



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

REPLY TO
ATTENTION OF:

2 MAR 1963

DAEN-CCJ

MEMORANDUM FOR THE CHIEF OF ENGINEERS
SUBJECT: Lake Pontchartrain Hurricane Protection Project,
Louisiana - INFORMATION MEMORANDUM

1. The ASA(CW) has questioned whether the Lake Pontchartrain Project can be modified under your discretionary authority as Chief of Engineers to allow construction of the high level levee plan. The materials attached generally address this issue and conclude in the affirmative. The purpose of this Memorandum is to provide you with a separate statement of my views on the matter.
2. The Lake Pontchartrain, Louisiana, and Vicinity Hurricane Protection Project was authorized by Congress for construction in Public Law 89-298, generally in accordance with the recommendations of the Chief of Engineers contained in House Document 231, 89th Congress. The project as envisioned in House Document 231 would provide hurricane protection to certain areas contiguous to Lakes Pontchartrain and Borgne in Louisiana through two major protective systems--the Lake Pontchartrain barrier plan and the Chalmette area plan.
3. The Lake Pontchartrain barrier plan consists of a system of levees and floodwalls around populated areas south of the lake and barrier structures to be constructed at the outlets of Lake Pontchartrain. The structural complexes at the lake outlets or tidal passes consist of a navigation lock, a flood control structure, and a closure dam at the Rigolets; a navigation structure, a flood control structure and a closure dam at Chef Menteur Pass; and a navigation lock, a flood control structure and a connecting rock dike at Seabrook.
4. The purpose of the barrier structures is to control water levels in Lake Pontchartrain. When a hurricane approaches the Louisiana coastline, the affected area experiences a tidal rise in advance of the storm's arrival. At such time, the control structures at the lake's outlets at Chef Menteur Pass, the Rigolets, and at Seabrook would be closed, thereby preventing the hurricane produced tides from entering and raising the lake to extreme heights. The barrier structures would keep the lake near its normal level just prior to the passage of the storm and would eliminate flooding associated with hurricane induced tidal rises. At all other times, the closure structures would remain open.

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5. At the time the project plan was developed, it was thought that the barrier construction plan afforded the most satisfactory solution to hurricane induced flooding. The House Document reflects this fact and indicates that the barrier construction plan was selected as the most suitable plan, over high level levee construction which was thought to be more time consuming and costly. Since that time facts have changed, and the high level levee plan has been selected tentatively for implementation as the most desired construction alternative. The question presented is whether considering these changed facts, made known after extensive reevaluation of the project, the high level levee plan can be implemented under your discretionary authority as Chief of Engineers without a requirement for additional legislation. Under this modified construction plan, the structural complexes at the Rigolets and Chef Menteur Pass would be eliminated and flood protection would be provided by generally increasing the height of the levees south of the lake.

6. In past opinions, I have recognized that the authority to modify projects involves an important delegation of authority derived from Congress. The authority has been exercised typically in the construction phase of projects to effect desirable engineering, design and construction changes. While it is difficult to generalize about these cases, I have considered it necessary as a legal matter to bring modifications to the attention of Congress for specific authorization when such changes involve:

a. A material alteration of the function of the project, such as the deletion or addition of a project purpose when not otherwise authorized by law.

b. A material change in the scope of the authorized plan of improvement.

c. A change in legal relationships, such as requirements of local cooperation.

7. While it is recognized that these factors involve varying degrees of subjective considerations and are mere guidelines to be employed when considering project changes, when applying them to the facts in this case and considering them on balance, it is my opinion that the high level levee plan may be undertaken under your discretionary authority as Chief of Engineers. This decision is based on the following considerations:

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a. There is no change in project purposes. The purpose of the project is to protect lives and property along the shore areas of Lake Pontchartrain, and in particular those densely populated areas immediately south of the lake. The high level levee construction plan will accomplish this purpose without a decrease in the level of protection by providing flood protection against the Standard Project Hurricane.

b. The modified construction plan will not materially alter the scope of the authorized plan of improvement. The high level levee plan will cost less (\$638M v. \$874M) and be completed in a shorter period of time (1988 v. 1993) than the originally conceived barrier construction plan. The principal change in the plan is that the barriers at the Rigolets and Chef Menteur Pass will be deleted. The high level levees will follow the original levee alignment and will not involve substantially greater land acquisition or displacements of homes and businesses. While the levee heights will in fact be raised, this elevation is not considered substantial when viewed in context of the levee raising planned to occur under any circumstance in connection with the overall barrier construction plan.

c. The high level levee plan will not involve a change in legal relationships. Local interests are required to provide lands, easements, rights-of-way and relocations normally associated with flood protection projects, and to otherwise contribute in cash or equivalent work an amount sufficient to bring their share to 30 percent of the total construction cost of the improvements. This requirement will apply equally to the high level levee plan.

8. The discussion provided above addresses the narrow issue of your legal authority to modify the project as Chief of Engineers. Obviously, the decision to proceed with the project modification is a personal one. However, I wish to bring the following information to your attention and to suggest that you consider the following should you choose to exercise your discretionary authority to modify the project.

9. In 1977 due to the political sensitivities of the project, caused in part by project related litigation, Governor Edwards of Louisiana was prepared to remove the State's sponsorship of the project unless the proposed barrier protection plan was changed to a high level levee plan. He was advised by the then Chairman of the Committee on Public Works and Transportation, U. S. House of Representatives, with the agreement of the LMVD Division Engineer and the New Orleans District Engineer, that to take such action at that time would force immediate cessation of work on the project since there was no authority to make the change. He

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was encouraged to continue his support of the project, but to urge the Corps to study alternatives with the understanding that if an alternative plan was subsequently agreed upon the Committee would further consider modifying the project.

10. In January 1978, hearings were held on this project in New Orleans by the Committee on Public Works and Transportation, U. S. House of Representatives. At the time of the hearings, considerable discussion was devoted to the high level levee plan and again it was presumed that implementation of the plan would require additional congressional authorization. That opinion and the similar position taken with respect to the project change relayed to Governor Edwards were based on facts which have changed substantially according to information provided by the Division and OCE Civil Works. At that time, it was believed that the high level levee plan would entail a realignment of the levees south of the lake in addition to deletion of the barrier structures. The levee realignment was considered necessary to overcome certain subsidence problems which were thought to preclude raising the levees in place along the lake. These problems have since been overcome through improved construction techniques to include construction on the levee wave berm. As a result, the problems of reformulating the levees, additional cost and greater land acquisition originally associated with the high level levee plan have been eliminated, and no longer serve as factors militating against exercise of your discretionary authority to modify this project and to implement the high level plan.

11. I suggest that if you choose to modify this project under your discretionary authority as Chief of Engineers and this is ultimately recommended to the Assistant Secretary of the Army, the changed circumstances surrounding this project and our reasons for believing that the project modification is within the discretionary authority of the Chief of Engineers be explained carefully to the Committees on Appropriations before actual construction is undertaken. It is important that the Committees understand the rationale behind our position and not be left with an impression of an apparent inconsistency in statements made in 1977 and 1978 and at the present time.



LESTER EDELMAN
Chief Counsel

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form, see AR 340-15; the proponent agency is The Adjutant General's Office.

DATE

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SUBJECT OF CONVERSATION

Lake Pontchartrain Hurricane Project

INCOMING CALL

PERSON CALLING

Ed Nutter

ADDRESS

DAEN-CWP-G

PHONE NUMBER AND EXTENSION

0154

PERSON CALLED

Arnold Robbins

OFFICE

LMVPD-P

PHONE NUMBER AND EXTENSION

5835

OUTGOING CALL

PERSON CALLING

OFFICE

PHONE NUMBER AND EXTENSION

PERSON CALLED

ADDRESS

PHONE NUMBER AND EXTENSION

SUMMARY OF CONVERSATION:

Mr. Nutter informed me that Chief Counsel, Mr. Edelman, concurred today in our position that the proposed change from the barrier plan to the high level plan falls within the Chief of Engineers discretionary authority. The memorandum to ASA(CW) documenting this position is now on COL Myers' desk for staffing and is expected to go to Mr. Gianelli as soon as it is signed by GEN Bratton.


ARNOLD V. ROBBINS

Routing:

1. Mr. Bayley
2. GEN Read
3. Mr. Harris
4. Mr. Bagley
5. Mr. Resta
6. Mr. Nettles
7. Mr. Joe Graham
8. Mr. Jack Hill
9. Files

CF:

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