

LMS-BA

5 April 1976

**SUBJECT: Fish and Wildlife Coordination - Mississippi River Between
The Ohio and Missouri Rivers - Regulating Works**

Division Engineer, Lower Mississippi Valley
ATTN: LMVPD-R

1. After several years of attempting to satisfy fish and wildlife concerns by design changes from within the existing authority of the subject project, SLD concluded, early in 1974, that the authorized project would have to be expanded to include fish and wildlife management as a project purpose before any meaningful results could be achieved. This conclusion was acceptable to and supported by the U.S. Fish and Wildlife Service and the State Departments of Conservation for Illinois and Missouri. Since that time, a number of coordination meetings have been held with representatives of these agencies in order to develop a Post-Authorization Change Report as the proper means for including fish and wildlife measures in the subject project. The measures under consideration were specifically limited to those that would preserve habitat in the side channel or chute areas along the Middle Mississippi River.
2. Contrary to this approach and past coordination efforts, SLD has recently been informed by the U.S. Fish and Wildlife Service that they cannot provide the necessary benefit data needed for completing the Post-Authorization Change Report due to philosophical differences of opinion as to the propriety of assigning benefits to the measures, the lack of manpower to accomplish this task, and, finally, due to their long-held opinion that mitigation lands are justified.
3. The U.S. Fish and Wildlife Service has presented SLD with an alternative course of action. This alternative would opt for conducting mitigation studies on the subject project under the auspices of the Fish and Wildlife Coordination Act of 1958 (Section 662.g) which reads,

"The provisions of this section shall be applicable with respect to any project for the control or use of water

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"as prescribed herein, or any unit of such project authorized before or after the date of enactment of the Fish and Wildlife Coordination Act for planning or construction, but shall not be applicable to any project or unit thereof authorized before the date of enactment of the Fish and Wildlife Coordination Act if the construction of the particular project or unit thereof has been substantially completed. A project or unit thereof shall be considered to be substantially completed when sixty percent or more of the estimated construction cost has been obligated for expenditure."

Although this requirement of the Act was initially considered by SLD prior to our efforts to develop a Post-Authorization Change Report, it was not considered viable on the basis that the subject project was more than 60 percent complete as of June 1958, based on economic data available at that point in time. However, the U. S. Fish and Wildlife Service has pointed out that the actual project expenditures to date, together with subsequent increases in the project cost estimate, indicate that the subject project was, in fact, not over 60 percent complete as of June 1958, thereby contending that the project falls under the authority of the Fish and Wildlife Coordination Act of 1958. When this issue was raised at the most recent coordination meeting of 22 March 1976, I agreed that there were sufficient grounds for pursuing this approach.

4. If it is determined that the 1958 Act applies, the following sequence of events would occur: the Fish and Wildlife Service would submit a plan of study to include a time schedule and funding requirements; SLD would review and approve this plan and would secure necessary funding; SLD would review the finished report, would prepare recommendations and would forward the documents for review, approval and implementation funding.

5. With regard to the above information, the following clarification is requested:

a. In light of the proposal by the U. S. Fish and Wildlife Service, as presented in paragraph 3, does the subject project now fall within the scope of the Fish and Wildlife Coordination Act of 1958?

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b. If the Act is now applicable, what would be the relationship of the recommendations which would result from mitigation studies conducted by the Fish and Wildlife Service and the results of similar studies conducted under a Great III study effort?

c. Or, if the Act is not applicable, what alternatives are available to SLD for continuing the pursuit of initiating fish and wildlife measures on the subject project?

THORWALD R. PETERSON
Colonel, CE
District Engineer

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DA, Lower Mississippi Valley Division, Corps of Engineers, Vicksburg,
MS 39180 28 May 76

TO: HQDA (DAEN-CWP-G) WASH DC 20314

1. Subject correspondence is referred for review and concurrence in position outlined below.

a. The 1958 report of Chief of Engineers listed estimated cost at 1958 price levels at \$102,828,000 (page 613). Work was estimated to be about 82 percent complete. The 1974 report of Chief of Engineers listed estimated cost at \$204,053,000, 1974 price levels. Work was estimated to be about 48 percent complete. Increase in cost and decrease in percent complete apparently result from two factors:

(1) Increased price levels.

(2) Increased work requirement. The 1974 report shows more linear feet of dike and revetment work remaining to be completed than was shown remaining to be completed in 1958.

b. It is the position of this office that funds in excess of 60 percent of the cost of the project have been obligated as of the date of passage of the 1958 Fish and Wildlife Coordination Act and, therefore, that the Act is not applicable to the basic project as authorized prior to that time. The Act does not provide for subsequent inclusion or exclusion of projects because of subsequent changing price levels.

c. GREAT III is a separate issue and probably would not be responsive to the current problem. Recommendations resulting from a study of environmental needs referenced in basic letter would address items as a part of the Middle Mississippi Project rather than basin-wide land and water resource needs to be addressed in GREAT III.

d. The St. Louis District should consider environmental needs and prepare recommendations for project modifications as outlined in Draft ER 1105-2-31. The following comments should also be considered in planning and conducting investigation of environmental problems in this project.

(1) The project probably has not resulted in any significant damage to terrestrial habitat; therefore, the need for mitigation lands is not currently apparent. It is an established policy of the fish and wildlife agencies that impacts to fishery resources cannot be counterbalanced by wildlife enhancements. The study should not be guided by any preconceived view that lands are the objective of mitigation needs.

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(2) The District Engineer is responsible for and must conduct and control the study. Paragraph 4 of the basic letter implies that Fish and Wildlife Service would plan and manage studies including preparation of finished reports, with the St. Louis District furnishing funds and acting in review capacity. The District Engineer should request advice and recommendations of other agencies, but he is solely responsible for the conclusions and recommendations. The District could accomplish studies with in-house capability or by contract.

(3) The District Engineer should make every effort to resolve philosophical differences with the U. S. Fish and Wildlife Service which would affect project justification or recommendation without compromising established policies or regulations of the U. S. Army Corps of Engineers. A documented record of coordination with Federal fish and wildlife agencies should be maintained in accordance with ER 1105-2-129 and unresolved problems fully documented in the investigation report.

(4) The study should consider the need for and feasibility of project features and modifications to utilize environmental resource development opportunities existing at the present time. Mitigation should be considered only for damages resulting from major project modifications approved after 12 August 1958. Major project modifications may be defined as those requiring specific approval of the Division Engineer or higher authority.

e. The District Engineer should prepare a plan of survey for approval of the Division Engineer prior to actual initiation of studies outlined above. The Plan of Survey should include the scope and intent of the studies; project features for which mitigation plans will be considered; description of environmental resource development plans to be considered; methodologies to be used in evaluating alternatives; prospective study participants and extent of their participation; and coverage of other requirements outlined in DIVR 1120-2-6.

2. Recommend concurrence in the above position. Expeditious response to this letter is requested.

F. P. KOISCH
Major General, USA
Division Engineer

CE ind only:
LMSD-BA

DAEN-CWP-C(LMS-BA, 5 Apr 76) 2d Ind

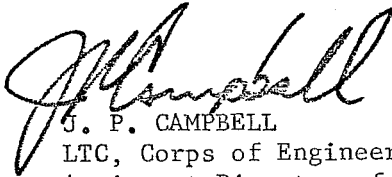
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DA, Office of the Chief of Engineers, Washington, D. C. 20314 31 AUG 1976

TO: Division Engineer, Lower Mississippi Valley

I concur with the recommendation in your 1st Indorsement.

FOR THE CHIEF OF ENGINEERS:



J. P. CAMPBELL
LTC, Corps of Engineers
Assistant Director of Civil Works
Environmental Programs

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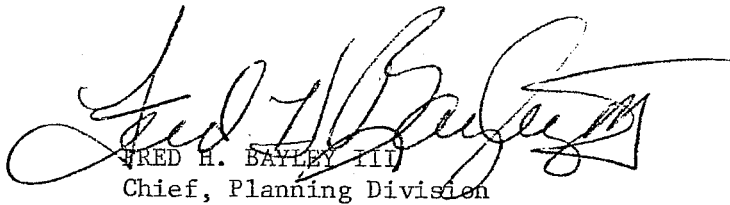
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DA, Lower Mississippi Valley Division, Corps of Engineers, Vicksburg,
MS 39180 3 Sep 76

TO: District Engineer, St. Louis, ATTN: LMSD-BA

Referred to note OCE's concurrence with our recommendation.

FOR THE DIVISION ENGINEER:



FRED H. BAYLEY III
Chief, Planning Division