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GOVERNOR



SCOTT A. ANGELLE
SECRETARY

State of Louisiana
DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE SECRETARY

November 23, 2009

The Honorable Gary Locke
Secretary
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Re: U.S. Army Corps of Engineers, New Orleans Districts'
Recent Consistency Determination for Dredging
Activities on the Lower Mississippi River

Dear Secretary Locke:

The U.S. Army Corps of Engineers ("the Corps"), New Orleans District ("NOD"), provided a consistency determination (copy attached), dated September 9, 2009, that claims the federal project, Fiscal Year (FY) 2010 maintenance dredging in the vicinity of the Mississippi River's Southwest Pass, as authorized by the Mississippi River, Baton Rouge to the Gulf of Mexico, Louisiana, and Mississippi River Ship Channel, Gulf to Baton Rouge, Louisiana projects, is consistent, to the maximum extent practicable, with the enforceable provisions of the Louisiana Coastal Resources Program ("LCRP"). We strongly disagree with this finding.

The State of Louisiana has objected to and continues to object to the plan as proposed by the Corps because of the failure of the NOD to provide for beneficial use of dredge material as required by Louisiana's federally-approved coastal program, because the current disposal practices are environmentally unsound and inconsistent with Louisiana's federally-approved program and because of the plan's failure to implement the provisions of the Corps' federal standard provisions regarding the disposal of dredged material resources. For these reasons, the proposed plan does not meet the mandatory requirements of the Coastal Zone Management Act of 1972 ("CZMA") and the implementing regulations regarding consistency, specifically 15 C.F.R. 932.32.

In support of this request, you will find the attached documents which set forth, in detail, the merits of our request;

- 1) the chronology related to Louisiana's efforts to secure a consistency determination and project that meets the federal and state requirements pursuant to the Corps' federal standard provisions, the State's federally approved program;
- 2) a "white paper" prepared by the Louisiana Department of Natural Resources, Office of Coastal Management based on input of various state and federal agencies, dredging industry executives, shipping industry representatives, pilot association representatives, and several nongovernmental organizations; and
- 3) the provisions of the CZMA and LCRP that Louisiana asserts the NOD's consistency determination fails to comply with.

The State of Louisiana has been clear that its intent is for the Corps to continue to maintain the full authorized channel dimensions so navigation and maritime commerce on the river are not compromised and that beneficial use of dredged material becomes an integral part of the management of the lower river. The goal of the State and its coastal program is to enhance both the quality and quantity of beneficial use and to deter environmentally unsound disposal practices of dredged material from federally maintained navigation channels in the State of Louisiana. The State recognizes that additional funding may be necessary to accomplish these goals. The crux of our disagreement with the Corps is that the Corps has made the judgment, which is reserved to Congress, not to fund these necessary components of the dredging program for a sustainable coastal area by ignoring its obligations under the CZMA by failing to request adequate funding.

The Lower Mississippi River Delta area is a sediment-starved system. The NOD dredges millions of cubic yards of sediment per year from the Mississippi River in pursuit of maintaining a federally-authorized navigation channel on a constant and continuing basis. The State recognizes the value to the nation of a reliable channel to support safe and uninterrupted navigation on the Mississippi River and the State supports activities to accomplish that mission. However, these millions of cubic yards of dredged material generated from the Corp's dredging program could be used, and under Louisiana's federally-approved legal mandates, must be used, to offset a significant amount of the coastal land loss experienced in this area on an annual basis.

Based on studies conducted from 2002 through 2009, Louisiana's coastal area has lost approximately 2,300 square miles of land since the 1930's. We continue to lose coastal wetlands at an alarming rate. Currently, it is estimated that Louisiana loses approximately 24 square miles of coastal wetlands per year. That is the equivalent of approximately one football field lost every 38 minutes. In addition, Louisiana has about 30% of the coastal marsh in the lower 48 states. However, Louisiana's land loss accounts for 90% of the total coastal marsh loss. The idea that the federal standard and the provisions of the CZMA and this State's federally

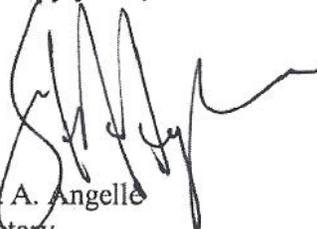
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approved coastal management program cannot be brought to bear and/or are not germane to addressing this issue is not tenable. Moreover, the disposal practices implemented by the NOD are unsound environmentally and have a deleterious effect on fresh water flow and sediment transport processes that result in unnecessary land loss and erosion. The provisions of the federal and state coastal programs and the intent of Congress and this State's Legislature place a high value on coastal resources and the efficient and proper management of those resources for all users and in support of all uses. The Corps is clearly not in compliance with these coastal programs, the law and is not maintaining or following this legislative intent. The Corps has ignored its obligations under the CZMA and has made the judgment, which is reserved to Congress, not to fund the activities to comply with the CZMA by not requesting such funding from Congress.

As we are confident that you will readily see, Louisiana has attempted, at every turn, to have meaningful negotiations and consultations with the NOD over the management of the Lower Mississippi River and the sediments that the NOD removes in furtherance of its navigation mission. We have been unable to resolve the impasse through the review and consultation process.

Therefore the State of Louisiana hereby requests intervention, by you personally in your statutory role as mediator of serious disputes, as provided for in 16 USC 1456(h) and 15 C.F.R. 930.44. If you or your staff has any questions regarding this request please contact Mr. Gregory J. DuCote at (225) 342-5052 or (225) 772-6793, or by electronic mail at Gregory.ducote@la.gov.

Very truly yours,



Scott A. Angelle
Secretary

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Attachment

cc: Louis E. Buatt, OCM Assistant Secretary
Colonel Alvin B. Lee, New Orleans District Commander
Garret Graves, Governor's Executive Assistant for Coastal Activities