than 110 science professionals, numerous scientific societies, and more than 120 national, state and local conservation, faith-based, social justice, and recreation organizations.

⁷ 2008 Clean Water Act 404(c) Final Determination at iii, 73.

⁸ SEIS, Appendix F-5 (Wetlands) at 33.

⁹ National Levee Database at <https://levees.sec.usace.army.mil/#/levees/system/5905000041/fema> (accessed November 6, 2020). Lack of accreditation means that the Yazoo Backwater Levee cannot protect Yazoo Backwater communities during flood events at or greater than the 1% chance of exceedance (100-year flood event).

¹⁰ SEIS, Appendix G (Engineering) at 144-145, paragraph 177.

¹¹ SEIS, Appendix E (Public Comment) at 225-273.

¹² SEIS, Appendix M-2 (U.S. Fish and Wildlife Coordination Act Report).

¹³ SEIS at 52 ("ESA coordination on the pondberry is ongoing and the Record of Decision would not be signed until coordination is complete.")

¹⁴ SEIS, Appendix F-5 (Wetlands) at 26; 2008 Clean Water Act 404(c) Final Determination at 28 and 47.

¹⁵ The SEIS also proposes out-of-kind mitigation consisting of the installation of groundwater wells far outside of the project area that would result in even more groundwater pumping from the already severely-depleted Mississippi Alluvial Plain aquifer.

¹⁶ SEIS, Appendix C (Tables) at Table 5.3; SEIS, Appendix G (Engineering) at 135, Table 2-26.

¹⁷ SEIS, Appendix F-1 (Environmental Justice) at 9.

¹⁸ 33 USC 2343(a) (making independent external peer review mandatory for civil works projects that cost more than \$200 million or are controversial).

¹⁹ The SEIS does provide minimal responses to the comments submitted by EPA and the Fish and Wildlife Service.