DAEN-CWP-G

24 NOV 1982

MEMORANDUM FOR THE ASSISTANT SECRETARY OF THE ARMY (CIVIL WORKS)

SUBJECT: Lake Pontchartrain Hurricane Protection Project, Louisiana - INFORMATION MEMORANDUM

This is in response to your memorandum of 17 November 1982, subject as above. That part of the working draft of the re-evaluation report, including the EIS, which is substantially complete is inclosed for your information. Those items which are not included are minor and would not affect any decisions or recommendations.

I have asked the Lower Mississippi Valley Division Engineer to prepare a comparison of the post authorization changes involved in adopting the high level plan and guidance contained in our regulations regarding the Chief's discretionary authority; and, to make recommendations regarding whether or not the use of discretionary authority is appropriate in this case. His recommendations and my views will be furnished at an early date.

/S/

1 Incl
TAB A - Report

J. K. BRATTON
Lieutenant General, USA
Chief of Engineers

Incl 2

FLOOD CONTROL ACT OF 27 OCTOBER 1965 (PL 89-298)

"The project for hurricane-flood protection on Lake Pontchartrain, Louisiana, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 231, Eighty-ninth Congress, except that recommendations of the Secretary of the Army in that document shall apply with respect to the Seabrook Lock feature of the project . . . ."

SECRETARY OF THE ARMY, Stephen Ailes, 28 June 1965

" . . . The Bureau of the Budget noted that the Seabrook Lock would serve a dual purpose - mitigating anticipated adverse effects of the Mississippi River Gulf Outlet navigation project, and serve as an element in the hurricane surge control project . . . consequently the viewpoint of the Bureau of the Budget is to allocate the cost of the Seabrook feature equally between navigation and hurricane protection . . . I concur in the views of the Bureau of the Budget . . . ."

CHIEF OF ENGINEERS, LTG W. K. Wilson, Jr., 4 March 1964

" . . . The Board of Engineers . . . concurs in general in the views and recommendations of the reporting officers . . . subject to re-examination of the levee alignment in the preconstruction planning stage with a view to protecting additional lands, and to certain requirements of local cooperation, the Board recommends authorization for construction of the improvements, essentially as planned by the reporting officers . . . Subject to these modifications, I concur in the recommendations of the Board . . . ."

BERH, 24 July 1963

" . . . the Board recommends: a. That the barrier plan for protection from hurricane floods of the shores of Lake Pontchartrain and the separate plan for protection of the Chalmette area be authorized for construction, to include the features shown in Table 1 hereto, and described in the report of the District Engineer, generally in accordance with the plans of the District Engineer and with such modifications thereof as in the discretion of the Chief of Engineers may be advisable . . . ."

HEARING BEFORE THE SUBCOMMITTEE ON WATER RESOURCES OF THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION, HOUSE OF REPRESENTATIVES, 5 January 1978, Present: Representatives Roberts, Boggs, Breaux, Clansen, Livingston, Cochran, and Treen

Congressman Breaux (opening statement) - " . . . Congress has a very serious responsibility. When we authorize a project we do not at that time forget about the project. That is why the committee is here today,

TAB A

to see that what Congress originally intended back in 1965 is being carried out in the manner in which the Congress intended. This particular project presents some very interesting and very complicated legal issues about a congressional authorization and environmental impact statements, and what happens to those environmental impact statements when the project has to have some changes made during the course of the project. It is a landmark, as far as nationwide importance. It affects not only Louisiana but all projects of similar importance throughout the United States . . . "

Congressman Livingston (opening statement) - "Hurricane protection is vital to the survival of the residents in this area . . . But disagreement lies in the best approach to protection. Just as there are alternative methods by which we might provide protection, there are alternative costs which we must pay in order to acquire such protection . . . in view of the man years, thousands of man-hours, and millions of dollars invested in this project, in view of the severity of the findings by the court in the recent lawsuit, and other factors not within the jurisdiction of this suit, in view of the intensity of feeling by persons on both sides of the issue, and in view of the quite apparent need for some form of hurricane protection for residents of southeast Louisiana, Congress, in my opinion, has the obligation and the duty to investigate this project and to provide adequate hurricane protection in this area at the lowest possible additional cost to the people and to the environment, as quickly as possible . . . "

Congresswoman Boggs (opening statement) - " . . . we sincerely appreciate your (committee) efforts to study and evaluate our problems and to enact legislation to enable us to solve them. I am sure the opportunity you have today to hear representatives of the jurisdiction affected by the Lake Pontchartrain plan and the various parties with interests in its implementation, will be invaluable to Congress in reviewing the current status of the project and in determining if modifications are indicated . . ."

Mr. Breaux (after testimony by COL Rush) - "Colonel Rush, the project was authorized in 1965, and here we are, still fighting over it in 1978. This project really presents what I consider to be some very basic problems about the whole process of authorizing and continuing projects. There is a considerably long gap between the time we say we want a project to accomplish a goal and the time we actually see anything being done. One of the questions that I have is, after the final Environmental Impact Statement which you required had been completed on this particular project, were additional changes made in the project that were not included in that Final Environmental Impact Statement?"

Colonel Rush - " . . . we are in a constant reevaluation of our designs . . . we have done model studies relating to the structures that we plan at Chef and at the Rigolets, we have, subsequent to the time that the environmental impact statement was filed, modified our plans relative to those structures . . ."

Mr. Breaux - "Let me interrupt you, because the point I am trying to get at is, whether as a policy matter or whether as a legal matter, do

any changes after a final EIS has been submitted require an additional, new, complete environmental impact statement?"

Colonel Rush - "It could, depending upon the changes that are found to be required . . ."

Mr. Breaux - "My final point, Colonel, is to ask one question . . . my question is, what kind of major changes can you make in this project under your current authorization?"

Colonel Rush - "Well, sir, if we were to deviate from the basic concept which we now have of the Chalmette plan, which I do not believe will change, but if we made a major change in the Lake Pontchartrain barrier plan, that we would have to come back to Congress for a reauthorization."

Mr. Breaux - " Starting over from day one?"

Colonel Rush - "Yes, sir. An alternative that would not be a barrier type of alternative."

Mr. Treen - "One other question about St. Charles Parish . . . That part of the levee has been abandoned . . . for the present time."

Colonel Rush - "We have that in a deferred status . . . we are studying other alternatives . . . in the St. Charles portion."

Mr. Treen - "I believe that you have . . . but there has been some proposal suggested that we move this levee down from somewhere in the vicinity of Airline Highway. Aside from the merits of that proposal, would that require a change in the statutory authorization? For the Corps of Engineers to redesign that."

Colonel Rush - "I believe that we could accommodate that kind of a change within the authorities that are delegated to the Chief of Engineers. It would require a postauthorization change report, however, to reflect that type of modification. It would be reported to the committee."

Mr. Clausen (after testimony by Guy F. LeMieux) - " . . . The previous witness made a plea that the Congress take action to deauthorize the barrier phases of the project. What would be the effect of that on the project from your point of view, sir?"

Mr. Le Mieux - "It is my understanding from the Corps that this would put us back to ground zero, that you would have to start all over again, back like in 1965, and put this thing through Congress all over again and come out with a new authorization for a new project."

Mr. Clausen - "Including another environmental impact statement and a study?"

Mr. Le Mieux - "Yes, sir. The whole thing, including the delays, what inflation would do to the cost of it, would make it impossible for the

local interests. You would have to, as Congress changed it from a 70-to-30 to perhaps a 90-to-10 project, for us to be able to put up our matching share.

Mr. Breaux - "Mr. Le Mieux, what would be the position of the Orleans Levee Board if we would have to go back to a new project authorization process?"

Mr. Le Mieux - " . . . we want hurricane protection . . . the quickest and best way we can . . . You cannot do anything today without causing some damage . . . And certainly this project is going to cause certain damage to the environment. I understand that. I just think that those things have to be weighed against the probability of loss of human life. And if this project had to be abandoned now, it would take an entirely different type of congressional authorization for it to be continued, because, as it stands now, the levee boards who are funding this are running out of money. One of them has already been taken over by the State, another one is in arrears, and the Orleans Levee Board just has enough money to complete the project if it is carried out as scheduled."

Mr. Breaux - "Is it the position of the Orleans Levee Board that the project without the barriers section in it is not a viable project?

Mr. Le Mieux - "It is, yes. I am not saying that we would not accept another type of project, but what I am saying is, is that the barrier project - or the hurricane protection without the barrier - is similar to people saying that they want to go to heaven but they do not want to die. One is essential to the other, as the plan has now been worked out."
Note: Mr. Le Mieux subsequently endorsed the high level plan.

Mr. Livingston - "If I may ask you, Mr. Le Mieux, what alternatives would be acceptable to the levee board if the barriers were phased out and other hurricane protection were available?"

Mr. Le Mieux - "Well, I mean, as an alternate, if there was no other way, certainly we would take higher levees. One of the things that we would give serious consideration to not accepting, though, would be floodwalls (run-a-way barge issue) . . . I do not believe that you could kill the barrier portion - it is my understanding that you could not knock out the barriers without knocking out the whole plan. It would all have to be reauthorized, including all of those levees. . . "

Mr. Breaux (after testimony by John Hammond representing Ernest J. Morial, Mayor-elect, City of New Orleans; testimony in support of reevaluation of alternatives) - " . . . We are reaching the point where, if a study considers some other alternatives and makes a suggestion that is outside the scope of a rather tightly drawn authorization, then we are looking at a hurricane protection plan that will never be completed within Dutch's term as mayor of New Orleans, even if it is a 2-year term. That is something that I think we have to evaluate very carefully. I cannot imagine the whole process starting over again. I cannot imagine the whole new reauthorization process, appropriation process, all of this being done over again . . . I am saying . . . that if we have the reassessment of this project, and it shows that we should take another approach, I suggest that New Orleans will not see a completed project within the next term of this man represented by Mr. Hammond . . ."

Mr. Roberts - "Well, I think you could ask the Corps, and they would say it would not be complete within 10 years. I think a . . . 10- to 12-year time frame would be required. Now, are you prepared to face a 10- to 12-year period without hurricane protection? Then I think you have got the answer."

Mr. Hammond - " . . . I believe any reanalysis, that information concerning the problems ought not to get either a postauthorization from the committees or new authorization would have to be part of the cost, for weighing the cost to benefit."

Mr. Clausen - " . . . I think you had better really evaluate this thing more in depth. This is a very preliminary statement, as I view it, and suggest that you submit a more comprehensive statement on the various alternatives so that we can have you and the administration firmly on record."

Mr. Hammond - "Well, we would be happy to do that. One of the things that I believe will be necessary to the mayor and his staff - information on these alternatives, exactly what they are . . . At this point, we have only one or two alternatives, as I see them."

Mr. Clausen - "Well, is it unrealistic to assume that you might be able to sit down and talk to the levee board people and arrive at some form of a compromise recommendation?"

Mr. Hammond - "I hope that that would be the case . . ."

Mr. Roberts - " Let me make my point again. If we have to start all over, the legislative process and everything, and the Corps' planning and then the EIS statement and then the Corps acts, you are looking at a minimum of 10 to 12 years.

Mr. Livingston - " . . . I do not think that any of us were talking about starting all over again. I think that after talking with representatives of both sides, that we can use a large portion of what has already been accomplished. But there are specifics that are in serious dispute on both sides. And I think that the alternatives to those specifics are going to have to be considered in much greater depth than they have been considered by any parties up to this date. And I do not think that those specifics need to be studied over a long period of time. I think we can have some studies along that line, so that the mayor can make an intelligent decision . . . "

Mr. Clausen - " . . . Oftentimes in the past the Corps of Engineers has been restricted to very narrow guidelines that the Congress has imposed upon it. And we have updated some of those in order to make a recommendation. But I am happy to say that I believe the Chairman and I, serving as the ranking member of the Water Resources Committee, have had a little bit to do with giving them a little bit more flexibility. We are also looking at a methodology for evaluating project alterations, in line with this, to have the degree of flexibility necessary to meet the kind of changing circumstances we face.

Mr. Roberts (closing statement) - " . . . I am convinced . . . that a hurricane project is needed, and I think everybody here agrees to that - that we have got to have a hurricane project. I want to say to you there is no way we are going to please everybody. You all are going to have to get together and come up with some sort of modified plan that maybe the Congress can enact. But you need a project not in 20 or 30 years - and you are looking at a project 12 years away now, unless this project is agreed to - and I don't think its going to be . . ."