

25 JAN 2008

MEMORANDUM FOR CECW-MVD (ATTN: John Lucyshyn)

SUBJECT: Mississippi River Gulf Outlet Deep Draft Navigation Deauthorization Report, and Environmental Assessment (November 2007) – Documentation of Review Findings

1. This memorandum forwards the documentation of policy compliance review findings for the subject project proposal. In the opinion of the policy compliance review team, all policy review concerns have been adequately addressed for this phase of project formulation and development.
2. Office of Water Project Review consideration of subject report and environmental assessment is complete. Questions concerning the HQUSACE policy compliance review of this project proposal may be discussed with review manager, Thomas Hughes, at 202-761-5220.

Encl



Handwritten signature of Robyn S. Colosimo in black ink.

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DOCUMENTATION OF REVIEW FINDINGS

**MISSISSIPPI RIVER – GULF OUTLET, LOUISIANA
DEEP DRAFT DEAUTHORIZATION**

**FEASIBILITY REPORT
AND
LEGISLATIVE ENVIRONMENTAL IMPACT STATEMENT**

January 2008

ENCLOSURE

Table of Contents

A. GENERAL.	5
1. Policy Compliance Review Findings	5
2. Project Location	5
3. Authority.	6
4. Non-Federal Sponsors.	6
5. Problems, Needs And Opportunities.	6
6. Plan Formulation	7
7. Selected Plan.	14
8. Project Costs.	14
9. Operation, Maintenance, Repair, Rehabilitation, and Replacement (OMRR&R).	14
10. Project Benefits.	14
11. Cost Sharing.	14
12. Environmental Compliance	14
B. REVIEW COMMENTS ON THE MARCH 2005 ALTERNATIVE FORMULATION BRIEFING PACKAGE.	15
1. Description of Existing Conditions.	15
2. Authority.	15
3. Needs for Deauthorization	16
4. Problems, Needs and Opportunities	16
5. Alternatives Descriptions.	16
6. Channel depth.	17
7. Future Without the Proposed Action	18
8. Impacts of tentatively selected plan	18
9. Alternative Costs.	19
10. Storm Surge.	19
11. Continued Maintenance of Rock Dikes (page 25).	19
12. Vessel Movements.	19
13. Closure Structure and Lake Pontchartrain.	20
14. Evaluation of Alternatives.	21

15. LEIS.	21
16. Incorporating into LACPR	21
17. Previous NEPA Documents.	21
18. Prior EAs.	21
19. FWS Coordination	22
20. Conference Language.	22
21. Benefit.	22
22. Authorized Project.	22
23. Description of Tentatively Selected Plan.	23
24. Rationale for the Selecting Plan.	24
25. Continued Maintenance	24
26. Legal Comments Addressed	24
27. Consistent with Main Report.	24
28. Navigation Servitude.	25
29. Contingency.	25
30. Price Level.	25
31. Relic Features.	25
<i>C. ADDITIONAL COMMENTS FROM THE 30 MAY REVISED ALTERNATIVE FORMULATION BRIEFING PACKAGE.</i>	26
1. Cumulative Impacts:	26
2. Description of the Tentatively Selected Plan.	26
3. Vessel Wake as the Cause of Wetland Loss	28
4. Need for Alternative Navigation Plan.	29
5. Monitoring.	29
6. LPBF.	29
7. Technical Statements Regarding Proximate Cause.	30
8. Assertion of Navigation Servitude.	30
<i>D. COMMENTS FROM REVIEW OF THE JUNE 2007 DRAFT REPORT</i>	30
1. Closure Structure.	30
2. Economic and Cost Allocation Tables.	31
3. Paragraph 6.5 ISSUE TO BE RESOLVED.	31
4. Value Engineering.	32
5. Engineering Design and Construction Management	33
6. Cost assumptions.	33

E. REVIEW COMMENTS ON THE NOVEMBER 2007 FINAL REPORT AND LEIS. __ 33

- 1. Coast Guard letter. _____ 33**
- 2. WRDA 2007 authority. _____ 34**
- 3. LaCPR Final Report. _____ 34**
- 4. O&M Access. _____ 34**
- 5. O&M associated with 3rd and 4th supplemental appropriations. _____ 35**
- 6. Sponsor Letter. _____ 35**
- 7. Effectiveness Discussion _____ 35**
- 8. Coastal Zone Management (Section 2.6.4.2, item 6, page 43). _____ 36**
- 9. Cost Sharing. _____ 36**

15 January 2008

DOCUMENTATION OF REVIEW FINDINGS

**MISSISSIPPI RIVER GULF OUTLET, LOUISIANA
DEEP DRAFT DEAUTHORIZATION**

**FEASIBILITY REPORT
AND
LEGISLATIVE ENVIRONMENTAL IMPACT STATEMENT
NOVEMBER 2007**

A. GENERAL.

1. Policy Compliance Review Findings. The following summarizes the final HQUSACE policy compliance review findings for the feasibility report and Legislative Environmental Impact Statement (LEIS) on the proposed deauthorization plan for Mississippi River – Gulf Outlet. This summary includes the concerns and the related resolutions of those concerns for the HQUSACE reviews of the Alternative Formulation Briefing Documentation received in April 2007, Integrated Draft Report and LEIS dated June 2007, and the November 2007 Final Feasibility Report and LEIS.

Policy review comments were provided to the district June 8, 2007. District responses, dated 21 June were prepared. Further coordination was performed that focused on resolution of critical comments required prior to release of the draft report for public review. Documentation of responses to the critical comments dated 25 July 2007 was provided. An Integrated Draft Report to Congress and Legislative Environmental Impact Statement dated June 2007 was received 23 July 2007 for concurrent public and Headquarters review. The AFB review information was originally documented in the CECW-MVD Project Guidance Memorandum (PGM) dated 7 June 2007. The draft report review information was previously documented in a CECW-PC memorandum dated 24 August 2007. The final report review information was documented in the CECW-PC Final Project Assessment Memorandum dated 19 December 2007. The documentation that follows comprises the HQUSACE policy compliance review record.

2. Project Location. The study area is located in southeastern Louisiana in St. Bernard, Orleans and St. Tammany Parishes. It covers the Lower Pontchartrain Basin, consisting of Lake Borgne, the Mississippi River Gulf Outlet (MRGO), Chandeleur and Breton sounds and the surrounding wetlands. The Middle Pontchartrain Basin is also in the study area. It consists of Lake Pontchartrain with its adjacent cities and towns and surrounding wetlands.

3. Authority. Congress directed the Secretary of the Army, acting through the Chief of Engineers, to develop a plan for deauthorization of deep-draft navigation for the Mississippi River Gulf Outlet from the Gulf of Mexico to the Gulf Intracoastal Waterway. Public Law 109-234, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, reads in part:

“...the Secretary of the Army acting through the Chief of Engineers, utilizing \$3,300,000 of the funds provided herein shall develop a comprehensive plan, at full Federal expense, to de-authorize deep draft navigation on the Mississippi River–Gulf Outlet, Louisiana, extending from the Gulf of Mexico to the Gulf Intracoastal Waterway: Provided further That, not later than 6 months after the date of enactment of this Act, the Secretary shall submit an interim report to Congress comprising the plan: Provided further, That the Secretary shall refine the plan, if necessary, to be fully consistent, integrated, and included in the final report to be issued in December 2007 for the Louisiana Coastal Protection and Restoration Plan.”

House Report 109-494 provides a conference committee manager’s statement accompanying the legislative language further requiring that:

“The plan shall include recommended modifications to the existing authorized current use of the Outlet, including what navigation functions, if any should be maintained and any measures for hurricane and storm protection. The plan shall be developed in consultation with St. Bernard Parish, the State of Louisiana, and affected Federal Agencies.”

While the report previously required by Public Law 109-234 was being released for State and Agency review, WRDA 2007 became law. Section 7013 of WRDA 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.

4. Non-Federal Sponsors. The Coastal Protection and Restoration Authority of Louisiana (CPRA) will be the non-Federal sponsor for the implementation of the closure plan.

5. Problems, Needs And Opportunities. Shoaling in the MRGO channel caused by Hurricane Katrina has limited the controlling depth to approximately 22 feet which has restricted deep-draft access. Many deep-draft businesses in the study area were severely impacted. Two companies chose to relocate to Mobile, Alabama. Others are trying to

recover; some may plan to relocate. Deep-draft vessels are entering the MRGO light-loaded, calling on tidewater port facilities in New Orleans, and exiting through the IHNC Lock into the Mississippi River for outbound voyages. Some maritime interests have reported modifying operations by moving products over to Mississippi River docks for loading. Other companies have adopted other modifications to continue commerce. Post-Katrina 230 jobs were lost from the MRGO-IHNC area due to relocation and downsizing. Shallow-draft facilities have essentially recovered. However, the total average annual costs to maintain a 12 ft shallow-draft channel are approximately \$6 million.

Traffic records from the Waterborne Commerce Statistics Center (WCSC) show MRGO utilization steadily increasing until reaching a peak in terms of tonnage carried in 1978 and in terms vessel trips in 1982. Both tonnage and total vessels have decreased since that time. Average annual operations and maintenance (O&M) costs to dredge a single shipping lane in the Inland Reach and authorized width in other reaches are \$12.5 million. Efforts to operate and maintain the fully authorized dimensions (i.e. a two-lane channel 500 feet wide by 36 feet deep) would be even more costly and would not produce greater navigation benefits.

6. Plan Formulation. A broad suite of options were identified for development of the deep-draft deauthorization plan and can be grouped into three categories; maintain shallow draft navigation, physically close the channel and cease operation and maintenance activities.

All of the alternatives that included maintenance of the MRGO channel for shallow-draft navigation were screened out based on economic analysis. The plan to maintain shallow-draft navigation (and all stated variations) was eliminated because the projected economic return was not positive. The cost to maintain the channel on an annual basis would be much higher than the projected benefits it could generate. Restoring both banks of Bayou La Loutre was eliminated because, while it achieves similar environmental and navigation results as putting a total closure structure across one bank, it would cost approximately twice as much to construct. There are also additional negative impacts to recreational and commercial vessel users caused by restricted access to Bayou La Loutre from the north. Filling the entire MRGO channel was eliminated because of cost. A very rough estimate is that it would take approximately 250-350 million cubic yards of dredged material to fill just the inland portion of the channel and cost about \$2.8 billion based on October 2006 price levels. This material could possibly be mined from the Ocean Dredged Material Disposal Site (ODMDS) and a rough estimate is that the filling could take 15-44 years. Other alternatives included multiple closures, limited channel filling, bank restoration, and tree planting. These suggestions were eliminated from detailed analysis based upon assessment of potential costs, impacts, and effectiveness. The suggestions for multiple closures, limited channel filling, and bank restoration were screened from detailed analysis because of concerns about sediment availability and costs. Tree planting and other vegetation was eliminated in light of concerns about potential impacts to levees during storms.

Three alternatives were developed for detailed evaluation.

- Alternative 1 – Construct a Total Closure Structure across the MRGO near Bayou La Loutre immediately.

- Alternative 2 – Phased Construction of a Total Closure Structure across the MRGO near Bayou La Loutre. (Construction would begin with a weir and be completed with a total closure structure.)
- Alternative 3 – Cease All MRGO Operations and Maintenance Dredging Activities Immediately.

The detailed evaluation included evaluating and comparing each of the alternatives based on the following four criteria: 1) completeness, 2) effectiveness, 3) efficiency, and 4) acceptability. The table below indicated how each alternative was evaluated on those criteria is indicated in Table 1.

7. Selected Plan. The recommended 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 a distance of approximately 950 feet rising to elevation +7 North American Vertical Datum 1988, have 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.

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 as part of the recommended plan conditioned on the non-Federal sponsor, assuming responsibility at 100 percent non-Federal expense for OMRR&R of such measures.

8. Project Costs. Based on a 4.875-percent discount rate and a 50-year period of analysis, the total equivalent average annual costs of the closure structure are estimated to be \$5,140,000, including OMRR&R.

9. Operation, Maintenance, Repair, Rehabilitation, and Replacement (OMRR&R). The Coastal Protection and Restoration Authority of Louisiana will be responsible for the operation and maintenance of the project in accordance with the procedures and schedules set forth in an Operation and Maintenance manual. The total estimated annual cost of operation, maintenance, repair, rehabilitation, and replacement for the recommended plan is \$172,000.

Table 1
Comparison of Alternatives Based on Four Criteria in Principles and Guidance Table

CRITERIA	FUTURE WITHOUT DE-AUTHORIZATION	ALTERNATIVE 1	ALTERNATIVE 2	ALTERNATIVE 3
Completeness	Not a complete plan. It does not meet the study objective of de-authorizing the channel. Assumes channel is dredged to authorized dimensions (recognizing appropriations limits). However, neither deep-draft nor shallow-draft is economically justified.	Most complete plan; it provides positive closure of de-authorized channel immediately. Plan eliminates possibility of through navigation after de-authorization.	Second most complete plan; it de-authorizes the channel but allows shallow-draft navigation until about 2014, when closure structure is completed.	Marginally complete plan; it de-authorizes the channel but does not physically close the de-authorized channel. Plan allows possibility of through navigation after de-authorization ⁷ . Will be no navigation aids on de-authorized channel.
Effectiveness	Least effective because does not de-authorize the channel.	Effective at meeting the requirement of de-authorizing the project.	Effective at meeting the requirement of de-authorizing the project.	Effective at meeting the requirement of de-authorizing the project.
Efficiency	Most costly and least benefits. B/C is 0.17 to 1	Third most costly. B/C is 2.5 to 1	Second most costly. B/C is 2.7 to 1	Least Costly. B/C is 3.7 to 1
Acceptability	Not acceptable (see details below).	Most acceptable (see details below).	Partially acceptable (see details below)	Not acceptable (see details below).
Technically feasible	Yes	Yes	Yes	Yes
Environmental Acceptability	Not environmentally acceptable	Highly environmentally acceptable	Less environmentally acceptable than Alt. 1	Not environmentally acceptable

<i>Salinity reduction</i>	Salinity in the Pontchartrain Basin would remain changed from historic conditions (Salinity should stay stable in Mid-Basin and might increase in Lower Basin as land loss from various causes continues). (see Section 3 and Appendix D). Habitat types are expected to generally remain as they are at present.	Slightly reduced salinity is expected throughout the project area soon after completion of closure structure (modeling indicates greatest reduction could be at Alluvial City – 6.0-6.6 ppt; salinity stratification north of the structure would be reduced; it is expected that the size of the H-A zone in Lake Pontchartrain could shrink). (see Section 3 and Appendix D). MRGO/Lake Borgne Landbridge could return to brackish marsh. More intermediate marsh and cypress could occur in Central Wetlands.	Fewer salinity improvements prior to completion of closure structure in about 2014. (see Section 3 and Appendix D). Marsh change on Landbridge and in Central Wetlands unlikely to occur until about 2014. Then when closure completed, Alt. 2 would have same benefits as Alt. 1. H-A Zone same as Alt. 1.	Salinity is unlikely to become lower for several years until much of the channel shoals. (see Section 3 and Appendix D). Salinity might increase in Lower Basin. Marsh types should remain as at present. Change in H-A Zone unlikely until USACE constructs measures to reduce storm surge into IHNC.
<i>Marsh loss</i>	Beneficial use could create 2,702 acres of marsh; erosion would likely destroy 4,565 acres of marsh for a net loss over 50 years that could be of 2,343 acres. (see Section 3 and Appendix G).	Marsh loss could be decreased by a significant percentage of the 2,343 acre net loss of the future without. (see Section 3 and Appendix G).	Slightly less marsh loss prevented than under Alt.1 because shallow-draft navigation could use the channel until about 2014. (see Section 3 and Appendix G).	More marsh loss than Alternative 1, but probably significantly less than future without. (see Section 3 and Appendix G).

<i>Endangered species (sea turtles)</i>	Unlikely that sea turtles would be found in Inland Reach. Turtles would continue to be taken in the Bar Channel.	Could allow sea turtles to reoccupy Inland Reach. ¹	Could allow sea turtles to reoccupy Inland Reach. ¹	Sea turtles could reoccupy Inland Reach once deep/draft vessels ceased using channel
<i>Restores Bayou La Loutre Ridge</i>	Ridge was a hydrologic barrier and a natural Line of Defense that protected marshes to north. Ridge may remain open for 50 years.	Immediately restores ridge function cut by MRGO. Restoration could allow wildlife to cross the MRGO, reduce salinity (see below) and return tidal flow to pre-MRGO conditions.	Ridge function not fully restored until about 2014. No restoration benefits during that period, then same as Alt. 1.	Ridge function never restored, MRGO would remain an open connection from the Gulf to Lake Borgne for 50 years.
Economically feasible	No	Yes, see efficiency	Yes, see efficiency	Yes, see efficiency
Financially feasible	No	Yes	Yes	Yes
Politically feasible	No	Yes, highly	Less politically feasible than Alt. 1.	No ⁵
<i>Compatibility with non-Federal plans for Coastal Louisiana</i>	This alternative is not included in the local government, state government, and environmental organization plans for coastal Louisiana mentioned under Alt. 1.	The channel closure is included in a number of local government, state government, and environmental organization plans for coastal Louisiana (see Section 2.6.2.2).	This alternative is not included in the local government, state government, and environmental organization plans for coastal Louisiana mentioned under Alt. 1.	This alternative is not included in the local government, state government, and environmental organization plans for coastal Louisiana mentioned under Alt. 1.
<i>Compatibility with USACE initiatives (LACPR, LCA, CWPPRA Restoration Plan)</i>	Least compatible with comprehensive ecosystem restoration. Specifically, the size and cost of any potential freshwater diversion	Most compatible with comprehensive ecosystem restoration. Specifically, consistent and supportive of many previous assessments of	This alternative would be less compatible than Alternative 1 until about 2014 in relation to ecosystem restoration. Specifically, a	Less compatible for comprehensive ecosystem restoration than Alt. 2 but more compatible than future without de-

	projects would be the highest of any alternative and there would be greater marsh loss on the MRGO/Lake Borgne Landbridge and thus more resources would be required to protect and restore this landbridge.	MRGO environmental solutions including the Louisiana Coastal Area Ecosystem Restoration Plan, CWPRA Restoration Plan, and the elements under consideration for the LACPR study; the size and cost of a freshwater diversion at the Violet Canal could be the smallest compared to other alternatives; and restoration of the MRGO/Lake Borgne Landbridge would be the least costly.	freshwater diversion at Violet Canal would have to be larger and restoration of the landbridge would be more costly.	authorization. Cost of potential Violet Canal freshwater diversion and restoration of the landbridge would fall between Alternative 2 and the future without de-authorization.
<i>Satisfactory to State</i>	Highly unsatisfactory and inconsistent with State Master Plan.	Highly satisfactory and consistent with the State Master Plan.	Marginally satisfactory and inconsistent with State Master Plan until 2014.	Highly unsatisfactory and inconsistent with State Master Plan.
Legally feasible	Yes	Yes	Yes	Yes
Institutionally feasible	Yes	Yes	Yes	Yes
Socially feasible ⁶	No	Yes, highly	Yes, but less feasible than Alt. 1.	No ⁵
<i>Satisfactory to local parishes²</i>	Highly unsatisfactory	Highly satisfactory compared to other alternatives and future without.	Less satisfactory than Alt. 1.	Highly unsatisfactory
<i>Satisfactory to adjacent landowners</i>	Highly unsatisfactory	Highly satisfactory compared to other	Less satisfactory than Alt. 1.	Does not satisfy expressed concerns.

		alternatives and future without.		
<i>Satisfactory to various non-governmental organizations's</i> ³	Highly unsatisfactory	Highly satisfactory compared to other alternatives and future without.	Less satisfactory than Alt. 1.	Highly unsatisfactory
<i>Satisfactory to navigation interests</i> ⁴	Satisfies some interests in the industry that expressed support for restoring coastal Louisiana while maintaining shallow draft alternative route.	Highly unsatisfactory because feasible shallow draft alternate route not available.	Unsatisfactory because alternate route only available until 2014.	Unsatisfactory because alternate route not available after about 2014.

¹ National Marine Fisheries Service letter dated September 14, 2007

² St. Bernard, Orleans, Jefferson, St. Tammany

³ Coalition to Restore Coastal Louisiana, Lake Pontchartrain Basin Foundation, Environmental Defense, National Audubon Society, National Wildlife Federation, Louisiana Wildlife Federation, American Rivers, Gulf Restoration Network, levees.org

⁴ Port of New Orleans, Shell, CITGO, Soluta, U.S. Coast Guard, Rhodia, Lonestar, Gulf States Maritime, Gulf Intracoastal Canal Assn., American Waterway Operators, Kirby Corp, Ed Peterson

⁵ Implementability means that the alternative is feasible from technical, environmental, economic, financial, political, legal, institutional, and social perspectives. If it is not feasible due to any of these factors, then it can not be implemented, and therefore is not acceptable. However, just because a plan is not the preferred plan of a non-Federal sponsor does not make it infeasible or unacceptable *ipso facto* " (ER 1105-2-100 E3. a(4)(a)(1)).

⁶ Information on social feasibility was gathered from a number of public meetings and feedback from stakeholders (see Section 4).

⁷ Discussions with stakeholders in the navigation industry (such as pilots, shipping companies, the Port of New Orleans, dock operators, industry trade groups) and with the USCG indicate that vessels are likely to continue to navigate the MRGO channel until depth conditions become inadequate for ocean vessel transits. Shallow draft vessels are also likely to continue to use the channel as long as adequate depth remains for their navigation purposes. Many aids to navigation were damaged or destroyed by hurricane Katrina and have not been replaced due to the uncertainty of the future of the channel. After de-authorization, relic aids to navigation would be removed through coordination with the USCG, but navigation is likely to continue unless the channel is physically blocked.

10. Project Benefits. 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.

11. Cost Sharing. 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 plan at 100 percent non-Federal expense, a cost currently estimated at \$172,000 per year. Table 2 shows the Federal and Non-Federal cost breakdown.

12. Environmental Compliance. The Recommended Plan is in full compliance with the Fish and Wildlife Coordination Act, the Endangered Species Act, the Clean Water Act, the Coastal Zone Management Act, EO 11988, EO 11990, EO 12898 and other environmental laws and regulations. The Recommended Plan is not likely to adversely impact any endangered or threatened species. It complies with the requirements of the Section 404(b)(1) Guidelines for water quality. It is consistent to the maximum extent practicable with the State of Louisiana’s approved Coastal Zone Management Program.

Table 2
MRGO Deep-Draft De-Authorization Study
Federal and Non-Federal Cost Breakdown
(October 2006 Price Level, 50-Year Period of Analysis)

	Responsibility	Federal	Non-Federal	Total
Project First Costs (Construction)				
Mobilization and Demobilization	100% Federal	\$ 85,000		\$ 85,000
Stone Placement - Channel Proper	100% Federal	\$11,773,000		\$11,773,000
Stone Placement - Overbank Tie-Ins	100% Federal	\$ 403,650		\$ 403,650
Crushed Stone Blanket	100% Federal	\$ 3,400,000		\$ 3,400,000
Geotextile Separator Fabric	100% Federal	\$ 31,500		\$ 31,500
Clearing and Grubbing (Overbank)	100% Federal	\$ 11,000		\$ 11,000
Engineering and Design	100% Federal	\$ 1,094,300		\$ 1,094,300
Construction Management	100% Federal	\$ 1,591,800		\$ 1,591,800
Real Estate*	100% Non-Federal	\$ 125,000	\$1,276,000	\$ 1,401,000
Removal of Aids to Navigation	100% Federal	\$ 700,000		\$ 700,000
Contingencies	100% Federal	\$ 4,193,000		\$ 4,193,000
Total Project First Costs		\$23,408,250	\$1,276,000	\$24,684,250
OMRR&R	100% Non-Federal		\$7,860,000	\$7,860,000
Total Cost Share		\$23,408,250	\$9,136,000	\$32,544,250

*Of the total Real Estate costs, \$21,000 are associated with acquisition of real estate rights necessary for the construction of the closure structure. For an explanation of additional costs, see Appendix E.

B. REVIEW COMMENTS ON THE MARCH 2005 ALTERNATIVE FORMULATION BRIEFING PACKAGE.

1. Description of Existing Conditions. The report does not provide a concise easily understood discussion of the existing project, including associated citations, and all of the ongoing related actions. (Although still incomplete, the discussions and illustrations in the December 2006 Interim Report to Congress provides a better explanation.) It is very difficult to comprehend the basics of the operation of MRGO, the Gulf Intracoastal Waterway, the Inner Harbor Navigation Channel (IHNC), IHNC Locks, and how they relate to each other. In addition, there are references to numerous studies and authorized activities relating to bank protection, jetties, lock replacement, and additional disposal areas relating to MRGO. There is a strong potential that if the MRGO channel is deauthorized, many of these navigation components may not be required, leaving the potential for additional benefits. A clear description of all of the components of the navigation system is required, specifically those that are directly related to MRGO. The tentatively recommended plan also needs to specify what project components are included in the proposed deauthorization and what components should remain authorized and why.

MVN Response: See revisions and additions in the following sections: Background (S.4, 1.4), Project Area Description (1.3), Description of TSP (S.17, 6.2), and Table 6.1

HOUSACE Assessment: Resolved.

2. Authority. The “draft” report states that the Authority provided by P.L. 109-234 is for a proposed action. Similar references can be found throughout the report. This authority does not authorize any action or any construction. It is only a study authority for the development of a plan for deauthorization of deep-draft navigation on the Mississippi River-Gulf Outlet which should be fully consistent with the Louisiana Coastal Protection and Restoration Act (LACPR). Such references should be taken out of the report and replaced by references to study purposes. If a recommendation results, that section should refer to a tentatively selected plan.

MVN Response: Changes have been made throughout the document to address this comment.

HQ Assessment: Not resolved. In Section 4.10 of the report the sentence "Authorities, such as Section 1135 of WRDA 1986, exist to address environmental concerns affected by the construction or operation of USACE projects." was not deleted as requested.

MVN Response: Delete “Authorities, such as Section 1135 of WRDA 1986, exist to address environmental concerns affected by the construction or operation of USACE projects.”

HOUSACE Assessment: Resolved.

3. Needs for Deauthorization. In general, delete the major reasons/needs for deauthorization of MRGO throughout the report, including comments relating to public fears, and simply state that this report was requested by Congress. It is appropriate to include at least part of this discussion under the Background section as it is relevant to state facts as to the current state of the MRGO, and even to state (but only in a cursory and strictly objective manner) that various concerns and complaints that have been voiced. But the current language--including, e.g., unsubstantiated assertions about what "the public" thinks or wants should be deleted.

MVN Response: Major reasons and needs have been deleted and replaced with Congressional purpose (see Sections S.5, 1.5 Purpose and Need). References to need have been changed or deleted throughout the report. Public concerns are stated in Sections S.19, 4.10 (Areas of Concern and Controversy). Public opinions are also documented throughout Section 4. We have reworded language throughout the report about what the public thinks or wants. Also, the Background sections have been reworded to be more objective (S.4, 1.4).

HOUSACE Assessment: Resolved.

4. Problems, Needs and Opportunities. The New Orleans District is to be commended for including the public in an effort to identify the views of a wide variety of interest groups. However, these views need to be included in the context of what the report is trying to accomplish. To do this the report needs to include problems and opportunities in respect to the alternatives developed for the purpose of implementing the deauthorization with a clear idea of what is to be accomplished, including actions that may be related to the LACPR. In addition, the report may be able to address the many suggestions received during the public involvement activities in a less dismissive manner.

The final report needs to either be expanded or include a Plan Formulation appendix to provide a more thorough discussion of the various alternatives and why they were discarded or kept for more detailed analysis. More information is required on what each alternative is trying to achieve including resource protection or restoration, in addition to effects on navigation.

MVN Response: Public concerns are stated in Sections S.19, 4.10 (Areas of Concern and Controversy). Public opinions are also documented throughout Section 4. Section 2 has been expanded to discuss the various alternatives and why they were discarded or kept, including a more detailed description of the initial array of alternatives. Sentences have been added at the beginning of the descriptions of Alternatives 1, 2 & 3 in Section 2.5 to explain what each is trying to achieve.

HOUSACE Assessment: Resolved.

5. Alternatives Descriptions. The detailed discussion of alternatives 1, 2, and 3 needs to be reworked to clearly explain what is included in each of the alternatives.

- a. If removal of relic features and offshore jetties are part of the alternative, the costs of these items must be included in the total project costs/annual costs etc. Annual costs should be checked to make sure they are consistent with the revised estimates. For example contingency costs were added into the total project costs but annual costs remained the same as the earlier version of the report without contingencies.
- b. Cost sharing of alternatives must be explicit. We agree that we could support cost sharing construction costs at 100 % Federal; LERRDs 100% non-Federal; however, OMRR&R costs must be 100% non-Federal.
- c. Monitoring costs need to be justified. Monitoring is appropriate when expected benefits of an alternative have significant uncertainty and implementation of the alternative can be modified to achieve expected outputs. Monitoring is not used to evaluate impacts of proposed projects. All impacts associated with each alternative need to be identified and described. Risk and uncertainty associated with an alternative needs to be identified. Any monitoring needs to be justified based on the identified risk and uncertainty and the need to modify the project. Cost of monitoring should be 100% non-Federal.
- d. Since the alternatives include continued maintenance of the existing rock breakwaters protecting wetlands, the associated OMRR&R costs of \$1,840,000 need to be included in total project OMRR&R costs to be cost shared 100% non-Federal.

MVN Response:

- a. The text description now makes it clear what is to happen to relic features under the alternatives. Costs are being verified as the MVD/HQ review is being conducted.
- b. An explanation of cost share break-down has been added to the detailed descriptions of Alternatives 1, 2, & 3.
- c. Monitoring is no longer part of the Tentatively Selected Plan, and has also been removed from the detailed descriptions of Alternatives 1, 2, & 3. Monitoring requested by the USFWS is discussed in Section 5.1. Monitoring of Bayou La Loutre under other authorities is discussed in Areas of Concern and Controversy (S.19, 4.10).
- d. Continued maintenance of the existing rock is no longer part of the Tentatively Selected Plan, and has also been removed from the detailed descriptions of Alternatives 1, 2, & 3.

HOUSACE Assessment: Resolved.

6. Channel depth. Various references to the current “channel depth of approximately minus 22 feet” are confusing. The description of channel depths needs to be consistent throughout the report. Either describe the channel depth as a negative depth relative to some reference

elevation (most likely mean sea level) or refer to the depth of channel as of positive depth such as a depth of 22 feet.

MVN Response: This change has been made throughout the document.

HOUSACE Assessment: Resolved.

7. Future Without the Proposed Action . There does not appear to be a logical basis for the selection of the future without-project condition. The report references at one point that there is Congressional direction not to perform any maintenance dredging. In addition, all evidence currently points to the fact that the project is no longer economically viable, raising questions as to whether we would conduct any short or long term maintenance dredging, let alone any multi-million dollar effort to restore the channels to their pre-hurricane conditions. The discussion indicates that recent maintenance prior to the hurricane has not been to authorized conditions and that even if the channel were somehow restored sufficient maintenance would not be conducted to keep the channels at their authorized dimensions. The district needs to explain the basis for the without project condition and why this condition is the best reference point to determine the economic efficiency of maintaining the Federal channel.

MVN Response: Although the MRGO has not been maintained to its authorized dimensions for several years due to multiple factors, the future without scenario is typically based on the project as it is authorized by law. Because the Congressional authorization defines a project's parameters, it provides the clearest and least speculative basis for describing the future without project scenario. The description of the Future Without De-Authorization has been revised to better explain this rationale (S.14, 2.4).

HOUSACE Assessment: Resolved.

8. Impacts of tentatively selected plan. The AFB materials state that the potential impacts of the diversion of vessels from the MRGO to other navigation routes cannot be quantified at the current time. This statement does not convey any meaningful information to the public concerning the affects of the closure of the MRGO channel at Bayou La Loutre. The nature and extent of impacts should be estimated to the degree possible at this time. Factors such as the numbers, types and speeds of vessels that would be diverted, and the most likely routes that these vessels would use should be considered in the estimate of affects. A similar comment applies to the LEIS- the affects of the vessel diversion should be described and quantified to the degree possible.

MVN Response: Explanation has been confined to Section 3 (Affected Environment and Environmental Consequences) and Areas of Concern and Controversy (S.19, 4.10).

HOUSACE Assessment: Resolved.

9. Alternative Costs. Not all of the alternatives appear to have costs identified; i.e., filling MRGO, so how can this alternative be compared to others? Provide additional explanation, analysis of the alternatives.

MVN Response: Cost of filling the MRGO specifically has been added and more detail generally about all alternatives has been added (see Section 2). Also, all costs are being verified as the MVD/HQ review is being conducted.

HOUSACE Assessment: Resolved.

10. Storm Surge. What is the purpose for including storm surge information in this report? It is not relevant to our decision to deauthorize MRGO as requested by Congress. If it is relevant with regard to providing a benefit, include this information in the discussion with the appropriate alternative. Economics Appendix, sec. IV states that MRGO has “a minor effect on storm surge during severe storm events,” “closing the MRGO would lead to a negligible reduction in storm damages from severe events,” and “areas outside of the levee system may see increased storm surge as a result of the MRGO. These sentences do not appear entirely consistent with the following language in S.16: “Total closure could provide some surge reduction in small storm events where the surrounding marsh areas are not completely inundated.” Suggest careful examination and clarification for including this information.

MVN Response: All statements about storm surge have been reviewed and any inconsistencies have been corrected. Discussion of storm surge is included for 2 reasons: 1) it is part of the Congressional direction for the study, and 2) it is an area of concern and controversy. It is not evaluated in Section 3 because there is essentially no difference between the alternatives relative to storm surge.

HOUSACE Assessment: Resolved.

11. Continued Maintenance of Rock Dikes (page 25). It is unclear why these alternatives would continue maintenance of rock dikes protecting wetlands along MRGO and Lake Borgne. Rock protection is presumably related to impacts from vessel wake and propeller wash. If traffic no longer uses the channels, why would the protection be required?

MVN Response: Maintenance of rock dikes has been removed from the Tentatively Selected Plan and from the detailed descriptions of Alternatives 1, 2, & 3.

HOUSACE Assessment: Resolved.

12. Vessel Movements. Alternatives 2 and 3 have the assumption that some vessel movements would continue until a certain level of shoaling eventually prevents such movement. What is the basis of this assumption? If the purpose of the study is to identify a plan to deauthorize the navigation use of the channel, why would we not include any navigation benefits immediately upon deauthorization. With the removal of aids to navigation, commercial traffic would likely not use the channels. The analysis should not include navigation benefits for these alternatives

MVN Response: We believe that vessel movement in the channel will continue under Alternatives 2 & 3 even after the channel is de-authorized. This is one of the arguments for selecting Alternative 1 as the Tentatively Selected Plan—that is, it physically blocks the channel and prevents through navigation. Additionally, the shallow-draft navigation industry has advocated for Alternatives 2 & 3 so that use could continue, even if the channel is deauthorized. Therefore, we believe, and the shallow-draft industry believes, that navigation benefits should be shown under Alternatives 2 & 3. Also, navigation aids may be removed through coordination with the Coast Guard, but maybe not.

HQ Assessment: Unresolved. Additional coordination and information needs to be provided to settle the issue of navigation aids. The report continues to use the statement that Aids to Navigation and channel markers will be “Considered for removal under the TSP after coordination with the United States Coast Guard. Why has this coordination not occurred? In order to present a complete plan this issue should be settled. Concern has been raised about vessels continuing to use the channel. Retention of the aids and markers would only intensify such concerns.

MVN Response: The project delivery team has coordinated with the US Coast Guard on the ownership and future disposition of aids to navigation located along the MRGO navigation channel. Coordination has occurred through meetings at the monthly Mississippi River Maintenance Forum and at the Lower Mississippi River Safety Advisory Committee and the Inland Waterways Users Board and through communications with our Operations Division and the staff of the Captain of the Port of New Orleans. In addition, we have received specific coordination comments in a letter from USCG supplied during the public comment period on the report. At this point numerous vessels continue to operate on the channel (mostly recreational and small commercial fishing craft) including some large ocean going ships that enter the channel light-loaded to call on tidewater port facilities. Until Congress acts to direct closure of the channel it remains authorized and in use and the US Coast Guard believes aids to navigation are an important safety component for area shipping and boating. We have developed costs for removal of the aids to navigation in the report and these have been provided to the USCG. Upon Congressional action the Captain of the Port will make a determination on when to remove the buoys and markers located along the channel.

HOUSACE Assessment: Resolved.

13. Closure Structure and Lake Pontchartrain. The report indicated that a closure structure on MRGO at Bayou La Loutre could impede drainage of the Lake Pontchartrain during storm surge events. Would this have any adverse impacts on either habitat or increased damages to structures? If so this impact needs to be quantified and presented in the report.

MVN Response: The statement is no longer in the document. If the closure did impede drainage from Lake Pontchartrain, is not likely this effect would adversely impact habitat or structures.

HOUSACE Assessment: Resolved.

14. Evaluation of Alternatives. The evaluation of alternatives should be revised to include safety considerations and timing of benefits.

MVN Response: We have been advised by OC that safety should not be discussed. Timing of benefits is included in the evaluation of alternatives as described in Section 3 and in Sections 2.7 and S.15.

HOUSACE Assessment: Resolved.

15. LEIS. Explain why a LEIS has been prepared.

MVN Response: See Sections S.1 and 1.1.

HOUSACE Assessment: Resolved.

16. Incorporating into LACPR. A statement is made in the report that the LEIS is being prepared so that when the final report is incorporated in the LACPR report, all NEPA compliance will be complete and closure construction can start as soon as possible. This may be a desired result but may not be the case. Suggest that the language be modified. Also, recommend striking the language stating that NEPA and implementing regulations “require the USACE to include a legislative EIS in every recommendation or report on a legislative proposal significantly affecting the quality of the human environment.” Instead, insert language explaining why we are preparing a LEIS in this case (see above comment).

MVN Response: These changes have been made throughout the document and language suggested by HQ Counsel has been incorporated.

HOUSACE Assessment: Resolved.

17. Previous NEPA Documents. The statement that this report has adopted previous NEPA documents “in an effort to reduce paperwork” should be stricken. The district can integrate existing analysis, but not if it is solely for the purpose of reducing paperwork.

MVN Response: This has been stricken.

HOUSACE Assessment: Resolved.

18. Prior EAs. A long list of EAs dating back to 1973 is included in the report; it is unclear how some or all of these prior studies could be relevant here.

MVN Response: These have been moved to Appendix L and are referenced and incorporated in Section 1.7.22.

HOUSACE Assessment: Resolved.

19. FWS Coordination. The report indicates that “coordination” with FWS will be required. It also states that if the construction that is required because of the deauthorization is not completed within a year then “the USACE should re-initiate [ESA] consultation.” Has ESA consultation already taken place? If not, when will it be initiated? How likely would construction be completed within a year and when does the “year” begin (publication of EIS? Final decision document? Project initiation?).

MVN Response: ESA consultation between the USFWS and the MVN for the MRGO de-authorization project, has been ongoing throughout preparation of associated environmental documentation. The USFWS inserts in coordination memos, as standard language, a statement recommending re-initiation of ESA coordination if project construction has not been started or completed within a calendar of the dated memo.

HOUSACE Assessment: Resolved.

20. Conference Language. The report should explain how the report meets the Conference language - recommend modifications to the existing authorized current use of the Outlet, including what navigation functions, if any, should be maintained and any measures for hurricane and storm protection.

MVN Response: See Sections S.16 and 6.1--Rational for Tentatively Selected Plan.

HOUSACE Assessment: Resolved.

21. Benefit. Delete any sentences that state that the plan would meet the needs of the project by essentially stopping wetland loss associated with MRGO - that is not a need, technically, but a benefit.

MVN Response: This change has been made throughout the document.

HOUSACE Assessment: Resolved.

22. Authorized Project. It is unclear in the report what is being recommended to be authorized - the connection with the Congressional direction - roles and responsibilities of Federal and local government and how these recommendations really fit with LACPR.

MVN Response: See Section 6.

HQ Assessment: Partially Resolved. The referenced section does a good job providing more detail. However, a few items need further clarification. With the deauthorization of MRGO it is not fully clear that all of the work proposed under P.L. 109-148 and P.L.109-234 is still required or possible. Particularly the shoreline protection along MRGO north bank Miles 44.4.to 39.9 and the proposed marsh creation through dedicated dredging within the Golden Triangle and at Shell Beach. The District should take another look at the proposed activities associated with MRGO and see if any cost savings are possible or if modifications are required to proposed activities. Finally Section 1.3 Project Area Description states “Another connection is available near the mouth of the Mississippi River at Batiste Collette Bayou

which provides a link to the MRGO across Breton Sound.” Does deauthorization of MRGO affect the continued need for operation of this lock? Are there other related features/projects that are no longer required if MRGO is deauthorized?

MVN Response: The work proposed under P.L. 109-148 and P.L.109-234 is still required and warranted because coastal land loss in the MRGO area is an issue with or without deauthorization of the channel. The purpose of the proposed work is for “repair, construction or provision of measures or structures necessary to protect, restore, or increase wetlands, to prevent saltwater intrusion or storm surge.” The proposed work is being evaluated under a separate EIS which includes a No Action alternative. The EIS will discuss the proposed work and its relationship to the proposed de-authorization plan. Potential cost savings or modifications will be evaluated in the EIS for the work proposed under P.L. 109-148 and P.L.109-234.

The Baptiste Collette route does not include a lock; rather it is part of an alternative route sometimes used to bypass the IHNC Lock which is located on the IHNC between the Mississippi River and Lake Pontchartrain/MRGO/GIWW. Baptiste Collette Bayou is a component of the Mississippi River Outlets, Venice, Louisiana Project, the purpose of which is to provide navigation connections to the Mississippi River. The use of Baptiste Collette Bayou to access the MRGO is incidental to the project purpose for Baptiste Collette Bayou (Mississippi River Outlets, Venice, Louisiana Project). Bayou Baptiste Collette is still needed to access the Mississippi River. The District is not aware of any related features/projects that are no longer required if MRGO is de-authorized other than those listed in Table 6.5.

Discussion: Based on the requirements of section 7013 of WRDA 2007 this report 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, including all necessary NEPA documentation, in a supplement to this report that will be provided to Congress at a later date. These measures, 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. 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.

HOUSACE Assessment: Resolved.

23. Description of Tentatively Selected Plan. Additional explanation is required as to why items (1) through (8) are included in the tentatively recommended plan. If they are not part

of the authorized MRGO project, they should not be included. If some components are part of the MRGO project, justification should be included that they are needed and appropriate.

MVN Response: See Section 6.2 and Table 6.1.

HOUSACE Assessment: Resolved.

24. Rationale for the Selecting Plan. To be consistent with the abstract, the Rationale for the Selecting Plan should include some discussion of safety aspects of the plug - With the plug we are removing an implied use of the channel for deep/shallow draft navigation, thus, potentially eliminating vessel grounding in channel. In addition, to the extent we can, we should qualitatively discuss the surge reduction afforded with the plug as compared to the other two Alternatives. Just saying Alternative 1 yields highest level of surge reduction is not enough (see, abstract). Regarding reference to the Environmental Operating Principles (EOP) we can't just say alternative 1 best meets the EOPs without discussing the principles first and without showing how the other alternatives stack up against the EOPs as well.

MVN Response: No appreciable storm surge reduction is realized with the plug and this discussion has been removed from the alternatives evaluation. We have discussed safety using language proved by OC to the extent possible. Discussion of EOPs has been enhanced (see sections 2 and 6.1).

HOUSACE Assessment: Resolved.

25. Continued Maintenance. For the selected plan, identify the continued maintenance of existing and authorized shoreline protection features, wetland protection features and dikes. What are authorized and what are existing? Clarify if these are existing features of the MRGO project or whether these features are part of the \$75M O&M effort. If the \$75M O&M work is included, state clearly the responsibilities of the Federal government and our non-Federal sponsor. If authorization is sought for additional work, state how this work should be cost-shared and how it will be integrated into and become part of LACPR.

MVN Response: See Section 6.

HOUSACE Assessment: Resolved.

26. Legal Comments Addressed. The District needs to ensure that all comments from MVD/MVN counsel have been addressed. The draft report should be coordinated with DOJ only after the district has revised the draft report to address all Corps comments.

MVN Response: MVN Counsel affirms that all legal comments have been addressed.

HOUSACE Assessment: Resolved.

27. Consistent with Main Report. The Real Estate Plan states that the construction, operation and maintenance of the closure structure will be a full Federal expense although a non-

Federal sponsor should provide LERRDS. The Real Estate Plan needs to be consistent with the main report.

MVN Response: Real Estate Appendix has been revised.

HOUSACE Assessment: Resolved.

28. Navigation Servitude. There is a comment in the REP that the navigation servitude does not apply. This may be true but we need a legal opinion on this. For purposes of this report, it may be better to simply state that if available, the navigation servitude will be asserted.

MVN Response: Real Estate Appendix has been revised.

HOUSACE Assessment: Resolved.

29. Contingency. The estimated construction cost of \$10,820,000 (does not include contingency) stated in the report could be understated. It is not clear whether all cost features in the project are included. The estimate should be verified and revised to include all Federal and non-Federal costs for lands and damages, all construction features, planning, engineering and design and supervision and administration along with the appropriate contingencies and inflation associated with each of these activities through project completion.

MVN Response: Costs are being verified while MVD/HQ completes its review.

HOUSACE Assessment: Resolved.

30. Price Level. The estimated construction costs stated in the report did not describe a price level date. It is not very clear whether the most current pricing is used in the development of the estimate. A price level date should be reflected where construction costs are stated.

MVN Response: Costs are being verified while MVD/HQ completes its review.

HQ Assessment: Unresolved. All construction costs stated in the report needs to explicitly state the price level.

MVN Response: Added “based on October 2006 price levels” to all construction costs stated in report

HOUSACE Assessment: Resolved.

31. Relic Features. Costs and net benefits need to be revised to reflect the actual total project cost of the alternatives. This includes the cost of removing the relic features and offshore jetties and inclusion of the OMRR&R costs associated with the existing rock breakwaters protecting the wetlands.

MVN Response: Costs are being verified while MVD/HQ completes its review.

HQ Assessment: Unresolved. The district needs to provide these costs and indicate how the report was changed to incorporate these costs.

MVN Response: Under Alternatives 1, 2, & 3, aids to navigation and channel markers are considered for removal at the discretion of the USCG. Removal of aids to navigation (including channel markers) is included in construction costs. Existing bank stabilization features and jetties would be de-authorized, but left in place; therefore there would be no OMR&R costs for existing rock breakwaters and no cost for jetty removal. Accurate calculation of these activities was verified when construction costs and total project costs were recalculated. Changes to estimated construction cost and total project cost have been made in Main Document and Appendices.

HOUSACE Assessment: Resolved.

C. ADDITIONAL COMMENTS FROM THE 30 MAY REVISED ALTERNATIVE FORMULATION BRIEFING PACKAGE.

1. Cumulative Impacts: The existing Cumulative Impact section of the LEIS appears abbreviated and conclusory, and does not provide evidence of sufficient analysis. Furthermore, it is our understanding that MVN Environmental Branch has not concurred in the analysis and/or conclusions of this section. It is understood, per our teleconference of 6 June 2007, that MVN is revising this section, including possible incorporation by reference of additional, existing analysis. Without concurrence from Environmental Branch in the cumulative impact analysis, however, Counsel will be unable to find the LEIS legally sufficient.

Reference LEIS, pp. 88-89.

MVN Response: CEA has been revised (see Section 3.4).

HOUSACE Assessment: Resolved.

2. Description of the Tentatively Selected Plan. Counsel proposes replacement of the language in Section 14 of the Draft Report (or to the appropriate section of the revised Draft Report and/or LEIS) to simplify and clarify requirements, responsibilities, and legal authority. Replacement text and related questions follow below.

a. Please insert the following text to replace that currently in Section 14 of the Draft Report:

14 DESCRIPTION OF THE TENTATIVELY SELECTED PLAN

Under the Tentatively Selected Plan, that portion of the MRGO channel from mile 60 on the southern bank of the GIWW to the Gulf of Mexico would be deauthorized for deep draft navigation. As part of the Plan, a total closure structure will be built of rock just south of Bayou La Loutre. The structure would be 25 feet to 30 feet wide on the top with an elevation of + 5 feet Mean Low Gulf (MLG). Side slopes of the structure would be 1 V on 2.5 H and the bottom width would be 205 feet to 275 feet wide. In addition, the area in

and around the total closure structure and key locations north, as far as Lake Maurepas, would be monitored to determine the hydrologic effects of the closure, such as circulation patterns and salinity change, and changes in the "H-A zone" in Lake Pontchartrain.

The estimated construction cost of the rock total closure structure is \$13,530,000. Costs to remove navigation aids are estimated to be \$700,000. Cost to remove jetties not providing protection to wetlands is estimated to be \$4,596,000, and real estate costs are expected to be \$1,521,000. Total average annual costs for this Tentatively Selected Plan (including O&M costs, monitoring costs and the costs to navigation) are estimated to be approximately \$6.6 million and total average annual benefits are estimated to be \$12.5 million. This results in an estimated total average annual net benefit of \$5.7 million.

The Tentatively Selected Plan contemplates that the Federal Government will construct the total closure structure and other features, including the shoreline protection features to be constructed in accordance with the 3rd/4th Supp. In addition, property not required will be disposed of in accordance with the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. § 471 et. seq. A non-Federal sponsor will be required to acquire any real estate necessary to implement the Tentatively Selected Plan and to operate, maintain, repair, rehabilitate and replace the closure structure and the shoreline protection features. The non-Federal Sponsor also will be responsible for monitoring vessel usage and shoreline erosion along Bayou La Loutre and the area in and around the total closure structure. Further, the non-Federal Sponsor will be required to hold and save the Government free from all damages arising from the construction, operation, maintenance, repair and replacement of the total closure structure and shoreline protection features, except for damages due to the fault or negligence of the Government or its contractors

It is recommended that the construction costs of the total closure structure be 100% Federal and the OMR&R costs of the total closure structure and shoreline protection features be 100% non-Federal. In addition, it is recommended that monitoring be a non-Federal expense.

b. Regarding this section, please address the following questions:

- i. If monitoring is changed in other parts of the report, it needs to be changed here.
- ii. A non-Federal Sponsor will be required to provide real estate. For purposes of this deauthorization plan, should the "D" in LERRD be required? (This should be determined before the final report.)
- iii. This Report refers to the requirement that the NFS must provide necessary real estate. Before the final report, we should determine whether additional interests need to be acquired for the existing shoreline protection features. An estimate for this can be included at this time, if ready.
- iv. The costs for 3rd/4th Supp real estate costs do not need to be included here. The current Real Estate appendix states that the closure structure will be built over an area encumbered by a perpetual channel easement and a perpetual disposal easement. Before the final report, we need to verify that these interests are sufficient for the construction of the closure structure.

MVN Response:

- a. Recommended language has been included but has been added to (see Sections S.17 and 6.2)

b.i References to monitoring have been updated throughout the report and are consistent.

b.ii This will be determined before the Draft Final Report is transmitted to Congress.

b.iii See Real Estate Appendix.

b.iv See Real Estate Appendix

HQ Assessment: Unresolved. This issue of determining whether real estate for disposal will be required by the non-Federal Sponsor for purposes of this deauthorization plan, needs to be resolved before the Chief of Engineers Report is signed.

MVN Response: Although the Recommended Plan does not include disposal areas, disposal will be in the agreement with the non-Federal sponsor. That is a term that USACE normally uses in its original form of LERRD and it is part of non-Federal responsibility to the project. In addition, should there be a change in project needs and we were to need disposal areas then the project cooperation agreement would already be covered by the term. Although we do not anticipate that any disposal areas will be required, it is a standard component of the non-Federal sponsor's obligations.

HOUSACE Assessment: Resolved.

3. Vessel Wake as the Cause of Wetland Loss. The Draft Final Report and LEIS assert that “[f]or purposes of this study, the USACE attributes all shoreline loss adjacent to the [MRGO] channel to vessel wakes, while recognizing that many other factors may contribute to wetlands erosion in the area” (see page references below). As written, this statement could be read to suggest that we have arbitrarily disregarded other known factors, and it could overstate the impact of MRGO on wetland loss, or understate other causes, or both. The methods and approach to determining wetland loss must be technically justified and fully explained. Furthermore, it is our understanding that there is not yet agreement among the appropriate technical experts at MVN regarding the estimates of wetland loss related to MRGO and to the alternative plans. Absent concurrence from the technical experts, Counsel will be unable to find the documents legally sufficient. Technical concurrence must be obtained, and all statements regarding wetland loss must be fully supported by independent data.

Reference Report, pp. 15 (lines 415-423), 51-52 (lines 2358-60, 2366, 2376); LEIS, p. xi; Appendix G.

MVN Response: MVN Team has reconciled approach to wetland loss. All sections of report and appendices discussing wetland loss have been updated.

HOUSACE Assessment: Resolved.

4. Need for Alternative Navigation Plan. Reference is made to industry stakeholders' belief that, in the event of IHNC lock congestion or inoperability, MRGO closure could pose a national security threat, due to a lack of alternative navigation routes. It is stated that this concern "warrants attention and efforts to avoid such a scenario," and that "the team and stakeholders *must* identify a no-cost-naturally deep (approximately 12-foot) water body or water bodies to serve as alternate routes in the event of prolonged delays or inoperability at the IHNC Lock." This section should be revised and clarified, because the risk of such an event, if it is more than de minimis, should have been accounted for in our existing analysis. While it is appropriate to note industry concern, perhaps this could be dealt with simply by stating the concern, restating the conclusions of the benefit-cost analysis, and expressing willingness to work with industry to develop alternatives (without committing the Government to any expenditures or course of action).

Reference Report, p. 23 (lines 754-59).

MVN Response: See Sections S.19 and 4.10—Areas of Concern and Controversy.

HOUSACE Assessment: Resolved.

5. Monitoring. The purpose of the proposed monitoring, and the intended use of monitoring data, remains unclear. It is one of the recommendations of FWS; however, USACE is not required to accept every FWS recommendation, and there is no explanation of why this recommendation has been accepted. Furthermore, in places, references to monitoring appear to suggest insufficient analysis of impacts. In summary, while monitoring may well be appropriate, it is not self-evidently so, and there is still no explanation of its purpose.

Reference Report, pp. ii (lines 70-72), 16 (line 482), 18).

MVN Response: Monitoring is no longer part of the Tentatively Selected Plan, and has also been removed from the detailed descriptions of Alternatives 1, 2, & 3. Monitoring requested by the USFWS is discussed in Section 5.1. Monitoring of Bayou La Loutre under other authorities is discussed in Areas of Concern and Controversy (S.19, 4.10).

HOUSACE Assessment: Resolved.

6. LPBF. Please reexamine citations to the Lake Pontchartrain Basin Foundation Comprehensive Habitat Management Plan for the Lake Pontchartrain Basin (2006) ("LPBF") study to ensure accuracy, including quotations as appropriate. Verify that permission been granted to reproduce tables from that report, if necessary. Please verify the validity of any technical data or conclusions from that report that are cited or relied upon in this document. It is our understanding that citations to LPBF are being removed from the Report and LEIS, which if would resolve these issues.

Reference LEIS, pp. 39ff.

MVN Response: LPBF is now only discussed in Section 4—Public and Agency Involvement.

HOUSACE Assessment: Resolved.

7. Technical Statements Regarding Proximate Cause. Statements that attribute proximate cause (“blame”) for erosion, wetland losses, or adverse salinity to the MRGO navigation project should not be made in the Report/LEIS, unless any such statements are inescapable facts and are essential to the Report’s analysis. If there are any such statements that are both inescapable and essential to the analysis, they must be supported by independent technical documentation and cannot be based on unreasonable assumptions. Identification and verification of such statements requires close coordination and agreement between Corps technical team experts, including hydraulic engineers, environmental and Legal Services team members.

MVN Response: Statements attributing proximate cause for adverse impacts to MRGO construction and use were identified and discussed among members of the PDT. Technical experts were apprised of the statements’ relevance to and potential impact on pending litigation. Such statements were included only where technical experts felt it was absolutely necessary. These sections include the Background Section and the Areas of Controversy Section. Technical experts verified that such statements were accurate and based on sound scientific data.

HOUSACE Assessment: Resolved.

8. Assertion of Navigation Servitude. Replace the sentence at line 1793 of the Real Estate Appendix (“It is not clear if the navigation servitude will be asserted in this instance.”) with the following: “The navigation servitude will be asserted, if applicable.”

MVN Response: See Real Estate Appendix.

HOUSACE Assessment: Resolved.

D. COMMENTS FROM REVIEW OF THE JUNE 2007 DRAFT REPORT

1. Closure Structure. The report needs to discuss what construction options are available to close MRGO. Specifically, explain why the closure needs to be stone and why the dredged material that was placed adjacent to the channel could not be used as closure material. Address in the explanation the potential opportunity to reduce the impact that was created when this dredged material was placed on lands adjacent to the channel. This discussion is required to incorporate a full array of alternatives in such a way to assure that the evaluation of alternatives will allow for the selection of a preferred alternative. If this alternative method of closure could be addressed during the design phase, include a statement that it will be evaluated in PED.

MVN Response: The report discusses various construction options for closing the MRGO in Section 2.5.1 and in the Engineering Appendix. These discussions include assessments of the required material quantities and the construction process that would be required to build the closure structure using hydraulic dredged or barge delivered earthen material. This assessment identified concerns with the quality of material that would be required and also concluded that construction in this manner would entail a minimum of two lifts and could encounter placement problems due to daily tidal cycles moving in and out of the area. This information was developed using in-house expertise and consultations with marine construction firms familiar with the area. Based upon this assessment and evaluation of other methods the team concluded that a stone structure was the best approach in terms of constructability, durability and limited environmental impacts.

Although not specifically discussed in the report, the team did consider the possibility of mining material from the south spoil bank for use in constructing a channel closure. This option was eliminated because of environmental and constructability concerns. Had this approach been carried further the team would have eliminated it for the same reasons cited for other earthen material options as discussed in the report. As stated in the report, a rock structure is preferred because it would ensure better control of placed materials, reduced erosion and O&M requirements, and overall was determined to be the least costly method of construction.

HOUSACE Assessment: Resolved.

2. Economic and Cost Allocation Tables. The executive summary and final report presentations for the recommended plan need to include a summary project cost table, a summary table identifying the OMRR&R requirements, and finally cost allocation table clearly identifying the Federal and non-Federal responsibilities for first cost and OMRR&R.

MVN Response: Added Tables S.1 through S.4 and Tables 6.1 through 6.4 regarding Recommended Plan: Project First Costs, Equivalent Annual Benefits and Costs, Economic Costs and Benefits of Recommended Plan, and Federal and Non-Federal Cost Breakdown.

HOUSACE Assessment: Resolved.

3. Paragraph 6.5 ISSUE TO BE RESOLVED. The lack of non-Federal sponsorship and abandonment of certain features should not be unresolved issues. Since the government has decided to abandon features, there is need to consider the effects of the abandonment. If there are concerns about the effects from a safety or environmental perspective, the report should propose a solution. Although, paragraph 6.5 notes that USACE will approach CPRA during the public comment period to discuss potential project sponsorship, the district needs to update the paragraph to reflect status of discussions and describe the path forward.

MVN Response: The language in the first paragraph has been carefully crafted through discussions between MVN & MVD to state that abandoned jetties and foreshore protection will subside below the water line resulting in diminished functional performance against wave energies. This language does not suggest liability or an obligation for continued

maintenance. For the offshore jetties, we propose to mark these features on navigation maps and post warnings in mariner's notices. For foreshore protection fronting levees, we propose to assign those features to the respective levee projects (generally Lake Pontchartrain and Vicinity but specifically to reaches). For foreshore protection fronting wetlands, we proposed that the features may be re-authorized for ecosystem restoration purposes under another authority such as LCA or LACPR. Additionally, we have been advised that any of these features may be reapplied under currently authorized construction authorities prior to abandonment. Channel easements should be maintained until these features are re-authorized under other authorities. Release of the easements would result in a need to reacquire the easements if the features are authorized under other authorities.

The following changes have been made to address the status of the non-Federal sponsor: 1) Section S.18—Deleted last paragraph; Section 5.3—Deleted last paragraph. 2) Section 6.3 Cost Sharing and Agency Responsibility—Completely replaced with new text and tables 3) Real Estate Appendix, Project Sponsor: Deleted second sentence. 4) Attachments 1&2 (Views of the Non-Federal Sponsor, Division of Responsibilities, Primary Financial Analysis on Non-Federal Sponsor) added to Main Report 5) Appendix O (Non-Federal Sponsor Letter) added.

HOUSACE Assessment: Resolved.

4. Value Engineering. Value Engineering (VE) is mandated by The Office of Federal Procurement Policy Act, Section 911 of WRDA 1986 and OMB Circular A-131. Paragraph 7d, ER 11-1-321, requires all feasibility reports and equivalent to “*contain a review and approval statement from the PM indicating that required VE action has been completed, as appropriate, for that phase of the project. This statement will indicate that appropriate studies have been performed and that all proposals indicating savings greater than \$1,000,000, impacting plan formulation, have been resolved.*” Paragraph D-2b, ER 11-1-321, requires “*Value Management Workshops (VE Studies) to be performed in the planning and design phases*” and “*At least one VE study will be performed during the feasibility phase of the project, as part of the plan formulation process prior to the selection of final alternatives.*” It is not clear if a VE study is required during the study because of the unique nature of this study. The district should discuss what is being accomplished from perspective of value engineering on this study and how value engineering will be utilized in the design of the recommended plan. Specifically, how are we designing the closure that can consider the view of the potential sponsor because the sponsor will be responsible for OMRR&R of this structure. Are there options that may reduce the OMRR&R costs or reduce construction costs?

MVN Response: A Value Engineering study was conducted for the Recommended Plan during September 11-13, 2007. The VE team endorsed the plan formulation process and plan selection rationale. In addition, they verified the cost details of the Recommended Plan and recommended three options to be considered for potential improvements or savings. The project engineering team evaluated the VE recommendations while developing a supplemental Engineering Appendix (October 2007) which further details and refines the design of the Recommended Plan.

HOUSACE Assessment: Resolved.

5. Engineering Design and Construction Management. The estimated construction cost of \$13,530,000 stated in the summary report (see p. xviii) and Appendix C (see p C-14) appears to be understated. The estimate did not include costs for **engineering and design**, and **construction management**. Also, the cost estimates shown on pages C-12 and C-13 did not include these costs items. The estimate should be verified and corrected to ensure all project cost features/items are included in the total project costs as per ER 1105-2-100 paragraph D3 (e). The Total Cost shown on Tables ENG 7 and ENG8 appears to be understated since it did not include costs for construction management. These Tables should be corrected to include construction management costs.

MVN Response: All costs in Main Report and Appendices have been revised to include engineering and design and construction management.

HOUSACE Assessment: Resolved.

6. Cost assumptions. The cost information stated in the report is not fully supported. Provide a narrative describing the basis of the estimate such as source of pricing, assumptions, quantities, contingencies, and construction schedule as per ER 1110-2-1302.

MVN Response: Cost information used for alternatives analysis was based on existing information including up to date channel surveys, historic soil borings, and post-Katrina price levels available for similar type work in the vicinity for unit pricing. These costs estimates provided the information necessary to distinguish the order of magnitude between the alternative plans evaluated. Cost information has been further refined for the Recommended Plan and is included in the Engineering Appendix. Costs for the Recommended Plan have been updated in the Main Report Sections S.17 & 6.0.

HOUSACE Assessment: Resolved.

E. REVIEW COMMENTS ON THE NOVEMBER 2007 FINAL REPORT AND LEIS.

1. Coast Guard letter. The documentation needs to include a letter from the U.S. Coast Guard indicating closure is necessary to ensure vessels do not continue to use the channel if deauthorized but allowed to remain accessible, presenting an unsafe condition.

MVN Response: Concur. U.S. Coast Guard letter dated 3 Dec 2007 has been included in the project file along with other comments received on the Integrated Final Report which was published November 2007.

Discussion: The letter from the U.S. Coast Guard indicates that local mariners would continue to use the MRGO as long as there is sufficient water for them to transit the area. This reaffirms the assumption in the report that traffic would continue in the MRGO if the closure structure were not in place. Furthermore, the U.S. Coast Guard indicated that they

would continue to maintain some aids to navigation on the MRGO as long as there is sufficient water for the local mariners to transit.

A closure structure would prevent such an unsafe condition by eliminating navigation traffic that would be at an increased risk of grounding as the channel continues to silt in over time. These groundings could result in contaminants being released into the environment resulting in potential environmental and economic damages. Further, costs to remove such grounded vessels would be borne unnecessarily. The closure structure would ensure the safety of mariners and that these groundings do not occur.

HOUSACE Assessment: Resolved.

2. WRDA 2007 authority. The document needs to discuss how WRDA 2007 requirements will be met.

MVN Response: Concur. This item is addressed in a new Section 6.2 in the Integrated Final Report and in the Chief's Report.

HOUSACE Assessment: Resolved.

3. LaCPR Final Report. References to the Final report of Louisiana Coastal Protection and Restoration Plan (LaCPR) being submitted to Congress the end of December 2007 should be updated to the current plan. This is important for two reasons. We are saying that our plan for closure is consistent with LaCPR but the plan for LaCPR could be more than a year away from completion and features from LaCPR may be incorporated into MRGO as part of the supplemental report. The supplemental report should be described as developing ecosystem restoration features that will be consistent with LaCPR. The recommendation for closure should be described as consistent with LaCPR.

MVN Response: Concur. References to December 2007 LACPR report have been removed throughout the Main Report and Appendix P, except where quoted in the study authority. The relationship between the supplemental report and LACPR is described in the new Section 6.2 of the Integrated Report and in the Chief's Report. The Recommended Plan is described as being consistent with LACPR in Sections 2.9 and 6.3 (old Section 6.2).

HOUSACE Assessment: Resolved.

4. O&M Access. Delete the requirement that a specific estate for access needs to be acquired - it may be similar to the estate in the Report, but it does not have to be that particular estate. The local sponsor will be responsible for the O&M and the sponsor will need to determine what action will be required to accomplish the O&M. We can say for cost estimating purposes a specific estate for access is used but it is not required.

MVN Response: Concur. This change was made in the Real Estate Appendix.

HOUSACE Assessment: Resolved.

5. O&M associated with 3rd and 4th supplemental appropriations. With regard to the O&M measures authorized by the 3rd Supp and modified by the 4th Supp, we need to modify the language in the report so it does not refer to authorization/deauthorization.

Suggest language similar to this: plan contemplates that measures authorized under (cited authorities) will be implemented conditioned on CPRA, the NFS, assuming responsibility of OMRR&R at 100 percent non-Federal expense.

Below are areas of the document that have a reference to the O&M work, there may be other areas. Review the document and make changes to all that reference the O&M work

1. p. xvii. - change as indicated above
2. p. 121 change as indicated above
3. p. 126 - change as indicated above

MVN Response: Concur. Change was made in Sections S.17, 6.1, 6.5 (old Section 6.4), and Table 6.5

HOUSACE Assessment: Resolved.

6. Sponsor Letter. The document needs to include a letter of commitment from the sponsor that indicates their understanding of all local responsibilities and costs as well as their willingness to accept these responsibilities.

MVN Response: Concur. A letter dated 13 Dec 2007 from the CPRA has been added to Appendix O.

HOUSACE Assessment: Resolved.

7. Effectiveness Discussion. Section 2.6.2.2, page 38, last paragraph, and first paragraph, page 39. The emphasis of these paragraphs is compatibility with a number of state and Federal plans- really not an effectiveness issue at all. These paragraphs should be moved from the Effectiveness section to the Acceptability section in 2.6.4.

Last sentence of Section 2.6.2.3, page 39. Same issue as above, move to Acceptability section 2.6.4

Last sentence 2.6.2.4, page 39. same issue as above, move to Acceptability section 2.6.4

MVN Response: Concur. The information presented in Sections 2.6.2 and 2.6.4 has been rearranged to match the presentation of information in Table 2.5.

HOUSACE Assessment: Resolved.

8. Coastal Zone Management (Section 2.6.4.2, item 6, page 43). The report should not state that CZM consistency cannot be obtained for any plan but the state's preferred closure plan. It is sufficient to say that Alternative 1 is acceptable (which is exactly what the last sentence says). This paragraph should be revised to remove everything EXCEPT the last sentence.

MVN Response: Concur. There is no discussion of CZM consistency in Section 2.6.4.2.

HOUSACE Assessment: Resolved.

9. Cost Sharing. Although this plan for deauthorization does not have cost sharing prescribed in law, and no policy exists regarding deauthorizations/dispositions, the district needs to provide supporting discussion on why the construction cost for the closure structure should be 100% Federal.

MVN Response: No changes have been made to the report; however, the following discussion is provided:

The purpose of this study as directed by congress is to “develop a comprehensive plan at full Federal expense to de-authorize deep-draft navigation on the Mississippi River – Gulf Outlet”. The economic evaluation determined that de-authorization of MRGO would save the Federal government millions of dollars annually through reduced maintenance. Current levels of maintenance of the channel, at less than the authorized depth, are approximately \$12 million annually and \$6 million annually if the channel were maintained for shallow draft navigation only. The de-authorization would also allow the Federal government to reduce expenditures for the continued operation and maintenance of existing structures.

The closure structure is an integral component of this plan to de-authorize MRGO. The closure structure will provide a physical barrier to navigation and immediately prevent the use of MRGO by commercial vessels to access the Gulf. The U.S. Coast Guard indicated in a letter to the Corps dated 3 Dec 2007 without a closure vessels will continue to transit the channel as long as there is a perception of adequate depth, presenting an unsafe and potentially environmentally damaging condition.

This waterway did not exist prior to this project. It was cut through the existing marshland to create a new navigable waterway. There is a need to provide a solution where the waterway, at a minimum, maintains the status quo and does not allow degradation of the system to continue. The alternative to leave the channel open is unacceptable to the general public and the local governments. The closure is consistent with the State Master Plan and the Louisiana Coastal Protection and Restoration study.

It is important to note that there is precedent for 100% federal funding of deauthorized projects, including the Kentucky River Lock and Dam, Fox Lock and Dam, Great Bridge and Deep Creek Bridge in Chesapeake, Va.

The inclusion of a closure structure allows for a new project sponsor to become responsible for the Operation and Maintenance for MRGO closure and 4th supplemental work associated

with ecosystem restoration. Without a new sponsor, the Federal government would be responsible for the O&M costs of the supplemental work.

In addition to the financial reasons, the recommended plan relieves the Federal government of its long term responsibilities, immediately stops navigation in the de-authorized channel, and reduces ongoing and projected long term environmental impacts. A closure structure will reduce the net loss of wetlands in the MRGO channel. It will also improve the salinity of the inland reach and will comply with the recently enacted Water Resource Development Act (WRDA) 2007. As an agency, the Corps should not simply walk away from a project that will continue to degrade the environment well into the foreseeable future.

Discussion: As indicated above there is no existing Corps policy for the disposition of a Federal project. Each project is handled on a case by case basis. However, there have been several cases where the disposition of a Federal project has occurred and in these cases the costs were 100% Federal which went well above the cost of just abandoning the project. For example on the Great Bridge at Chesapeake, VA for full Federal expense of more than \$32 million the Corps replaced a double swing, two-lane span bridge with a 4-lane, two-leaf bascule bridge and approach roadway, with a 5th lane being added as the Locally Preferred Plan (LPP). Ownership and all operation, maintenance, repair, rehabilitation and replacement responsibility has been turned over to the City of Chesapeake. A similar project in Chesapeake, VA is at Deep Creek Bridge. This project is has not be completed. The Corps will replace a bridge, at a cost of more than \$37 million, which includes 2 eastbound lanes with sidewalk and 3 westbound lanes. Four of the lanes are to be constructed at full Federal expense. The 5th lane was added as a LPP. These projects along with others not listed here clearly set a precedence for the disposition of Federal projects and indicate that it is not realistic to just walk away from a project expecting a non-Federal sponsor to assume the responsibilities associated with those projects. Congress has similarly required that the Corps undertake major repair efforts of other projects like, Fox River and Kentucky Locks costing millions of dollars before authorizing Federal disposition.

As indicated by the U.S. Coast Guard in their letter dated 3 Dec 2007, even after the project is deauthorized, as long as there is access to the waterway, local mariners will continue to use the MRGO waterway. The U.S. Coast Guard indicated that they will maintain some aids to navigation as long as there is sufficient usage of the waterway. Their opinion is that even though the channel would be de-authorized vessels would continue to traverse the channel. This indicates that a complete closure is necessary to stop navigation on the de-authorized channel. Consequently a closure structure eliminates navigation traffic that would be at an increased risk of grounding as the channel continues to silt in. These groundings could result in contaminants being released into the environment resulting in potential environmental and economic damages. The alternative to leave the channel open is unacceptable to the general public and the local governments. We concur that the closure structure is necessary based on the analysis contained in the report and considering the authorization contained in Section 7013 of the Water Resources Development Act of 2007.

Additionally, we concur with the assessment that as an agency the Corps is unable to simply walk away from a project that will continue to degrade the environment well into the future.

We acknowledge that the recommended plan will keep that degradation to a minimum. As stated earlier, de-authorization of MRGO will save the Federal government millions of dollars annually through reduced maintenance.

The MRGO waterway was implemented at nearly full Federal expense. Since completion of the waterway significant Federal dollars were spent on the operation and maintenance of the project at full Federal expense. Therefore, it is our assessment that the decision to complete the closure structure at 100% Federal expense is justified and is in the best interest of the Corps and the nation.

HOUSACE Assessment: Resolved.



Thomas Hughes

Policy Compliance Review Manager

