DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20314-1000

29 JAN 2008

CECW-MVD (1105-2-10a)

SUBJECT: Mississippi River Gulf Outlet, St. Bernard Parish, Louisiana, Deep Draft Deauthorization Study

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on the deauthorization of the Mississippi River - Gulf Outlet (MRGO) deep draft navigation channel in Louisiana. It is accompanied by the report of the district and division engineers. These reports are in final response to the authority provided in the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234), which authorized development of a comprehensive plan at full Federal expense to deauthorize deep draft navigation on the MRGO extending from the Gulf of Mexico to the Gulf Intracoastal Waterway, and Section 4304 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Public Law 110-28), which directed accelerated completion of the final report of the Chief of Engineers recommending a comprehensive plan to deauthorize deep draft navigation on the MRGO. Preconstruction engineering and design activities would continue under these authorities, and authority provided by section 7013 of the Water Resources Development Act of 2007 (WRDA 2007). The MRGO deep draft navigation project was authorized in the Rivers and Harbors Act of 1956 (Public Law 84-455). Construction of the deep draft navigation channel was completed in 1968.

2. Section 7013 of WRDA 2007, which became law on November 8, 2007, expands the scope of the study and report authorized by Public Law 109-234. In addition, pursuant to section 7013, upon submission of the final report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives, the MRGO from the Gulf of Mexico to Mile 60 at the southern bank of the Gulf Intracoastal Waterway is no longer authorized. Section 7013 also authorizes the Secretary of the Army to carry out a plan to close the MRGO and to restore and protect the ecosystem substantially in accordance with the final report subject to the Secretary's determination that the plan is cost-effective, environmentally acceptable, and technically feasible. Section 7013 became law at the time that the report previously required by Public Law 109-234 was being released for State and Agency review.

3. This report addresses recommendations concerning deauthorization and physical modification of the MRGO project and, based on the requirements of section 7013 of WRDA 2007, has been expanded to include a plan to address ecosystem restoration. The plan for

ecosystem restoration, inclusive of the considerations set forth in section 7013 of WRDA 2007, is preliminarily addressed in an addendum to the report of the district and division engineers. Systematic ecosystem restoration measures, including consideration of measures to reduce or prevent damage from storm surge, will be fully addressed in a supplement to this report that will be provided to Congress at a later date. The recommendations included in the supplement will be used as a basis for implementing an ecosystem restoration plan under the authority of section 7013 of WRDA 2007. In accordance with both Public Law 109-234 and WRDA 2007, the recommendations of this report are, and the future supplement will be, consistent and integrated with development of the Louisiana Coastal Protection Restoration study.

4. The reporting officers recommend approval of a plan to deauthorize the portion of the MRGO Federal deep draft navigation channel from the Gulf of Mexico to the confluence of the channel with the Gulf Intracoastal Waterway. The plan would deauthorize the existing deep draft navigation channel on the MRGO from mile 60 at the southern bank of the Gulf Intracoastal Waterway to the Gulf of Mexico. The plan includes the construction of a rock closure structure at the south ridge of Bayou La Loutre in St. Bernard Parish, Louisiana, approximately mile 36 on MRGO. The structure would span the MRGO and connect the two sides of the ridge, a distance of approximately 950 feet rising to elevation +7 North American Vertical Datum 1988, with a top width of approximately 12 feet and side slopes of 1 vertical to 2 horizontal. In addition, overbank extensions would be approximately 50 feet wide and 7 feet high and extend inshore approximately 150 feet on the south bank and approximately 250 feet on the north bank. Existing bank stabilization features and jetties in this portion of the MRGO would remain in place. Disposal area easements and perpetual channel easements that are no longer required will be released in accordance with Federal law. Because construction of the closure structure would not have any significant adverse environmental effects, no mitigation measures (beyond management practices and avoidance) or compensation measures are required.

5. The Coastal Protection and Restoration Authority of Louisiana (CPRA) will be the non-Federal sponsor for the implementation of the closure structure. The estimated total first cost of the closure structure based on October 2006 price levels is $24,680,000. The Federal share of the first costs is $23,410,000; the Federal Government will be responsible for 100 percent of the construction cost of the closure structure and 100 percent of the costs related to the disposal of existing easements, with such costs currently estimated at $23,285,000 and $125,000, respectively. The non-Federal sponsor will be responsible for providing the lands, easements, rights-of-way, relocations, and disposal areas (LERRDs), a cost estimated at $1,270,000. In addition, the non-Federal sponsor will be responsible for the operation, maintenance, repair, rehabilitation and replacement (OMRR&R) of the closure structure at 100 percent non-Federal expense, a cost currently estimated at $172,000 per year.

6. Based on a 4.875-percent discount rate and a 50-year period of analysis, the total equivalent average annual costs of the closure plan are estimated to be $5,140,000, including OMRR&R. The equivalent average annual benefits are estimated to be $12,500,000 with net average annual benefits of $7,360,000. Average annual benefits are associated with future O&M cost avoidance. The benefit-cost ratio is approximately 2.4 to 1.

7. Deauthorization of the existing deep draft navigation channel on the MRGO from mile 60 at the southern bank of the Gulf Intracoastal Waterway to the Gulf of Mexico would not affect or impact the non-Federal responsibilities for the remaining authorized portions of the MRGO project. In addition, measures to protect, restore or increase wetlands or to prevent saltwater intrusion or storm surge, as provided for under the heading "Operation and Maintenance" in Title I, Chapter 3 of Division B of Public Law 109-148, as modified by Section 2304 in Title II, Chapter 3 of Public Law 109-234, would be implemented at Federal expense as part of the recommended plan conditioned on CPRA, the non-Federal sponsor, assuming responsibility at 100 percent non-Federal expense for OMRR&R of such measures.

8. I concur in the findings, conclusions, and recommendation of the reporting officers. Accordingly, I recommend implementation of the Mississippi River Gulf Outlet Deep Draft Deauthorization Plan in accordance with the reporting officers' recommended plan at an estimated first cost of $24,680,000 with such modifications as in the discretion of the Chief of Engineers may be advisable. The non-Federal sponsor would provide all LERRDs and would be responsible for all OMRR&R. This recommendation is subject to the non-Federal sponsors agreeing to comply with all applicable Federal laws and policies.

9. The Washington level review indicates that the plan recommended by the reporting officers is technically sound, economically justified, and environmentally and socially acceptable. The plan complies with essential elements of the U.S. Water Resources Council's Economic and Environmental Principles and Guidelines for Water and Land Related Resources Implementation Studies and complies with other administration and legislative policies and guidelines. Also, the views of interested parties, including Federal, State, and local agencies have been considered.

10. Accordingly, I recommend implementation of the plan as described in the reporting officers' report with such modifications as in the discretion of the Chief of Engineers may be advisable. My recommendation is subject to the non-Federal sponsor executing an agreement with the Department of the Army prior to the Federal Government initiating construction of the closure structure and agreeing to comply with all applicable Federal laws and policies, including, but not limited to:

a. Provide all lands, easements, and rights-of-way (LERRDs), including suitable borrow and dredged or excavated material disposal areas, and perform or assure the performance of all relocations determined by the Federal Government, in consultation with the non-Federal sponsor, to be necessary for the construction, operation, maintenance, repair, replacement and rehabilitation (OMRR&R) of the closure structure and any additional measures to be undertaken pursuant to the authorization provided under the heading "Operation and Maintenance" in Title I, Chapter 3 of Division B of Public Law 109-148, as modified by Section 2304 in Title II, Chapter 3 of Public Law 109-234 ("additional 3rd Supplemental measures"), all at no cost to the Federal Government.

b. Comply with all applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights-of-way required for construction, operation, and maintenance of the closure structure and any additional 3rd Supplemental measures, including those necessary for relocations, the borrowing of materials, or the disposal of dredged or excavated material; and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

c. Perform, or cause to be performed, any investigations for hazardous substances that are determined necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Public Law 96-510, as amended (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, or rights-of-way that the Federal Government determines to be required for the construction, operation, and maintenance of the closure structure and any additional 3rd Supplemental measures. However, for lands that the Federal Government determines to be subject to the navigation servitude, only the Federal Government shall perform such investigations unless the Federal Government provides the non-Federal sponsor with prior specific written direction, in which case the non-Federal sponsor shall perform such investigations in accordance with such written direction.

d. Assume, as between the Federal Government and the non-Federal sponsor, complete financial responsibility for all necessary cleanup and response costs of any CERCLA regulated materials located in, on, or under lands, easements, or rights-of-way that the Federal Government determines to be necessary for the construction, operation, or maintenance of the closure structure and any additional 3rd Supplemental measures.

e. Operate, maintain, repair, rehabilitate, and replace the closure structure at no cost to the Federal Government, in accordance with applicable Federal and State laws and regulations and any specific directions prescribed by the Federal Government.

f. Operate, maintain, repair, replace and rehabilitate any measures undertaken or to be undertaken pursuant to the authorization provided under the heading "Operation and Maintenance" in Title I, Chapter 3 of Division B of Public Law 109-148, as modified by Section 2304 in Title II, Chapter 3 of Public Law 109-234 ("3rd Supplemental measures") at no cost to the Federal Government in accordance with applicable Federal and State Laws and regulations and specific directions prescribed by the Federal Government.

g. Hold and save the United States free from all damages arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of the closure structure or 3rd Supplemental measures, except for damages due to the fault or negligence of the United States or its contractors.

h. Agree, as between the Federal Government and the non-Federal sponsor, that the non-Federal sponsor shall be considered the operator of the closure structure and 3rd Supplemental measures for the purpose of CERCLA liability, and to the maximum extent practicable, operate, maintain, repair, rehabilitate, and replace the closure structure and 3rd Supplemental measures in a manner that will not cause liability to arise under CERCLA.

i. Prevent obstructions or encroachments on the closure structure and 3rd Supplemental measures (including prescribing and enforcing regulations to prevent such obstructions or encroachments), such as any new developments on lands, easements, and rights-of- way or the addition of facilities which might hinder operation and maintenance of the closure structure and 3rd Supplemental measures or interfere with their proper function.

j. Comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141- 3148 and 40 U.S.C. 3701 – 3708 (revising, codifying and enacting without substantial change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c *et seq.*).

k. Not use funds from other Federal programs, including any non-Federal contribution required as a matching share therefor, to meet any of the non-Federal obligations unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is authorized.

11. The recommendations contained herein reflect the information available at this time and current Department of the Army policies governing formulation of individual projects. They do not reflect program and budgeting priorities inherent in the formulation of a national civil works construction program nor the perspective of higher review levels within the executive branch. Consequently, the recommendations may be modified before they are transmitted to the Congress. However, prior to transmittal to the Congress, the sponsor, the State, interested Federal agencies, and other parties will be advised of any modifications and will be afforded an opportunity for further comment.

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