



# Arkansas Wildlife Federation

9700 Rodney Parham Rd. – Suite I-2  
Little Rock, AR 72227

501-224-9200 – 1-877-945-2543 – Fax 501-224-9214 – awf@aristotle.net

October 2, 2007

Jim Wood, Chairman  
AR River Study Committee  
AR Wildlife Federation  
56 Delaware Bay Road  
Dardanelle, AR 72834

Mr. Wilbert Berrios, CIO  
US Army Corps of Engineers  
441 G Street, NW  
Washington, DC 20314-1000

Dear Mr. Berrios,

Please find enclosed AR Wildlife Federation's further appeal to you of Steven Stockton's 9-14-07 response to our June 16, 2006 Request for Correction of Information under provisions of PL 106-554, referred to as The Data/Information Quality Act (DQA).

Sincerely,

A handwritten signature in cursive script that reads "Jim Wood".

Jim Wood, Chairman  
AR River Study Committee

DQA Appeal MKARNS

October 2, 2007

From: Jim Wood, Chairman  
AR River Study Committee  
AR Wildlife Federation  
56 Delaware Bay Road  
Dardanelle, AR 728343

To: Mr. Wilbert Berrios, CIO  
US Army Corps of Engineers  
441 G Street, NW  
Washington, DC 20314-1000

Ref: Further appeal of September 14, 2007 findings by Steven Stockton, Deputy Director of Civil Works, regarding AR Wildlife Federation June 16, 2006 Petition for Correction of Information concerning provisions of the Data Quality Act of 2000 as they apply to McClellan-Kerr AR River Navigation Study Final EIS, Final Feasibility Report and Record of Decision signed 9-27-05 by MG Don Riley, Director of Civil Works.

On behalf of AR Wildlife Federation (AWF) and sportsmen users of the above referenced AR River Navigation System we submit our response and further appeal from 9-14-07 review by Mr. Steven Stockton (attached) of our 6-16-06 DQA appeal. For your convenience we're enclosing a copy of AWF's original Petition and additional supporting documents for this appeal.

It is interesting to look back and compare how the few appeals AWF has submitted to federal resource agencies sharply contrast in their rational and response procedures. The Forest Service treats their appeal process as a benefit to building information and readily follow a mandated time frame for answering. The Corps of Engineers, on the other hand, noticeably send a message of disinterest in public involvement, and this assumption is evidenced by this appeal being filed 6-16-06 and response was delayed 15 months. And then required a directive from Assistant Secretary of the Army for Civil Works.

I will first respond to general issues Steven raised in the first three paragraphs, largely he questions how we framed our request for correction of information. With exception to broad appellants narrative guidance to describe, "that such information is not accurate, clear, complete or unbiased", there's little specific DOD instruction on building or framing a Statement of Reasons for appeal. With a multitude of political, lobbying, special interest barge company interference to micro-manage and corrupt the 5 year AR River Study, we are overloaded on, what we consider, DQA violations, but chose to limit our request for correction of information by simplifying our petition to 5 situations. **AWF continues our conclusion made in 2003 that Corps actions to corrupt this MKARNS study reaches the level of fraud, abuse and mismanagement.**

While COE considers response to "procedural questions" we raised to be a "courtesy", we appreciate the courtesy, but believe many references in the FEIS/Feasibility

Report/Record of Decision declaring documents were prepared in accordance with the NEPA process cause such COE discussion of procedural compliance with the National Environmental Policy Act (NEPA) to qualify under DQA's standard as being disseminated narrative Information. The NEPA Process mandates accuracy (40 CFR 1502.24 Methodology and Scientific Accuracy) in the same respect as DQA. You can't claim NEPA procedural compliance without actually complying with provision at 40 CFR 1500-1508.

DOD clarifies that **Information is "any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative or audiovisual forms"**. Thus, we conclude that the FEIS and Gen. Riley's ROD, "8. CONCLUSION--- considered all applicable laws, regulations, FEIS, supporting studies,"---etc. affirms that he considered COE's study procedures to comply with NEPA and ER 1105-2-100, and he records this statement as a narrative representation of fact. We request clarification of COE rational that declaring procedural compliance with NEPA and COE Planning Principles is somehow not required to meet DQA accuracy/transparency test, nor can qualify as representing a form of Information?

**AWF believes 40 CFR 1500.1(b) language is very transparent as to the "steps and order of consideration" and states, "NEPA procedures must insure that environmental information is available to public officials before decisions are made and before actions are taken". COE decision to develop and make available environmental information (ROD/EIS) over 2 years after authorization to construct a 12' channel on MKARNS certainly is not before the decision was made, and we request transparency of COE rational that supports otherwise? Moreover, placing information in an official NEPA document the Agency knows to be false seems to be a "fraudulent statement or representation" and a clear violation of 18 USC Sec. 1001, and AWF requests COE provide transparency as to why it is not a scheme of fraud to bring about a \$166 million cost to taxpayers?**

We conclude that COE fails DQA information standard by declaring in the EIS, "This EIS was prepared in consideration of applicable laws (NEPA) and regulations?" LRD Commander Col. Wally Walters himself commented they were "shocked and dismayed" that the 12' channel deepening project was authorized by congress midway of the 5 year, \$9.4 million study, two years before a Final EIS or Record of Decision. We believe that DQA requires transparent proof when making narrative representations of NEPA and regulatory compliance, regardless who or how the steps or order of consideration is violated, same as any other disseminated information.

Steven comments that "the request for corrective process is not designed to create duplicative and parallel processes", raising the question as to whether we the affected public can participate with the Lead Agency, raise issues early and throughout the NEPA Process, without, at final decision/end of the study process, foregoing entitlement to also challenge COE failure to comply with DQA standards. Please clarify?

The longer this AR River Navigation System Study/EIS/NEPA Process played out, the more corrupt COE allowed it to become, and it became the exact opposite from the process Gen. Flowers describes for Studies in his 2001 White Paper. Steven avoids answering our RCI query as to how limiting "authorizing for construction" to the 12' channel alternative, before Studies are completed, complies with NEPA or COE planning

## DQA Appeal MKARNS

regulations which clearly require completion of these studies before decision to “authorize” is made? Moreover, Let Mon Lee, HQUSAC, work assignment at that time was to advise Senate Env. & Public Works committee members, and so far COE has produced no evidence that Mr. Lee alerted committee members that this “authorization” violated the order of consideration of NEPA and EP 1165-2-100.

AWF commented following submission of the Reconnaissance Report and “throughout the NEPA Process”, as provided by 40 CFR 1500.2(d), 1506.6 and repeated solicitations by COE. Our goal was to make sure COE officials from HQ to District level knew of all the apparent fraudulent schemes being employed by lobby and other special barge interests to micromanage, influence and bias NEPA. We believed, and still do, that all these lobby and other tricks to corrupt objectivity of the Study, regardless from where they originate, are part of the environmental situation COE did nothing to correct or reference in the FEIS, and thus, we requested such actions be considered a Environmental Issue and, at the time, requested without success that they be discussed in the EIS.

Steven is correct that from 2000-2006 throughout this Study we have presented many queries, solicitations, comments, information, requests questioning NEPA Process/EP 1165-2-100 compliance we passed up COE chain of command. But AR Wildlife Federation had never previously filed a Request for Corrected Information under DQA. AWF, even before the Reconnaissance Report, was alert to likelihood this MKARNS Study, given Sen. Inhofe’s disregard for Corps Studies, would end up a victim of fraudulent false information to satisfy the Senator and special barge company lobbyist/pre study authorization and loose objectivity. **Recognizing these on going tricks and schemes to short-circuit the NEPA Process, our goal was to make sure COE chain of command knew, and thus had an opportunity to timely clean up the Study.** During AWF’s 35 years of participation in many federal agency studies, MKARNS displays the most corrupt systemic application of NEPA of any of these agencies. Does COE consider AWF’s numerous past NEPA Process queries, in some fashion, to substitute for a DQA petition?

Response to COE review of five specific AWF requests:

I.

The 3-11-82 House Resolution states, “The goal of the study---was to evaluate alternatives to address navigation conditions while improving flood control, hydropower, recreation, and fish and wildlife.” COE decided compliance with NEPA would require two separate, stand alone studies. COE had paid damages and acknowledged that their managed AR River flow regime was creating a “takings without compensation” situation downstream in AR and had to be fixed. After a 5 year \$9.4 million Study COE now creates a flow regime to minimally enhance navigation that increases flood related “takings” (Enc. 8) under claim their SUPER Model shows “0” cost for these damages?

The Resolution and later 1999 Reconnaissance Study (Enc. 2) was not limited to improving navigation, but began as a large scale regional study ( Enc. 1) and states--- “with particular reference to developing and implementable plan for storage, conservation, treatment, and conveyance of water in the AR River and tributaries in AR and OK, for municipal, industrial, and agricultural uses and other purposes.” These other

## DQA Appeal MKARNS

purposes clearly refer to all of MKARNS congressionally authorized purposes. AWF simply questioned, (Enc. 3) since AR River is a region wide functioning system, how under NEPA, COE would scope fish, wildlife and recreation mitigation issues whether under a single broad basin wide comprehensive study or two Phase separate EIS's?

From outset, AWF considered LR District's track record as a slanted interest in MKARNS navigation without regard for other authorized purposes. Our 12-10-03 letter to Gen. Griffin and answered by Thomas Caver requested Independent Peer Review (Enc. 4) which is denied on basis that "as this project is authorized." Fish and Wildlife habitat mitigation is now left to a unclear, unenforceable, non transparent, future adaptive management process COE officials, nor the FEIS, have been able to explain?

Additionally, COE fails to respond to our well documented allegation they narrowed an already scoped AR River basin wide two Phase NEPA Study/EIS into only a navigation channel enlargement/deepening study, following 2004 Energy and Water Development Appropriations Act (signed by President in December 2003) authorizing only the 12' channel, solely to accommodate special navigation interests. It would be naïve to assume COE Revision of the Scope/12' channel authorization timing was happenstance? 40 CFR 1502.5 states clearly, "The statement shall be prepared early enough so that it can serve practically as an important contribution to the decision making process and will not be used to rationalize or justify decisions already made."

We continue our position that COE's conclusion that the Study was conducted in accordance with NEPA is inaccurate narrative information and should be corrected. Moreover, COE response fails rational to defend their assertion that applying the NEPA Process to already made decisions (12' channel authorization) complies with the NEPA Process.

We agree with Steven that AR River study was to evaluate alternatives to address navigation conditions while **improving flood control, hydropower, recreation, and fish and wildlife**. Navigation is now the only authorized purpose being improved.

## II.

COE response to Part II of AWF's DQA Petition is simply a description of how ER 1105-2-100 planning is structured as consecutive steps, and is designed to function. It falls short of clarifying how COE can arbitrarily reshuffle these steps, place project authorization before Feasibility Study/ Record of Decision/determine benefit/cost ratios for alternatives, and produce a narrative declaration that reshuffling these ER 1105-2-100 "consecutive steps" is an unbiased process? COE claims that continuing the Study under a Revision of the Scope for the already authorized 12' alternative is an unbiased process, and so we question why then are these 6 steps in the ER? COE declaration that, "The Districts evaluated each of the six steps in the Planning Process throughout the study, in the **order required** by Engineering Regulation 1105-2-100" simply is inaccurate . Enclosure 5 taken from GAO-06-529T refutes this claim. We would appreciate COE providing transparent NEPA/COE Regulation language that allows a project study "order of consideration" structure that places authorization before study completion and ROD?

COE response that the AR River study began in 2000 to address "channel maintenance, flow management and channel depth", is inconsistent with the August 23,

2000 Notice of Intent. NOI states, “The study purpose is to develop and evaluate alternatives for implementing solutions to problems resulting from sustained high flows on the McClellan-Kerr AR River Navigation System (MKARNS).” Intent was a broad comprehensive structural and non structural two phase study to include improving navigation, flood control, hydropower, recreation and fish and wildlife (Reconnaissance Report). With a comprehensive study underway, COE came up with a Revision of the Scope that effectively limited alternatives to navigation improvement in response to a pre study 12’ channel authorization. Since COE was not obligated under Congress 12’ channel authorization Report (Title II Sec. 2001, “must satisfy provisions of the National Environmental Policy Act”), it is not transparent how, after 3 years of study, limiting alternatives to only navigation improvement/channel deepening complies with NEPA’s “evaluate all reasonable alternatives” mandate, nor solve flow regime “takings” issues?

It is not sufficiently transparent to AWF, nor defended in your response, that authorizing a project followed by directing COE to later “satisfy provisions of NEPA by disclosing the impacts” complies with consecutive steps of ER 1105-2-100 and your reference to “the order of consideration”. Your rational lacks DQA’s “data and methods of analysis” transparency, and the basic substance you draw upon deserves clarification?

### III

COE responds that “Flow Management benefits can be accomplished at no cost, because benefits expected from adjusting the high and low water levels can be accomplished with minor operational changes.” Your “method of analysis” inputs to SUPER obviously fails to recognize System storage cost and revenues foregone trade offs from MKARNS other authorized purposes. Thus, this “0” cost assumption fails DQA’s accurate, clear, reliable test, nor is such disseminated information sufficiently transparent in terms of data and methods of analysis, that it would be feasible for a 3<sup>rd</sup> party replication to be conducted. Moreover, the same LR District Planning Section that did both this MKARNS Study and Land Impact Study (Enc. 8) 1990 analysis, assessed predicted flow regime created annual losses from induced flooding alone at \$3.9 million. If COE can not replicate their “0” cost, how do you expect the “data and methods of analysis” to be sufficiently transparent that a 3<sup>rd</sup> party could replicate “0” cost. Fact is COE fails DQA’s “complete” test for inputs to their SUPER Model.

LRD’s own past MKARNS studies contradicts your calculation of “0” flow regime cost, and demonstrates failure of COE’s analysis to meet DQA’s “accurate, complete, clear and unbiased” test. With regard to our claim that COE knowingly used false information/“cook the books” inputs to their SUPER Model, Mr. Stockton’s response fails to clarify how running this same Model for similar flow regime cost assessments produce, not “0”, but sharply contrasting differences from \$millions annually to “0”? We believe a General Reevaluation with Independent Peer Review will confirm statistical data was fabricated to support 12’ channel authorization decisions already made.

The reservoir and flow routing inputs to the SUPER Model can be neither “accurate or reliable” since updated reservoir storage cost to produce flow regime benefits claimed for navigation is not accurate and completely considered. And yes, it is rather transparent to AWF that COE has engaged in “cooking the books” with inaccurate, less than objective inputs into their SUPER Model, and Stephen Stockton fails to clarify accuracy of

applying this data and method of analysis? Cost to manage flow regimes to benefit navigation using flood/conservation pools is certainly not “0” and Corps own studies find true expense includes much more than “minor operational changes”.

One need only compare COE application of the same SUPER Model to cost analyze White River flow regime vs MKARNS, done near the same time, to see how the same Planning Staff contradicts their “0” cost finding for MKARNS flow regime. Same SUPER Model was used to calculate WR flow regime cost using five COE reservoirs and the analysis revealed \$millions in annual cost for “storage” and “benefits foregone”, (Enc. 6). Same Model and similar impacts to benefits foregone show AR River flow regime cost “0”? Since COE can not seem to replicate a “0” cost finding for two rivers with two runs of the same SUPER Model within the same Planning Section, do you think perhaps GAO-06-529T “fraught with errors, mistakes and miscalculations” might also fit MKARNS flow regime calculation? It is also appropriate to note that SW Power Administration were measurably in disagreement with COE reliance upon SUPER Model calculations of flow regime costs for White River projects.

AWF timely requested Independent Peer Review midway of MKARNS Study and we continue to reaffirm this request. Moreover, we believe these MKARNS/White River examples produce sufficient evidence to show statistical information used fails to meet DQA, “higher quality standard than that of peer review is warranted”, requirement, as well as 40 CFR 1502.24.

Steven’s response fails to defend accuracy of SUPER Model to consider cost of storage, O&M and other benefits foregone that are directly related to expense of providing flow regime navigation benefits. AWF requests COE provide “clear, complete and accurate” transparency as to how the same SUPER Model calculated enormous flow regime cost for 1990 MKARNS Land Impacts and WR flow regime for only a couple summer months, and yet now calculate out to “0” annual cost to enhance MKARNS navigation? Moreover, AWF proposes that benefit/cost of providing navigation flow regimes for MKARNS should undergo a General Reevaluation and include true Independent Peer Review. Declaring that Independent Technical Review was provided by the Agency does not meet the recognized description of “independent” as described in the current Water Resources Development Act or Gen. Flowers presentations to Congress. An Agency that reviews itself is in no fashion an independent process.

Steven Stockton fails to respond to our request for clarification of “financial and statistical information needed to produce a transparent reproducible product showing that a deeper channel solves lack of demand problems”. The demand/projected tonnage growth analysis fails to meet DQA’s “clear and complete” test by ignoring logistics problems that are commonly recognized as the major contributor to the current flat lack of usage and navigation demand.

Factual situation of producing a 12’ channel with locks designed to accommodate 9’ barges, coupled with flat or declining demand,(Enc. 7) cause Corps barge tonnage growth assumption to be outdated and unrealistic. And should be corrected to the 2007 average, as well as the entire tonnage growth assumption should undergo General Reevaluation, see GAO “assumptions and outdated data” (Enc. 5). AWF petitioned for a simple Request for Correction of Information that called for COE to acknowledge that cost to produce MKARNS flow regime \$8.8 million annual benefits for navigation was incorrect and not “0”. The Agency declines and holds to their “0” cost finding. So, AWF further

## DQA Appeal MKARNS

petitions the Corps to Reevaluate their “0” cost assumption, including IPR, to confirm that accuracy of their data and analysis meets DQA standards.

### IV

AWF holds to our claim that COE decision to charge \$700 for hard copies of MKARNS EIS and Feasibility documents effectively restricted many of the affected working public and those without computers or internet access from timely reviewing these documents and participating in the NEPA Process. IV at page 10 of our Petition well clarifies the basis for our claim, and request for corrected information, so I will not repeat these points. Moreover, AWF holds to our opinion that COE use of \$108,850 in appropriated study funds to pay a barge company to engage in lock chamber studies, in a direct conflict of interest, demonstrates that cost was not the deciding factor, as Mr. Stockton claims, in deciding to charge \$700 for printed copies of these NEPA documents. Nor can COE claim NEPA compliance by choosing such expensive voluminous writing methods that discourage public involvement through claiming these documents can only be provided through a Freedom of Information request to justify a \$700 charge.

COE defends this \$700 charge under claim, “cost are very high and we had a limited budget restricting the number of printed copies”. We present three questions, (a) At what cost for printed NEPA documents does printing expense rise to a threshold where Corps considers it legal to charge a fee for hard copies? (b) Since we find that some participants were afforded free copies, what criteria does Corps use to determine who gets free copies? (c) Does the Council on Environmental Quality set a standard method COE uses to assess charges when NEPA documents are released and circulated for public review and comment? AWF has participated in the NEPA Process numerous times with federal resource agencies over the past 35 years who too suffer under limited budgets and, with exception of Corps of Engineers MKARNS Study, none have ever charged AWF or county affiliates for requested printed NEPA documents. We disagree with COE interpretation of their public involvement obligation, and claimed freedom to arbitrarily impose exorbitant costs upon public participants, in implementing the NEPA Process and thus we appeal Steven Stockton’s response on this \$700 fee matter for further review.

### V

AWF clearly describes why COE’s Mitigation plan fails DQA’s “clear and complete” sufficiency test as well as violates NEPA procedural requirements for arbitrarily releasing a Draft EIS the Agency knows is not “complete.” And Steven Stockton’s response acknowledges, “Indeed, the aquatic mitigation plan was not finalized when the Draft Feasibility study and EIS were released for public review.” COE claim that failure to finalize mitigation plans by later substituting public meetings fails to satisfy NEPA “before decisions are made” obligation and AWF holds to our claim that this failure is in direct violation of NEPA procedural requirements as we stated at page 12 of our Petition.

Corps is not at liberty to claim NEPA compliance while engaging in glaring violations of 40 CFR 1500-1508 procedural implementing provisions as they apply to mitigation. Thus, Mr. Stockton’s response demands further clarification? And mitigation plans still remain not developed, but are left to some unknown future time or process, and AWF



challenges Corps planners or anyone else to take the FEIS/Feasibility Report or ROD and find “sufficient transparency of data and methods of analysis that would be feasible for a replication” of cost and aquatic functional benefits of a unknown mitigation plan?

Mr. Stockton further answers that “it is expected that the mitigation plan will develop over time in response to unanticipated effects.” COE’s plan is to have no plan. How can there be an “accurate and reliable” substance to data used to develop such a non existing plan? Please add transparency to your confusing rational that such a non-plan is actually a plan that can be legally enforced as required by NEPA?

In summary:

Steven Stockton responds to defend “data, methods and analysis” used by Corps to produce their EIS/Feasibility Report and ROD for a comprehensive \$166 million AR River navigation project. And concludes his Agency followed procedural requirement of NEPA Process and order of consideration steps of their own ER 1105-2-100.

**It is interesting that MKARNS Study originated from need to solve a flow regime created “takings without compensation” situation and ends up with a flow regime that further exacerbates “takings” instead of addressing the problem.**

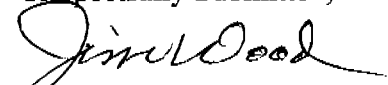
Given that DQA broadly interprets Information as “any communication or representation of knowledge such as facts or data, in any medium or form, including textural, numerical, graphic, cartographic, narrative or audiovisual”, Steven’s response lacks transparency and further adds confusion to the five DQA compliance issues AWF submits for appeal and request for correction of disseminated information. COE finds information for this Study need not be corrected. AWF has closely studied COE response and conclude your interpretation of DQA compliance reveals the following.

- I. COE is at liberty to arbitrarily revise scope of the NEPA Process to fabricate an analysis that biases objectivity to favor authorized decisions already made.
- II. Agency can disregard ER 1105-2-100 and NEPA mandated steps in the order of consideration and declare the study to be in compliance with NEPA.
- III. Running the same SUPER Model to determine flow regime cost for the same impacted resources on White River vs AR River can reflect millions for WR and “0” for AR River, and claim data and analysis used is “objective, accurate and reliable.”
- IV. Corps can effectively undermine public involvement through imposing exorbitant fees, \$700 or \$1,700, for printed NEPA documents, raise this issue to Gen. Strock on 5-12-05 who declines to correct the matter, while presenting a narrative claim of compliance with NEPA public involvement mandate.
- V. Agency can arbitrarily rush the Study to decision and disregard producing a clear and transparent enforceable aquatic mitigation plan, instead substituting some unknown future process not even transparent nor clear to the Corps or anyone else, and claim it complies with NEPA’s “enforceable mitigation plan” mandate.

DQA Appeal MKARNS

On behalf of AR Wildlife Federation we further appeal under DQA Steven Stockton's 9-14-07 response and respectfully encourage your consideration of our request for correction of information included in the above referenced MKARNS EIS, Feasibility Report and Record of Decision. AWF requests that Information we've challenged as not meeting DQA standards within these two documents and ROD for MKARNS be either corrected or both these documents withdrawn by the Agency. Should you have questions, please let me know at 479-229-4449.

Respectfully Submitted,



Jim Wood, Chairman  
AR River Study Committee  
AR Wildlife Federation

Enclosures  
Cc file

## Overview

Under direction of the U. S. Congress, the U.S. Army Corps of Engineers is conducting a study of the Arkansas River Basin in Arkansas and Oklahoma. The purpose of the feasibility study is to develop and evaluate alternatives for implementing solutions to concerns resulting from sustained high flows on the McClellan-Kerr Arkansas River Navigation System. These high flows result in decreased navigation traffic, flooding, losses to recreation use, and other adverse conditions. Improvements to navigation could positively impact farming, hydropower, recreation, flood control, and the environment.

The navigation system consists of a series of 18 locks and dams, 17 existing and 1 currently under construction, and provides navigation from the Mississippi River to the Port of Catoosa near Tulsa, Oklahoma. Flows on the Arkansas River are modified primarily by 11 reservoirs in Oklahoma. These reservoirs are: Keystone, Oologah, Pensacola, Hudson, Fort Gibson, Tenkiller Ferry, Eufaula, Kaw, Hulah, Copan, and Wister. The lakes provide flood control, water supply, hydropower, fish and wildlife, water quality, recreation and other benefits.

Since this is a large-scale regional study of the entire navigation system, it will require the combined efforts of both Little Rock and Tulsa Districts. Tulsa District will take the lead in hydraulics and hydrology work for the study, and Little Rock District will take the lead in project management, environmental, and economic study areas. The first phase of the feasibility study is expected to take three years to complete and cost \$3 million. It will involve a major hydraulics study and modeling runs of the river system, an economics study to evaluate each scenario, and an environmental impact statement. The second phase of the study, which will overlap the first phase by one year, will look at increasing the channel depth and adding passing lanes on the Verdigris River in Oklahoma. The second phase will take three years to complete and cost \$2.7 million. Since this project is part of the inland waterway system, the feasibility study will be conducted at full Federal expense.

The study will examine a variety of project alternatives, including operational changes to these reservoirs as well as constructing additional lakes or levees along the Arkansas River for navigational flow management. These alternatives are currently being developed with the input from local, state and federal agencies, and the public.

Several workshops will be held in both Arkansas and Oklahoma to provide an opportunity for all the stakeholders to become involved and provide their input into the study.



---

**EXPEDITED RECONNAISSANCE STUDY**

**Section 905(b) (WRDA 86) Analysis**

**Arkansas River, Fort Smith, Arkansas**

---

General Investigations Report  
Section 905(b)(WRDA 86) Analysis  
Arkansas River, Fort Smith, Arkansas  
September 1999

**1. STUDY AUTHORITY:** The authority for this and other recent studies of the Arkansas River comes from a Resolution by the Committee on Public Works and Transportation of the United States House of Representatives, dated 11 March 1982, and referred to as the Arkansas River Basin Study Authority read as follows:

*" RESOLVED BY THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION OF THE HOUSE OF REPRESENTATIVE, UNITED STATES, that the Board of Engineers for Rivers and Harbors, established by Section 3 of the River and Harbor Act approved June 13, 1902, is hereby requested to review in cooperation with the States of Arkansas And Oklahoma, political subdivisions, agencies and instrumentalities thereof, and appropriated Federal agencies as a shared effort, the report of the Chief of Engineers on the Arkansas River and tributaries, published as House Document No.308, seventy-fourth Congress, and other pertinent reports, with a view to determining whether any modification of the recommendation contained therein are advisable at this time, with particular reference to developing an implementable plan for storage, conservation, treatment, and conveyance of water in the Arkansas River and tributaries in Arkansas and Oklahoma, for municipal, industrial, and agricultural uses and other purposes. This study should include an assessment of the usability of the water for various uses."*

Funds were appropriated in the Energy and Water Development Appropriations Act, 1999, which stated as follows:

*" Arkansas River, Fort Smith, Arkansas - The Committee has provided \$100,000 for the Corps of Engineers to initiate and complete a reconnaissance study of flooding in unprotected areas outside of the existing flood control levee at Fort*

ENC. 3

COE. It appears that COE is treating the Proposed Action as a connected activity, but breaking the Study up into two stand-alone Phases, and separately applying the NEPA Process to each with an EIS for Phase I and another EIS for Phase II?

Can you clarify procedurally how COE's two Phase EIS approach fits into the NEPA Process and your view as to how we are to sufficiently Scope the Issues in resource trade-off situations where both Phase I and II cumulative impacts overlap upon each other, but are separate EIS's? As you are aware, the AR River Navigation Study has become a confusing two Phase (Flow Regime/Nav Channel Enlargement/ Tulsa-Little Rock District) Study mixed up with the previous AR River Land Impact Study (1990), Additional 49,410 acre Flood Easement Acquisition/expanded in 1993 to include AR River Tributary Streams, and the 1997 Report-Effects On The Environment From The Operation Of The McClellan-Kerr Arkansas River Navigation System. In order for us to adequately represent our interests and understand NEPA boundaries for Scoping, we need a thorough understanding as to COE plans to separate Phase I & II EIS's based on 40 CFR 1500-1508 procedural guidance.

Your Preparation of an EIS Notice fails to mention the date when COE published their Declaration of Intent to Develop an EIS in the Federal Register for Phase II. Can you provide me with a copy of the Declaration of Intent? We appreciate your help as we try to sort out how best to participate in Scoping the Issues and developing the information base for your Phase II Study. Thanks, Jim Wood, Route 3 Box 1278, Dardanelle, AR 72834.

ENC. 4



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
WASHINGTON, D.C. 20314-1000

5/16

REPLY TO  
ATTENTION OF.

Directorate of Civil Works

Mr. Jim Wood, Chairman  
Arkansas Study Committee  
Arkansas Wildlife Federation  
Route 3, Box 1278  
Dardanelle, Arkansas 72834

Dear Mr. Wood:

Thank you for your letter dated December 10, 2003, to Major General Robert H. Griffin, Director of Civil Works. Major General Carl A. Strock is the new Director of Civil Works and he asked me to reply to your letter. Your letter, regarding the Arkansas River Navigation Study, expresses your concern that Section 136 of House Report 2754 has biased the study to navigation, and you request the study be terminated or addressed by an Independent Peer Review panel. Your letter also references the paper "GAO Audit Lessons Learned," and cites the goal to "ensure that analyses are complete and will fully support recommendations." You ask how the recent authorization for a 12-foot channel fits into the U.S. Army Corps of Engineers objective of "formulating solutions to water resources problems."

As you know, the primary purpose of the Arkansas River Navigation Study is to investigate inland navigation problems and opportunities. Congress further provided legislation that authorizes a 12-foot navigation channel. Although the authorization is broad, it does provide construction authorization for inland navigation, and not for any other project purpose. While the focus of the study is on navigation improvements, our evaluation efforts are not biased. We will explore environmentally acceptable alternatives that avoid or mitigate for adverse effects and considers opportunities for beneficial use of dredge material. The analyses will be complete, and be assured that potential impacts to the environment and other project purposes will be evaluated and addressed. All significant environmental impacts will be mitigated.

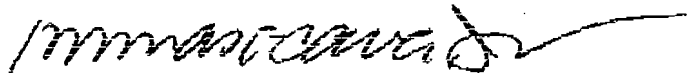
As you pointed out in your letter, the Chief of Engineers supports Independent Peer Review (IPR) for controversial studies, and you further suggest that IPR be implemented for the Arkansas River Navigation study. At this time, we do not intend to utilize IPR for this project. The IPR is more appropriately used for projects where the Corps is seeking congressional authorization. As this project is authorized, we will utilize a similar process of independent technical review that will be conducted by other Corps districts. You also pointed out that reporting officers must be alert to the need to terminate studies at any time when accumulated information establishes that termination is advisable. At this time, our Reporting Officers see no reason or basis to terminate the Arkansas River Navigation study. As a result of the Feasibility Scoping Meeting (FSM) that

you attended in November 2003, this office has provided addition guidance to the Southwestern Division on continuing the feasibility study and preparing material for future briefings.

Your letter also enclosed a copy of your December 3, 2003, letter to Mr. Ron Carman of the Corps Little Rock District, regarding issues discussed at the November 19, 2003, FSM. We have reviewed and concur in Mr. Carman's response letter to you dated January 6, 2004.

Thank you for participating in the feasibility scoping meeting and sharing your thoughts and concerns with us. I will share your letter and this response with the two Corps districts that are conducting the study.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas F. Caver, Jr.", with a long, sweeping flourish extending to the right.

Thomas F. Caver, Jr., P.E.  
Deputy Director of Civil Works

United States Government Accountability Office

**GAO**

**Testimony**

**Before the Subcommittee on Energy and  
Resources, Committee on Government  
Reform, House of Representatives**

For Release on Delivery  
Expected at 2:00 p.m. EST  
Wednesday, March 15, 2006

**CORPS OF ENGINEERS**

**Observations on Planning  
and Project Management  
Processes for the Civil  
Works Program**

**Statement of Anu Mittal, Director  
Natural Resources and Environment**



**G A O**

**Accountability \* Integrity \* Reliability**





Highlights of GAO-06-529T, a testimony before the Subcommittee on Energy and Resources, Committee on Government Reform, House of Representatives

## Why GAO Did This Study

Through the Civil Works Program, the Corps of Engineers (Corps) constructs, operates, and maintains thousands of civil works projects across the United States. The Corps uses a two-phase study process to help inform congressional decision makers about civil works projects and determine if they warrant federal investment. As part of the process for deciding to proceed with a project, the Corps analyzes and documents that the costs of constructing a project are outweighed by the benefits. To conduct activities within its civil works portfolio, the Corps received over \$5 billion annually for fiscal years 2005 and 2006.

During the last 4 years, GAO has issued five reports relating to the Corps' Civil Works Program. Four of these reports focused on the planning studies for specific Corps' projects or actions, which included a review of the cost and benefit analyses used to support the project decisions. The fifth report focused on the Corps management of its civil works appropriation accounts. For this statement, GAO was asked to summarize the key themes from these five studies.

GAO made recommendations in the five reports cited in this testimony. The Corps generally agreed with and has taken or is taking corrective action to respond to these recommendations. GAO is not making new recommendations in this testimony.

[www.gao.gov/cgi-bin/getrpt?GAO-06-529T](http://www.gao.gov/cgi-bin/getrpt?GAO-06-529T).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Anu Mittal at (202) 512-3841 or [mittala@gao.gov](mailto:mittala@gao.gov).

## CORPS OF ENGINEERS

### Observations on Planning and Project Management Processes for the Civil Works Program

#### What GAO Found

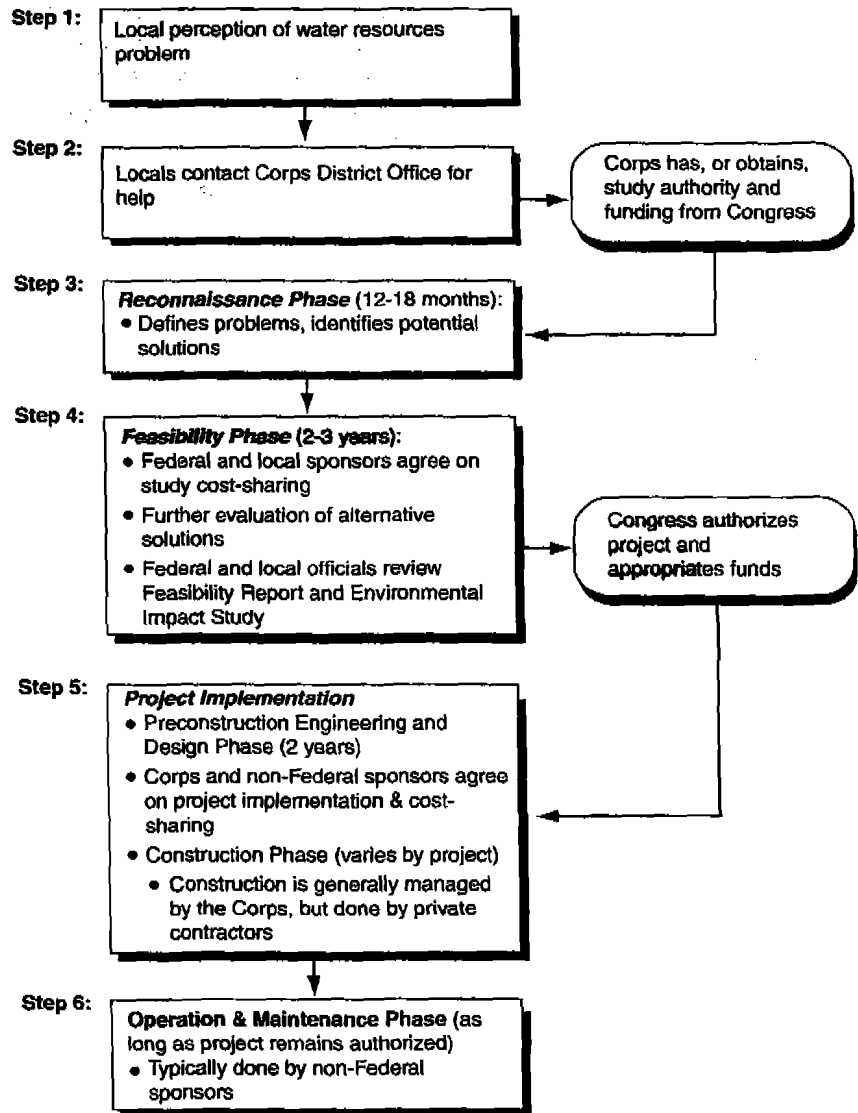
GAO's recent reviews of four Corps civil works projects and actions found that the planning studies conducted by the Corps to support these activities were fraught with errors, mistakes, and miscalculations, and used invalid assumptions and outdated data. Generally, GAO found that the Corps' studies understated costs and overstated benefits, and therefore did not provide a reasonable basis for decision-making. For example:

- For the Delaware Deepening Project, GAO found credible support for only about \$13.3 million a year in project benefits compared with the \$40.1 million a year claimed in the Corps' analysis.
- For the Oregon Inlet Jetty Project, GAO's analysis determined that if the Corps had incorporated more current data into its analysis, benefits would have been reduced by about 90 percent.
- Similarly, for the Sacramento Flood Control Project, GAO determined that the Corps overstated the number of properties protected by about 20 percent and used an inappropriate methodology to calculate the value of these protected properties.

In addition, the Corps' three-tiered internal review process did not detect the problems GAO uncovered during its reviews of these analyses, raising concerns about the adequacy of the Corps' internal reviews. The agency agreed with GAO's findings in each of the four reviews. For three projects the Corps has completed a reanalysis to correct errors or is in the process of doing so; it decided not to proceed with the fourth project.

GAO's review of how the Corps manages its appropriations for the civil works program found that instead of an effective and fiscally prudent financial planning, management, and priority-setting system, the Corps relies on reprogramming funds as needed. While this just-in-time reprogramming approach can provide funds rapidly to projects that have unexpected needs, it has also resulted in many unnecessary and uncoordinated movements of funds, sometimes for reasons that were inconsistent with the Corps' own guidance. Because reprogramming has become the normal way of doing business at the Corps, it has increased the Corps' administrative burden for processing and tracking such a large number of fund movements. For example, in fiscal years 2003 through 2004 the Corps moved over \$2.1 billion through over 7,000 reprogramming actions. In response to GAO's findings, the Congress directed the Corps to revise its procedures for managing its civil works appropriations, starting in fiscal year 2006, to reduce the number of reprogramming actions and institute more rational financial discipline for the program.

**Figure 1: Major Steps in Developing a Civil Works Project**



Source: GAO presentation of Corps data.

**Reprogramming Authority**

Reprogramming is the shifting of funds from one project or program to another within an appropriation or fund account for purposes other than

Corps to identify any Federal costs incurred, but did not provide guidance on cost sharing, project purposes, and cost of storage.

a. **Storage Costs**

Paragraph h of section II defines actual and updated storage costs. The difference between actual and updated cost of storage is the dollar amount of joint-use project costs that is used to calculate the cost of storage. Actual cost of storage uses the projects joint-use project cost from the final cost allocation reports, which were finalized in the early 1970's. Updated cost of storage uses joint-use project costs that have been inflated to present day values. When cost of storage is calculated, it is primarily based on the joint-use project costs and the percentage of water that is going to be reallocated out of the usable storage in the reservoir. Southwestern Power Administration is paying the actual cost of storage. Tables 18 and 19 detail the actual and updated annual cost of storage as well as the cost sharing responsibilities for recreation and ecosystem restoration, respectively.

**TABLE 18: Federal and Non-Federal Cost Sharing Amounts, Actual Storage Costs**

Reservoir	Annual Cost of Storage	Cost Apportionment		
	Actual Costs <sup>1</sup>	50% Fed/Non Fed	65% Federal	35% Non-Federal
<b>Beaver Lake</b>				
-Conservation Pool Reallocation	\$ 31,000	\$ 15,500	\$ 20,150	\$ 10,850
-Flood Pool Reallocation	41,000	20,500	26,650	14,350
-50/50 Pool Reallocation	36,000	18,000	23,400	12,600
<b>Table Rock Lake</b>				
-Conservation Pool Reallocation	\$ 41,000	\$ 20,500	\$ 26,650	\$ 14,350
-Flood Pool Reallocation	52,000	26,000	33,800	18,200
-50/50 Pool Reallocation	46,000	23,000	29,900	16,100
<b>Bull Shoals Lake</b>				
-Conservation Pool Reallocation	\$ 90,000	\$ 45,000	\$ 58,500	\$ 31,500
-Flood Pool Reallocation	107,000	53,500	69,550	37,450
-50/50 Pool Reallocation	98,000	49,000	63,700	34,300
<b>Norfolk Lake</b>				
-Conservation Pool Reallocation	\$ 35,000	\$ 17,500	\$ 22,750	\$ 12,250
-Flood Pool Reallocation	47,000	23,500	30,550	16,450
-50/50 Pool Reallocation	40,000	20,000	26,000	14,000
<b>Greers Ferry Lake</b>				
-Conservation Pool Reallocation	\$ 63,000	\$ 31,500	\$ 40,950	\$ 22,050
-Flood Pool Reallocation	72,000	36,000	46,800	25,200
-50/50 Pool Reallocation	67,000	33,500	43,550	23,450

<sup>1</sup> Actual costs are sunk costs.

**TABLE 19: Federal and Non-Federal Cost Sharing Amounts, Updated Storage Costs**

Reservoir	Annual Cost of Storage	Cost Apportionment Updated Costs		
	Updated Costs	50% Fed/Non Fed	65% Federal	35% Non-Federal
<b>Beaver Lake</b>				
-Conservation Pool Reallocation	\$ 276,000	\$ 138,000	\$ 179,400	\$ 96,600
-Flood Pool Reallocation	366,000	183,000	237,900	128,100
-50/50 Pool Reallocation	321,000	160,500	208,650	112,350
<b>Table Rock Lake</b>				
-Conservation Pool Reallocation	\$ 554,000	\$ 277,000	\$ 360,100	\$ 193,900
-Flood Pool Reallocation	699,000	349,500	454,350	244,650
-50/50 Pool Reallocation	623,000	311,500	404,950	218,050
<b>Bull Shoals Lake</b>				
-Conservation Pool Reallocation	\$ 1,200,000	\$ 600,000	\$ 780,000	\$ 420,000
-Flood Pool Reallocation	1,430,000	715,000	929,500	500,500
-50/50 Pool Reallocation	1,309,000	654,500	850,850	458,150
<b>Norfolk Lake</b>				
-Conservation Pool Reallocation	\$ 472,000	\$ 236,000	\$ 306,800	\$ 165,200
-Flood Pool Reallocation	635,000	317,500	412,750	222,250
-50/50 Pool Reallocation	550,000	275,000	357,500	192,500
<b>Greers Ferry Lake</b>				
-Conservation Pool Reallocation	\$ 683,000	\$ 341,500	\$ 443,950	\$ 239,050
-Flood Pool Reallocation	785,000	392,500	510,250	274,750
-50/50 Pool Reallocation	732,000	366,000	475,800	256,200

\$1.250M  
Est. average  
annually

**b. Hydropower Revenues Foregone**

When the Corps reallocates storage for municipal and industrial water supply the water supply user pays the higher of **hydropower benefits foregone**, **hydropower revenues foregone**, **hydropower replacement cost**, **flood control benefits foregone**, or **the updated cost of storage**, Little Rock District projects are usually governed by the **updated cost of storage**. Hydropower revenues foregone are based on the current rates of the marketing agency, which in the case of White River Minimum Flows is the Southwestern Power Administration (SWPA). At the time that the Hydropower Analysis Center wrote its report, *White River Basin Projects White River, Arkansas and Missouri, White River Minimum Flow Study, Power Benefits Foregone Due To Storage Reallocation, August 2003*, the rates that were in effect were from 01 January 2002 and were:

Energy Charge: 7.00 mill/kWh  
Capacity Charge: \$30.72/kW-year

The energy charge would be applied to the average annual energy losses and the capacity charge would be applied to the loss in marketable capacity. The first value, energy charge, is the charge applied to the annual energy losses from the reallocation of storage. The second value, capacity charge, is applied to the capacity losses the

ENC. 7



**DEPARTMENT OF THE ARMY  
Little Rock and Tulsa Districts, Corps of Engineers  
Commerce on McClellan-Kerr Arkansas River Navigation System  
2007**

THE FOLLOWING IS A STATEMENT OF TONNAGES TRANSPORTED ON THE MCCLELLAN-KERR ARKANSAS RIVER NAVIGATION SYSTEM IN 2004. THE FIGURES FURNISHED HEREON ARE PRELIMINARY ESTIMATES ONLY AND ARE SUBJECT TO CHANGE. OFFICIAL STATISTICS ON WATERBORNE COMMERCE ON THE MCCLELLAN-KERR ARKANSAS RIVER NAVIGATION SYSTEM ARE PUBLISHED ANNUALLY IN "WATERBORNE COMMERCE OF THE UNITED STATES, PART 2." THIS PUBLICATION IS SOLD BY THE DISTRICT ENGINEER, NEW ORLEANS DISTRICT, CORPS OF ENGINEERS, P.O. BOX 60267, NEW ORLEANS, LA 70160.

**TONNAGE**

	<u>INBOUND</u>	<u>OUTBOUND</u>	<u>INTERNAL</u>	<u>THROUGH</u>	<u>MONTHLY TOTAL</u>
JAN	295300	373005	184129	54740	907174
FEB	304950	353369	258956	45080	962355
MAR	501900	553275	380296	48300	1483771
APR	442093	440469	304606	35420	1222588
MAY	323765	382076	196401	16100	918342
JUN	261203	305156	231720	25760	823839
JUL	141196	180009	89105	22540	432850
AUG	417624	428330	328511	20980	1195445
SEP					
OCT					
NOV					
DEC					
<b>Total</b>	<b>2688031</b>	<b>3015689</b>	<b>1969724</b>	<b>268920</b>	<b>7942364</b>
<b>% Change</b>	<b>-10</b>	<b>-15</b>	<b>-30</b>	<b>-14</b>	<b>-18</b>

1. INBOUND - TRAFFIC TERMINATING AT POINTS ON THE MCCLELLAN-KERR ARKANSAS RIVER NAVIGATION SYSTEM THAT ORIGINATED FROM POINTS OFF OF THE WATERWAY.
2. OUTBOUND - TRAFFIC ORIGINATING AT POINTS ON THE MCCLELLAN-KERR ARKANSAS RIVER NAVIGATION SYSTEM DESTINED FOR POINTS OFF THE WATERWAY.
3. INTERNAL - TRAFFIC ORIGINATING AND TERMINATING AT POINTS ON THE MCCLELLAN-KERR ARKANSAS RIVER NAVIGATION S
4. THROUGH - TRAFFIC ENTERING THE WATERWAY DESTINED FOR POINTS ON THE UPPER WHITE RIVER; AND ORIGINATING ON THE UPPER WHITE RIVER DESTINED FOR POINTS OFF THE WATERWAY.

**TONNAGE**

**MINERALS**



**DEPARTMENT OF THE ARMY  
Little Rock and Tulsa Districts, Corps of Engineers  
Commerce on McClellan-Kerr Arkansas River Navigation System  
2006**

THE FOLLOWING IS A STATEMENT OF TONNAGES TRANSPORTED ON THE MCCLELLAN-KERR ARKANSAS RIVER NAVIGATION SYSTEM IN 2004. THE FIGURES FURNISHED HEREON ARE PRELIMINARY ESTIMATES ONLY AND ARE SUBJECT TO CHANGE. OFFICIAL STATISTICS ON WATERBORNE COMMERCE ON THE MCCLELLAN-KERR ARKANSAS RIVER NAVIGATION SYSTEM ARE PUBLISHED ANNUALLY IN "WATERBORNE COMMERCE OF THE UNITED STATES, PART 2." THIS PUBLICATION IS SOLD BY THE DISTRICT ENGINEER, NEW ORLEANS DISTRICT, CORPS OF ENGINEERS, P.O. BOX 60267, NEW ORLEANS, LA 70160.

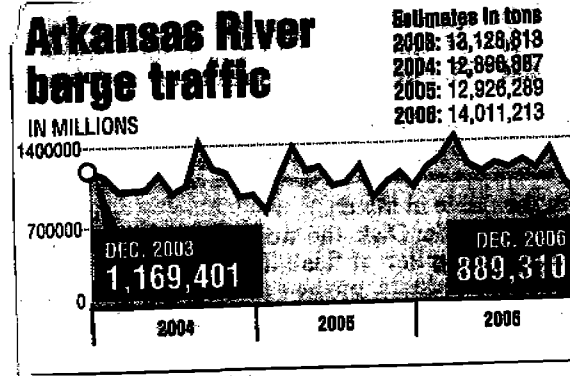
TONNAGE

	INBOUND	OUTBOUND	INTERNAL	THROUGH	MONTHLY TOTAL
JAN	344150	452871	302857	65790	1165668
FEB	391750	419398	382573	54180	1247901
MAR	483346	568324	314597	58050	1424317
APR	445200	396982	297686	42570	1182438
MAY	349460	368771	375645	19350	1113226
JUN	333000	468688	352632	30960	1185280
JUL	303095	454691	360599	27090	1145475
AUG	345000	431166	418736	15480	1210382
SEP	338560	438783	348576	7740	1133659
OCT	423750	458516	412339	3870	1298475
NOV	308750	417285	265827	23220	1015082
DEC	287405	372235	190970	38700	889310
<b>TOTALS</b>	<b>4353466</b>	<b>5247710</b>	<b>4023037</b>	<b>387000</b>	<b>14011213</b>
% CHANGE	10	19	-4	9	8

1. INBOUND - TRAFFIC TERMINATING AT POINTS ON THE MCCLELLAN-KERR ARKANSAS RIVER NAVIGATION SYSTEM THAT ORIGINATED FROM POINTS OFF OF THE WATERWAY.
2. OUTBOUND - TRAFFIC ORIGINATING AT POINTS ON THE MCCLELLAN-KERR ARKANSAS RIVER NAVIGATION SYSTEM DESTINED FOR POINTS OFF THE WATERWAY.
3. INTERNAL - TRAFFIC ORIGINATING AND TERMINATING AT POINTS ON THE MCCLELLAN-KERR ARKANSAS RIVER NAVIGATION S
4. THROUGH - TRAFFIC ENTERING THE WATERWAY DESTINED FOR POINTS ON THE UPPER WHITE RIVER; AND ORIGINATING ON THE UPPER WHITE RIVER DESTINED FOR POINTS OFF THE WATERWAY.

TONNAGE

MONTH	IRON & STEEL	CHEMICAL FERT	OTHER CHEMICALS	PETROL PROD	COAL & COKE	SAND/GRAV & ROCK	MINERALS & BLDG MTLs	WHEAT	SOY-BEANS	FOOD/FARM PRODUCTS	Manufactured Equip/Mac	MISC	MONTHLY TOTAL
JAN	115200	122101	13200	26000	57600	482237	58500	70080	128900	83400	3000	5450	1165668
FEB	111650	190018	12800	33800	62000	493123	59000	67760	129150	85100	0	3500	1247901
MAR	132046	203023	6400	29100	126204	554447	63100	108685	129152	64500	1410	6250	1424317
APR	157350	251434	14200	13400	37800	477425	44900	76929	59800	43800	2650	2750	1182438
MAY	160510	120421	16400	34600	19600	546295	76400	29000	73900	34250	600	1250	1113226
JUN	117200	135578	12000	77500	32300	569632	53000	88720	62000	30050	3900	3400	1185280
JUL	119160	127801	10600	31100	32200	547899	50900	121080	45500	54850	1235	3150	1145475
AUG	145400	140456	16100	37200	16800	598986	51900	100160	27000	73650	30	2700	1210382
SEP	153500	101273	10000	21700	50400	604776	62700	57280	28800	40650	880	1700	1133659
OCT	149500	150581	8600	75250	65300	632054	45100	47240	73900	49200	100	1650	1298475



## SYLLABUS

After the McClellan-Kerr Arkansas River Navigation System was placed into operation, land owners along the river began filing damage claims alleging the Government had increased flood damages. These claims were processed and many were denied. With additional claims experience, lawyers and the courts changed the basis of the claims from induced flood damages to taking of land by the Government without compensation. (This is prohibited by the United States Constitution.) This resulted in more claims being won by the plaintiffs. A claim for 3 acres of river bank land (residential lots) was recently settled for \$120,000.

Hydrologic and hydraulic studies were performed to determine if the flood control reservoirs and the navigation locks and dams were causing increased duration and/or frequency of flooding. This study, between 1986 and 1988, indicated that the McClellan-Kerr Arkansas River Navigation System has increased the duration and/or frequency of flooding.

The hydrologic, hydraulic, and real estate studies identified approximately 49,410 acres of land that are subjected to increased duration and/or frequency of flooding which are not under easement.

Future without project condition is assumed to be the following scenario. Claims will be filed and paid on lands not under easement including one hundred percent of the land within the proposed perpetual right to permanently flood easements and 50 percent of the land within the proposed perpetual right to occasionally flood easements. The total claims which are predicted to be filed is estimated to be \$57,346,000 (undiscounted) or \$3,949,000 annually.

This report analyzes three alternatives to correct this problem. The alternatives are as follows.

1. Reduce Arkansas River flows to stay within existing easements.
2. Obtain additional easements on all lands identified as subjected to increased duration and/or frequency of flooding based on a perpetual right to permanently flood easement below the maximum allowable pool at the dam and the 70,000 cfs flow profile.
3. Obtain additional perpetual right to permanently flood easement on approximately 49,410 acres which have been identified as subjected to increased duration and/or frequency of flooding from flood control operations and effects of navigation locks and dams which are not under easement.



US Army Corps  
of Engineers  
Little Rock District

---

# ARKANSAS RIVER LAND IMPACT STUDY

LETTER REPORT AND ENVIRONMENTAL ASSESSMENT  
JANUARY 1990

En-12





**DEPARTMENT OF THE ARMY**  
**U.S. ARMY CORPS OF ENGINEERS**  
441 G ST. NW  
WASHINGTON, D.C. 20314-1000

REPLY TO  
ATTENTION OF:

SEP 14 2007

Southwestern Division  
Regional Integration Team

Mr. Jim Wood, Chairman  
Arkansas River Study Committee  
Arkansas Wildlife Federation  
56 Delaware Bay Road  
Dardanelle, AR 72834

Dear Mr. Wood:

This letter is in response to your June 16, 2006 Information Quality Act (IQA) Petition regarding the McClellan-Kerr Arkansas River Navigation System (MKARNS) project. I apologize for the tardiness of this response. Please be assured that a dedicated team from all levels of the US Army Corps of Engineers (USACE) was consulted in developing this response.

Your June 16, 2006 petition (attached) challenges and requests correction of the USACE findings, accounting methodology, National Environmental Policy Act (NEPA) compliance, narrative conclusions and accuracy of data relied upon to develop the "McClellan-Kerr Arkansas River Navigation Study Final Environmental Impact Statement and McClellan-Kerr Arkansas River Navigation System Final Feasibility Report and Record of Decision Arkansas River Navigation Study McClellan-Kerr Arkansas River Navigation System Arkansas and Oklahoma and Record of Decision signed 27 September 2005 by MG Don Riley, Director of Civil Works." The items for which you requested corrective action through the IQA are discussed below.

Your petition includes a number of claims that appear to challenge the project itself, and primarily addresses procedural aspects of the project. The claims do not clearly and specifically identify data that are incorrect. Additionally it is not clear how you think the data used to develop the report is inaccurate and how you think it should be corrected. Nevertheless, we have attempted to identify specific data quality matters as well as to address your procedural questions here as a courtesy. We note that we have responded to some of these same queries within the context of prior correspondence with you on this topic. As discussed in the Office of Management and Budget's (OMB) government-wide information quality guidelines, the request for correction process is not designed to create duplicative and parallel processes.

In your first claim, you state that the USACE violated the "DQA 'objectivity' requirement" because it "cooked the NEPA process" to justify the authorized decision. You based this on your claim that the USACE reversed an earlier decision and combined "non-related studies into a single action" thereby violating NEPA.

The Arkansas River Navigation Study, Arkansas and Oklahoma, Feasibility Study and supporting Environmental Impact Statement (EIS) were authorized through a Resolution by the Committee on Public Works and Transportations of the United States House of Representatives, dated 11 March 1982, referred to as the Arkansas River Basin Authority. Additional language was included in Section 136 of the Energy and Water Development Appropriations Act of 2004, which authorized a project depth of 12 feet.

The goal of the study, conducted by the USACE Little Rock and Tulsa Districts (Districts) was to evaluate alternatives to address navigation conditions while improving flood control, hydropower, recreation, and fish and wildlife. The Feasibility study and EIS were developed to address the main objectives of navigation channel maintenance, flow management, and channel depth. Alternatives were developed that included an array of project features and components for each objective. Exhibit 1, attached to this response, provides a description and display of each alternative. While the 12 foot channel (Alternative E, which also included Channel Maintenance and Flow Management features) was ultimately recommended, that recommendation was based on a detailed analysis that strived to maximize net project benefits. Note that the Little Rock District also addressed your concerns regarding the impact of the language in the Appropriations Act on the planning process in the Little Rock District's 6 January 2004 response to your 3 December 2003 letter.

The Arkansas River Navigation Study, Arkansas and Oklahoma, Feasibility Study and supporting EIS was conducted in a manner which was objective and responsive to public input. Early in the process it was determined that the study would be conducted in separate phases: Phase I would examine how to reduce flooding and expand the navigation season in a balanced manner against the existing project purposes; and Phase II would investigate channel deepening and widening. Comments received from the public, including your organization, during the scoping process suggested that the two phases should be combined into one comprehensive study to capture cumulative impacts of both phases. The Project Delivery Team reviewed the suggestions and agreed that a single comprehensive study would better address the cumulative impacts of both phases. The determination that both phases and the existing channel maintenance into a single comprehensive study reflects the objectivity and transparency of the Corps process in developing the Feasibility Study and EIS.

Your second claim is that the Corps failed the IQA objectivity test by "shift[ing] step #6 of COE Planning Principles up to front of the Study", and "selecting only the pre study authorized 12' channel Plan/alternative at beginning of MKARNS studies".

As you indicated, the USACE Planning Process, as described in Engineering Regulation 1105-2-100, includes six steps: Problem Identification; Inventory and Forecast Conditions; Formulation of Alternatives; Evaluate Alternatives; Compare Alternatives; and Selecting a Plan. The Districts conducted the planning process for the study as follows:

**Problem Identification:** The Feasibility report identified the current problems associated with flow management; channel depth and width; and channel maintenance.

**Inventory and Forecast Conditions:** Described the existing operations, features and conditions of the MKARNS system. Documented the future without project conditions to form a baseline for analysis of effects.

**Formulation of Alternatives:** The formulation of alternatives began by identifying features and components within each feature that met the planning objective of providing a safe, reliable, efficient, and sustainable navigation channel. Alternative formulation was started by identifying potential measures to achieve the study purpose and subjecting them to a screening process that resulted in the selection of viable components that make up the alternatives for detailed analysis.

**Evaluate Alternatives:** Preliminary analysis included various options (features and components) to address each objective of the study, which were then screened down to the viable alternatives. Alternatives were developed with structural and non-Structural measures to address the main objectives of navigation channel maintenance, flow management, and channel depth.

**Compare Alternatives:** Ultimately five alternatives were analyzed. These include the No Action (Alternative A - maintenance dredging and disposal in areas approved in the 1974 O&M Plan); Maintenance Only (Alternative B which equated to the No Action plus new disposal sites – this alternative was deemed the baseline for which all other alternatives were compared); Maintenance & Flow Management (Alternative C); Maintenance, Flow Management and a Channel Depth of 11 feet (Alternative D); and Maintenance, Flow Management and a Channel Depth of 12 feet (Alternative E).

Detailed information for these alternatives was developed to compare cost with the effectiveness to achieve the desired goals of the study. Analysis included a comparison of environmental effects and required actions to avoid, minimize, or mitigate for any potential adverse effects.

**Selecting a Plan:** The plan that reasonably maximizes net national economic benefits consistent with the study objective is identified as the NED plan. The analysis in the study documented that Alternative E produced the higher annual net benefits when compared to costs and was selected as the Recommended Plan.

The Districts evaluated each of the six steps in the Planning Process throughout the study, in the order required by Engineering Regulation 1105-2-100. While it is true that during the study, Congress enacted authorization language in 2004 for a 12' channel depth, that authorization did not alter the process of formulating and evaluating alternatives, the order of consideration, nor the results of the evaluation. This issue was also addressed in the USACE Directorate of Civil Works 8 March 2004 response to your 10 December 2003 letter.

Moreover, the Districts began the study of the Arkansas River, in 2000 to address the problems, needs and opportunities relating to channel maintenance, flow management and channel depth. The study was already underway when Congress authorized a channel depth to 12 feet.

Your third claim appears to raise three questions: the accuracy, reliability, and transparency of the USACE evaluation of costs and benefits based on the Districts statement that the Benefit-to-Cost Ratio is incalculable; the objectivity of the benefit cost analysis because it relies on undocumented assumptions that private port owners will dredge and deepen their facilities; and that the Corps failed to evaluate the No Action Alternative in order to establish an accurate baseline from which to measure other alternatives.

As an initial matter, the values used for calculating the costs and benefits of the alternatives were objectively developed. For example, the Districts utilized the SUPER model for its analysis of the flow regime. The SUPER model is a USACE model that is an industry standard tool, which considers period of record data, collected at the navigation operating facilities to model reservoir routing scenarios. Additionally, the economic analysis included forecasts of the shipping activities of the Navigation industry based on the Tennessee Valley Administration (TVA) barge costing model, which is also an industry standard tool. The TVA model was used for analysis of commodities and growth rates. In addition the Project Delivery Team compared its analysis against studies and analyses conducted on other Navigation waterways. For a complete explanation of the costs and benefits please review the Economics appendix to the Feasibility study.

Use of the term "incalculable" was meant to explain a mathematical conundrum of dividing substantial benefits by no cost for the Flow Management portion of the study. While the term may have confused some people, it is accurate. The Flow Management benefits can be accomplished at no cost, because benefits expected from adjusting the high and low water levels can be accomplished with minor operational changes. As a part of normal project operations District staff make adjustments to the water flow on a daily basis using an established water control curve. The change in flow management contemplated in the study would merely involve using a new water control curve and adjusting flow on a daily basis to the new curve. The same flow management cost and benefit values were used in the evaluation of all alternatives. For transparency, the study broke out the Flow Management portion of the benefit cost analysis for each of the alternatives to allow the reader to see exactly where costs and benefits were derived.

You raised a concern that the Districts' analysis relied on undocumented assumptions based on some port owners indicating that they were not going to deepen their ports which you further perceived to be included in determining the benefit and cost analysis. The Districts conducted a formal survey of Port owners through mailings and follow-up phone calls. The surveys were developed within the guidelines developed by the OMB for the collection of USACE planning data. Based on the feedback received, only the ports which indicated they would make modifications were included in the analysis. Those port operators who stated that they would not deepen their port facilities were not used to calculate deepening benefits. It is also important to note that the costs of deepening the ports, which are not a federal cost, were included as associated non-Federal costs in the benefit-cost calculations. A full description of the economic analysis conducted for the study can be found in Appendix B of the Feasibility study.

The original No Action Alternative, Alternative A, was determined to not be a viable option, because it lacked dredged material disposal capacity for the existing , no action, channel

maintenance activities. Alternative B was developed, with sufficient dredged material disposal capacity, as the baseline alternative from which to compare and measure the other alternatives. Alternative B, as such, is the only feasible no action alternative. Alternative B carries out the channel maintenance and dredging activities described in the 1974 Operations and maintenance Plan in existing and new disposal sites.

Comparison of the remaining alternatives to Alternative B, was conducted in a transparent and reproducible manner. Alternative C included channel maintenance and the flow management components. That alternative only included an operational change beyond Alternative B. That operational change would allow the system to be used more efficiently through manipulating the flows of the MKARNS to maximize the amount of days that the navigation industry can operate, which derive the majority of the benefits claimed. There were no construction or implementation costs, only operational activities which would be incurred as part of the normal Operations and Maintenance budget.

Alternatives D and E included the channel maintenance and flow management components and added a channel depth component. Alternative D was the 11 foot channel depth and Alternative E was channel depth to 12 feet. The cost benefit analysis was presented in displays (see Exhibits 2 and 3, attached) that broke out the costs and benefits for each component of the study. The cost benefit analysis for each component was shown separately to improve transparency and reproducibility, and to better show where the costs and benefits came from and how they compared to Alternative B.

Your fourth claim indicated that charging \$700 for a paper copy limited access to the documents, and was not in accordance with NEPA Public Involvement requirements and "fail[ed] DAQ accuracy of dissemination information test".

We acknowledge that printing cost are very high, and that we had a limited budget restricting the number of printed copies. That is why we offered free copies of the Feasibility Study and EIS on CD's as well as making them available free of charge on the Little Rock District's Internet site. We also made printed copies available at twenty-four area libraries. Additional rationale was provided to you in the Little Rock District's email response, dated 13 October 2005.

Your fifth and last claim questions the transparency and completeness of the mitigation plan contained in the Draft EIS and Feasibility Study.

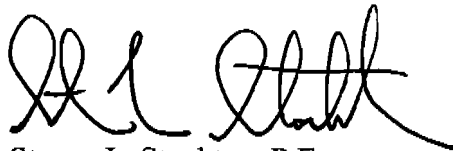
The aquatic mitigation plan is designed to avoid, minimize, or restore the environmental impacts of the project. The plan was designed in coordination with the USFWS, the Arkansas Game and Fish Commission, and the Oklahoma Department of Wildlife and Conservation. There were also a variety of venues for public input. Indeed, the aquatic mitigation plan was not finalized when the Draft Feasibility study and EIS were released for public review. However, two additional public meetings were held during the public review period and prior to distribution of the Final report, to discuss the aquatic mitigation plan. The finalized aquatic mitigation plan was included in the documents when they were submitted for final review in August 2005.

The aquatic mitigation plan explicitly acknowledges the uncertainty and variability associated with water resource planning. For that reason, although the mitigation plan identifies actions required in the face of expected adverse impacts, it is expected that the mitigation plan will develop over time in response to unanticipated effects. Furthermore, an important component of the aquatic mitigation plan is monitoring and adaptive management. Adaptive management is an accepted technique for ecosystem restoration activities that promotes flexible decision making, and allows for adjustment as new information becomes available, to better achieve the desired mitigation goals and ensure success. As part of the Adaptive Management plan, a Committee has been developed to review the implementation of the project. The public is welcome to observe and comment on the process.

I have reviewed your requests for correction and have not identified any information in need of correction in the questioned documents: "McClellan-Kerr Arkansas River Navigation Study Final Environmental Impact Statement and McClellan-Kerr Arkansas River Navigation System Final Feasibility Report and Record of Decision Arkansas River Navigation Study McClellan-Kerr Arkansas River Navigation System Arkansas and Oklahoma and Record of Decision signed September 27, 2005 by MG Don Riley, Director of Civil Works.

You have the right to appeal to the Department of the Army Chief Information Officer (CIO) if you disagree with this determination. Your appeal must be in writing and filed within 30 working days of notification of this determination. The appeal should be sent to Mr. Wilbert Berrios, CIO, U.S. Army Corps of Engineers, 441 G Street, N.W. Washington, D.C., 20314-1000, for review and forwarding to the Department of the Army CIO. The Army CIO will advise you directly of his appeal decision.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. L. Stockton', written in a cursive style.

Steven L. Stockton, P.E.  
Deputy Director of Civil Works

Enclosures

**Exhibit 1**

Table E-5, Executive Summary, Arkansas River Navigation Study Final Feasibility Study.  
(August 2005)

<b>Table E-5. Components of Decision Alternatives</b>				
	<b>Navigation Channel Maintenance*</b>	<b>Flow Management Operations Only</b>	<b>Navigation Channel Deepening 11 Ft.</b>	<b>Navigation Channel Deepening 12 Ft.</b>
<b>Alternative A</b> No Action (Dredge disposal sites approved in 1974)	X			
<b>Alternative B</b> Maintenance Only (New dredge disposal sites including those in-stream)	X			
<b>Alternative C</b> Maintenance & Ops Only Flow Management	X	X		
<b>Alternative D</b> Maintenance & Ops Only Flow Management & 11 Foot Navigation Channel	X	X	X	
<b>Alternative E</b> Maintenance & Ops Only Flow Management & 12 Foot Navigation Channel	X	X		X
<p>* Navigation channel maintenance activities would occur in the same manner under Alternatives B, C, D, and E. The Navigation channel depth to be maintained would be 9 feet for Alternatives A, B and C, 11 feet for Alternative D, and 12 feet for Alternative E.  <i>Source: USACE 2005</i></p>				

**Exhibit 2**

Table E-7, Executive Summary, Arkansas River Navigation Study Final Feasibility Study.  
(August 2005)

<b>Table E-7. Summary of Incremental Net Benefits and Costs</b>			
<b>Alternative D</b>			
<b>Average Annual Equivalent Values (July 2004 \$)</b>			
<b>5.375% Discount Rate, 50-year Period of Analysis</b>			
	<b>Flow Management Operations</b>	<b>Channel Deepening 11'</b>	<b>Alternative D</b>
Period of Analysis (years)	50	50	
Construction Period (years)	1	4	
Interest Rate (percent)	5.375%	5.375%	
<b>Project First Costs<sup>1</sup></b>	<b>\$0</b>	<b>\$123,356,100</b>	<b>\$123,356,100</b>
Interest During Construction	0	13,568,500	\$13,568,500
Associated Non-Federal Requirements:			
Local Facilities	0	530,000	\$530,000
Local Facilities IDC	0	58,300	\$58,300
<b>Total Project Cost</b>	<b>\$0</b>	<b>\$137,512,900</b>	<b>\$137,512,900</b>
<b>Annual Costs:</b>			
Interest	0	\$7,391,300	\$7,391,300
Amortization	0	581,800	\$581,800
Operations & Maintenance	0	2,234,100	\$2,234,100
<b>Total Annual Costs</b>	<b>\$0</b>	<b>\$10,207,200</b>	<b>\$10,207,200</b>
<b>Annual Benefits<sup>2</sup>:</b>			
Navigation	8,372,100	10,173,500	\$18,545,600
Recreation	0	0	\$0
Hydropower	466,000	0	\$466,000
Non-Ag. Property Damage			
Oklahoma	0	0	\$0
Arkansas	(\$17,100)	0	(\$17,100)
Recreation Facilities OK	(\$5,500)	0	(\$5,500)
Recreation Facilities AR	4,000	0	\$4,000
Ag. Property Damages			
Oklahoma	0	0	\$0
Arkansas	(\$18,800)	0	(\$18,800)
<b>Total Annual Benefits</b>	<b>\$8,800,700</b>	<b>\$10,173,500</b>	<b>\$18,974,200</b>
Incremental Net Benefits for Components	\$8,800,700	(\$33,700)	
<b>Incremental Net Benefits for Alt. D over Alt. B</b>			<b>\$8,767,000</b>
Incremental Benefit-to-Cost Ratio for Components	incalculable	0.99	
<b>Benefit-to-Cost Ratio for Alt. D over Alt. B</b>			<b>1.9</b>
<sup>1</sup> Incremental Costs - costs in addition to those existing under Alternative B.			
<sup>2</sup> Incremental Benefits - benefits in addition to those existing under Alternative B.			
Source: USACE, Tulsa and Little Rock Districts, Hydropower Analysis Center, Parsons.			



**Exhibit 3**

Table E-8, Executive Summary, Arkansas River Navigation Study Final Feasibility Study.  
(August 2005)

<b>Table E-8. Summary of Incremental Net Benefits and Costs</b>			
<b>Alternative E</b>			
<b>Average Annual Equivalent Values (July 2004 \$)</b>			
<b>5.375% Discount Rate, 50-year Period of Analysis</b>			
	<b>Flow Management Operations</b>	<b>Channel Deepening 12'</b>	<b>Alternative E</b>
Period of Analysis (years)	50	50	
Construction Period (years)	1	4	
Interest Rate (percent)	5.375%	5.375%	
<b>Project First Costs<sup>1</sup></b>	<b>\$0</b>	<b>\$148,966,200</b>	<b>\$148,966,200</b>
Interest During Construction	0	16,385,400	\$16,385,400
Associated Non-Federal Requirements:			
Local Facilities	0	961,200	\$961,200
Local Facilities IDC	0	105,700	\$105,700
<b>Total Project Cost</b>	<b>\$0</b>	<b>\$166,418,500</b>	<b>\$166,418,500</b>
<b>Annual Costs:</b>			
Interest	0	\$8,945,000	\$8,945,000
Amortization	0	704,100	\$704,100
Operations & Maintenance	0	2,823,700	\$2,823,700
<b>Total Annual Costs</b>	<b>\$0</b>	<b>\$12,472,800</b>	<b>\$12,472,800</b>
<b>Annual Benefits<sup>2</sup>:</b>			
Navigation	8,372,100	\$13,482,600	\$21,854,700
Recreation	0	0	\$0
Hydropower	466,000	0	\$466,000
Non-Ag. Property Damage			
Oklahoma	0	0	\$0
Arkansas	(\$17,100)	0	(\$17,100)
Recreation Facilities OK	(\$5,500)	0	(\$5,500)
Recreation Facilities AR	4,000	0	\$4,000
Ag. Property Damages			
Oklahoma	0	0	\$0
Arkansas	(\$18,800)	0	(\$18,800)
<b>Total Annual Benefits</b>	<b>\$8,800,700</b>	<b>\$13,482,600</b>	<b>\$22,283,300</b>
<b>Incremental Net Benefits for Components</b>	<b>\$8,800,700</b>	<b>\$1,009,800</b>	
<b>Incremental Net Benefits for Alt. E over Alt. B</b>			<b>\$9,810,500</b>
<b>Incremental Benefit-to-Cost Ratio for Components</b>	<b>incalculable</b>	<b>1.08</b>	
<b>Benefit-to-Cost Ratio for Alt. E over Alt. B</b>			<b>1.8</b>

<sup>1</sup> Incremental Costs - costs in addition to those existing under Alternative B.

<sup>2</sup> Incremental Benefits - benefits in addition to those existing under Alternative B.

Source: USACE, Tulsa and Little Rock Districts, Hydropower Analysis Center, Parsons.

Data Quality Act Petition  
McClellan-Kerr AR River Study

Before the U.S. Department of Defense  
WASHINGTON, DC

Arkansas Wildlife Federation,  
Petitioner,  
v.  
U.S. Army Corps of Engineers  
Agency.

---

PETITION FOR CORRECTION OF INFORMATION

---

To: Dr. Linton Wells  
Chief Information Officer  
Department of Defense  
6000 Defense Pentagon  
Room E3194  
Washington, DC 20301

To: LTG Carl Strock  
Commander US Army Corps of Engineers  
441 G Street, NW  
Washington, DC 20314-1000

To: Dr. John Graham, Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
725 17<sup>th</sup> Street, NW  
Washington, DC 20503

Pursuant to the Data Quality Act of 2000, Section (b) 2(B), the US Office of Management and Budget (OMB) *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies*, and the Deputy Secretary of Defense's Memorandum dated

Data Quality Act Petition  
McClellan-Kerr AR River Study

February 10, 2003, *Ensuring Quality of Information Disseminated to the Public by the Department of Defense*, Arkansas Wildlife Federation hereby requests corrections to specific information, data and conclusions included in the documents entitled *McClellan-Kerr Arkansas River Navigation Study Final Environmental Impact Statement* and *McClellan-Kerr Arkansas River Navigation System Final Feasibility Report and Record of Decision Arkansas River Navigation Study McClellan-Kerr Arkansas River Navigation System Arkansas and Oklahoma, and* Record of Decision signed September 27, 2005 by MG Don Riley, Director of Civil Works.

BACKGROUND INTRODUCTION

Some property owners adjacent to the Arkansas River near Ft. Smith successfully prosecuted flood damage claims against the US Army Corps of Engineers in the 1980's, alleging that the Agency's McClellan-Kerr AR River Navigation System water management regime for controlling upstream flows out of Oklahoma created flooding downstream to lands in AR which resulted in a "takings without compensation" situation to their property in violation of Amendment 5 of the US Constitution. COE responded by developing a AR River Land Impact Study and EA in January 1990 which found operation of MKARNS was impacting to flood more lands and for longer duration than pre project (Enc 1), and 49,410 acres of private lands were being impacted for which COE did not have rights to flood. Barge and Port interests then asked that navigation improvement also be included in the study, primarily limited to analyzing deepening the existing 9' channel to 12'. September 1999 a Reconnaissance Study was completed and Congress appropriated \$1 million to begin the study. Corps concluded that solving

Data Quality Act Petition  
McClellan-Kerr AR River Study

flooding problems called for non-structural flow modifications, which was unrelated to channel depth, and for which COE already had management authority and need not seek additional Congressional approval or authorization. Navigation channel deepening to 12' though was a new structural proposal, thus requiring congressional authorization. Flow Regime and Navigation improvement were to be NEPA documented concurrently as unrelated separate, stand-alone actions, each Phase having it's own EIS and ROD (Enc 2). Flow Regime studies began with a August 23, 2000 NOI (Enc 3) and Navigation Study had a 5-31-02 NOI with the first Navigation Phase scoping meeting in May 2003. Through paid lobbyist (Enc 4), and purchasing congressional influence (Enc 5), navigation interests got earmarked into PL 108-137 (Enc 6) "authorization for construction" of a 3' deeper 12' channel throughout MKARNS while NEPA Process scoping was barely underway. Early modeling and cost accounting working documents reflected unfavorable B/C ratios (ENC 7) while separate flow regime studies were showing \$8.8 million annual benefits at "0" cost. COE declared "lower MS River's authorized 12' channel to be the industry standard" but produces no data evidence to support this assumption. On July 16, 2004 COE issued a Revision of the Scope NOI (Enc 8) combining both studies in a strategy to shift unrelated no-cost flow regime benefits over to improve channel deepening B/C ratios. **On several occasions, during the 5 year Study, AWF formally requested COE institute external independent peer review of MKARNS analysis and also evaluate non-structural navigation improvement alternatives. COE declined both (Enc 9).**

Amendment 5 Constitutional "takings" problem, which Congress originally directed be reviewed, was abandoned. Through cooking/manipulating the NEPA Process, on 7-9-

Data Quality Act Petition  
McClellan-Kerr AR River Study

04, COE combined both flow regime and navigation improvement into a single MKARNS/ Feasibility/EIS Study, and reformulated their analysis under revised alternative screening criteria, that would eliminate all alternative solutions except the already pre study “authorized” 12’ deeper channel, structural alternative, without objectively considering non-structural solutions. COE’s reformulating/combining/ assumption of “0” cost flow regime modification/shifting non related flow regime benefits over to cover channel deepening cost, etc. constitutes a “cook the books” accounting scheme to shift unrelated flow benefits over to justify the already made 12’ channel “authorization.” NEPA/CEQ regulations clarify that Agencies are not to use the NEPA Process to “rationalize or justify decisions already made”, regardless what legal or illegal schemes get worked to produce pre study decisions or authorization. COE manipulation of the NEPA Process fails DQA’s “unbiased” test. Agency’s claim, that “This EIS was prepared in accordance with NEPA” and Engineering Regulations is inaccurate disseminated information that should be withdrawn and corrected.

STANDING

Arkansas Wildlife Federation (AWF) is a non-profit, non-partisan, public interest, activist sportsmen resource organization formed in 1936, and State affiliate of National Wildlife Federation, with a mission to protect and enhance fish and wildlife related resources through citizen action and legal defense. AWF members are users of the AR River resource being affected, and have actively participated in both flow regime and navigation related studies since Reconnaissance Report release and NOI publishing in the Federal Register. AWF and other sportsmen users of MKARNS have been impacted through COE’s public involvement plan that fails to timely and affirmatively involve the

Data Quality Act Petition  
McClellan-Kerr AR River Study

affected public by providing free NEPA and other printed documents. They pursued a strategy to restrict participation by sportsmen users likely to disagree with the Agency by imposing exorbitant \$700 fees for providing essential printed Draft and Final documents for our Committee Members and other sportsmen requesting the same. COE chose to apply the NEPA Process, in a deliberate biased fashion directed toward limiting alternative solutions analyzed to only those that favor navigation/channel deepening interests, while failing to objectively quantify and develop transparent, enforceable fish and wildlife mitigation plans. Charging exorbitant fees for hard copies, they forced those without computers to rely upon CD's, a violation of NEPA/public involvement mandate. COE Conclusion that "This EIS was prepared in accordance with requirements of NEPA" as regards to public involvement review and comment on documents, is inaccurate information and should be corrected.

#### REQUIREMENTS OF DATA QUALITY ACT

The Data Quality Act of 2000 (DQA) was passed by Congress with the objective of "ensuring and maximizing the quality, objectivity, utility and integrity of information disseminated by Federal Agencies." The Department of Defense guidelines for implementing the Data Quality Act require that information disseminated by DOD components meet quality criteria in three areas: utility, objectivity and integrity. Guidelines explain that in terms of "utility" the government component disseminating the information "must consider the usefulness of the information for its reasonable and expected application." Objectivity means that the information should be "presented in an accurate, clear, complete, and unbiased manner and as a matter of substance, is accurate, reliable and unbiased."

## REQUEST FOR CORRECTED INFORMATION

AR Wildlife Federation requests that the Department of Defense withdraw and correct their AR River Navigation Study FEIS, ES.7 Conclusions (Enc 10), at page ES-32 which disseminates false information of fact that “This EIS was prepared in accordance with the requirements of the National Environmental Policy Act, regulations promulgated by President’s Council on Environmental Quality (40 CFR 1500-1508) and US Army Corps of Engineer Regulations at ER 1105-2-100.” And that this corrected information replace language in the FEIS/Final Feasibility Report (Enc 11) and ROD where COE declares MKARNS Navigation Study was developed in compliance with NEPA, Presidents Council on Environmental Quality (40 CFR 1500-1508) Corps of Engineer Policy and Army Regulations. In addition AWF requests that COE issue a letter supplement to their 9-27-05 Record of Decision (Enc 16) declaring that MKARNS Studies were conducted in a manner that failed to comply with NEPA and CEQ’s Public Involvement procedural requirements, and that accounting methodology finding of “0” cost to produce \$8.8 million in flow regime benefits, \$1.08 navigation cost/benefit ratio, and postponing aquatic fish and wildlife habitat mitigation to some unknown/unfunded future process is in non compliance with NEPA, Engineering Regulations and DQA’s “accurate, clear, complete and unbiased” requirement. AWF requests that this letter supplement be provided to all Study participants, Ex Office of the President, Office of Management and Budget, Government Accountability Office and Presidents Council on Env. Quality.

**I. The National Environmental Policy Act at Sec. 102(2)(C)(i), and CEQ regulations at 40 CFR 1502.5 regarding EIS’s state, “The statement shall be prepared early enough so that it can serve practically as an important contribution to the decision-making process and will not be used to rationalize or justify decisions already made.” On 2-6-03, when studies were underway, MKARNS navigation interests**

**employed lobbyist and purchased congressional influence to securing congressional “authorization to construct” a 12’ channel throughout the System. COE followed by modifying and combining two separate stand-alone, previously declared unrelated flow regime/navigation studies (Enc 8). COE engages in a strategy to lead and bias the NEPA Process towards an analysis that favors only the already “authorized” 12’ channel deepening alternative, reversing their 8-23-2000 NOI that combining these non related studies into a single action would violate NEPA. “Cooking” the NEPA Process to justify the “authorized” decision violates NEPA, DQA “objectivity” requirement, and COE Conclusion that the Study was conducted in accordance with NEPA, is inaccurate information and should be corrected.**

The process of deciding to choose MKARNS 12’ channel deepening structural alternative through seeking congressional authorization for the same began before the Navigation Study was even scoped. COE combined and limited alternatives in applying NEPA Process through a biased screening formula designed to develop and limit their finding to justifying a congressionally “authorized” already made decision. The largest barge shipper on MKARNS hired a lobbyist in 2003, and through financial contributions to key House and Senate committee members, interfered to secure Congressional authorization to “construct” a 12’ channel throughout 445 miles of the System, before completion of EIS/Feasibility Studies. Although under no obligation to modify the study, COE arbitrarily decided to combine non-related flow regime study with navigation channel deepening studies, and screen out non-structural solutions, solely to satisfy political and navigation interest “earmark”, and 2003 political interference authorization through PL 108-137. COE’s response to this interference, by biasing the Study to favor special navigation interest, fails DQA “objectivity” test as well as NEPA. Thus, COE declaration that MKARNS studies were developed in compliance with NEPA and Engineering Regulations is inaccurate information, and violates DQA as well. AWF requests that COE correct their Conclusion and ROD information with supplemental language acknowledging that MKARNS NEPA documentation was **not** developed in



accordance with CEQ procedural regulations at 40 CFR 1500-1508, Engineering Regulations or DQA, and that this corrected information be circulated to Study participants, Executive Office of the President, and Office of Management and Budget.

**II. ES.7 Conclusions and ROD states that the Decision was based on consideration of applicable laws, regulations and USACE Policy. USACE ER 1105-2-100, 2-3 The Planning Process, requires 6 consecutive steps be followed (Enc 12), and the last step #6, is Selecting a Recommended Plan. Selecting only the pre study authorized 12' channel Plan/alternative at beginning of MKARNS studies, shifted step #6 of COE Planning Principles up to front of the Study. Regardless how and who bought influence, lobbied or worked unethical schemes to pull off the trick, COE failed DQA "objectivity" test by arbitrarily responding to accommodate special navigation lobby interference by inserting step #6 (selecting a plan) at head of the process and before steps 1-5 are completed. ER 1105-2-100, Chapter 2, f. Step-6 Selecting a Plan states, "The culmination of the planning process is the selection of the recommended plan or the decision to take no action", not COE's strategy to select a plan followed by building a alternative screening analysis/EIS to justify the already made decision. Clearly COE derails "objectivity" and violates their own Planning Principles by pre study "selecting a recommended plan", solely to please lobbyist and political influence purchased by MKARNS navigation interests. EIS Conclusion that these unethical schemes comply with NEPA and Engineering Regulations is inaccurate narrative information that fail DQA's "unbiased, objective" test and should be corrected.**

The Final EIS and ROD claim, that the Study was prepared in accordance with Engineering Regulations (1105-2-100, Chapter 2, Planning Principles), fails DEQ's "accurate, reliable and unbiased" test. Regardless on what basis COE decided to deviate from their Planning Principles, declaration that the Study was prepared in accordance with Engineering Regulations is inaccurate information. AWF requests that MKARNS Final EIS, Feasibility Study and ROD be supplemented with corrected language stating that "the Study was **not** developed in accordance with Engineering Regulations" or Planning Principle step procedures at EP 1105-2-100, Chapter 2, 2-3 and this correction be circulated to Study participants, Ex Office of the President, and OMB.

**III. Accounting methodology used to quantify incremental benefits and costs of the Recommended Alternative E Flow Management fails DQA's "accurate, reliable and unbiased" test. COE provides Cost/Benefit accounting information in the Final Feasibility Report (Enc 13) proclaiming managing flows from MKARNS multitude of tributary water projects annually produce \$8.8 million in benefits at "0" cost. Moreover, declaring that Flow Management Incremental Benefits-to-Cost Ratio for Components is "incalculable" becomes a convoluted contradiction of COE accounting data and lacks transparency. Thus, COE's accounting formula being "incalculable" causes estimated annual \$8.8 million calculated flow management/ regime benefits to be based on imagination, contrary to DQA's "clear, accurate, unbiased and transparent" data requirement. Assuming \$8.8 million annual benefits is unrealistic and fail to account for annual O&M reservoir or flow control costs, nor does it pass DQA's test of "transparency of data and methods that facilitate reproducibility of such information by third parties." An accounting process that is "incalculable" can not possible be relied upon for "accuracy"? In addition, COE \$1.08 incremental benefit-to-cost ratio accounting for the deeper 12' channel fails DQA's "objectivity, accurate and reliable information" test. The B/C calculation relies on undocumented assumption, without evidence, that private MKARNS port owners will dredge and deepen their facilities needed to create the \$1 million annual net benefits (Enc 14). When in fact, some port owners indicated at stakeholder meetings, that they do not intend to incur additional expense of deepening their ports. Moreover many listed ports have deteriorated, and no longer function. COE also fails to analyze No Action cost/benefit data, necessary to establish accurate baseline accounting situations from which to measure cost/benefits of the proposed deeper 12' channel. Their analysis fails to quantify whether the current No Action O&M baseline cost/ benefit ratio of MKARNS overbuilt/unused capacity, is favorable, or in what measure the declared lack of demand problem is attributable to the 9' channel or other unanalyzed logistics problems. Whether, and in what measure, the baseline situation is c/b favorable or unfavorable, is absent but absolutely essential to DQA's "financial and statistical information" needed to produce a "transparent" reproducible product showing that a deeper channel solves lack of demand problems.**

COE's accounting methods that find MKARNS flow regime produces \$8.8 million in benefits at "0" cost fails DQA's "accurate, clear, complete and unbiased" test, given that the many tributary projects in OK alone, that schedule and produce all claimed flow regime benefits, collectively have annual O&M budgets exceeding \$30 million.

Accounting methodology used to support this \$8.8 million level of annual benefits fails DQA's "transparency to be reproduced by a 3<sup>rd</sup> party" test. AWF requests that COE issue a ROD supplemental letter statement withdrawing the projected annual \$8.8 million in

incremental net flow management benefits and further correct this information by acknowledging that total annual cost to produce \$8.8 million in flow management benefits is **not “0”**. Additionally, in order for COE to claim heavier 12’ barge benefits for projected tonnage handled, the MKARNS EIS/Feasibility Study must be supplemented with corrected information listing that each owner has entered into a legal enforceable commitment with COE agreeing to modify their ports to handle the 3’ deeper barges. To correct accounting accuracy, tonnage at 9’ ports, where owners decline to commit to such port deepening agreement, channel deepening benefits attributed to that port must be removed from COE’s benefit/cost accounting formula through a reanalysis. We further request that this corrected accounting information be circulated to study participants, Ex Office of President, and OMB.

**IV. The Conclusion narrative declaration that the Study was conducted in accordance with NEPA is inaccurate, in regards to COE releasing Study documents for public review and comment followed by imposing a fee charge (Enc 15) biased and discouraged public participation by sportsmen and other MKARNS users most likely to disagree with COE trade-off of recreation, fish and wildlife resources. COE released DEIS/FEIS and Feasibility Study soliciting public comment and review, while requiring a \$700 fee charge for providing printed copies, deciding to short change public access to documents by substituting a CD to participants without computers or internet access and placing NEPA copies in selected AR River libraries with 9-5 hours, closed on weekends. Hours that fail to fit most working schedules. MKARNS has broad regional interests to sportsmen far outside the narrow river corridor or libraries. Notwithstanding, participants timely alerted COE that these printed documents were absolutely essential to in-depth review and comment, the Agency continued their exorbitant \$700 charge. COE’s “narrative representation” claim that these NEPA documents were developed in accordance with NEPA Public Involvement and Engineering Regulations is inaccurate and fails DQA accuracy of disseminated information test.**

40 CFR 1502.19 Circulation of EIS provides that “the entire statement shall be furnished to:” (c) Any person, organization, or agency requesting the entire environmental impact statement.” And (d) “In the case of a Final EIS any person,

organization, or agency which submitted substantive comments on the draft.” COE uses an exorbitant \$700 fee charge for these documents as a strategy to discourage and bias public involvement, while including narrative information claiming these NEPA documents were developed in accordance with the NEPA Process. With regard to Public Involvement, COE’s decision to impose high fees for requested documents fails the 40 CFR 1503.1 test of “affirmatively soliciting comments”, and makes it impossible for some reviewers to meet the “Specificity of comments” test at 40 CFR 1503.3. ER 1105-2-100 Public Involvement and Coordination, guidance states, “It is important to develop a strategy that creates relevant, quality public involvement opportunities for those who have, or may have, an interest in the study.” COE strategy is to bias and discourage public involvement through fee charges while declaring in the EIS to have developed the Study in accordance with NEPA. COE’s narrative declaration fails DQA test for information accuracy and should be corrected and revised through a supplemental statement declaring that Public Involvement was not conducted in accordance with the NEPA Process or Engineering Regulations, and this corrected information provided to all Study participants, OMB and Presidents Council on Environmental Quality.

**V. COE’s aquatic habitat mitigation plan for MKARNS EIS fails DQA transparency test, as it relies not upon quantifying existing baseline data from which to measure change, and avoiding or correcting adverse impacts created by 12’ channel deepening, channel scouring and filling off channel wetlands. But instead substitutes for mitigation a confusing, after the fact, unknown, yet to be determined, future monitoring and adaptive management plan (Enc 16). COE fails to produce transparent mitigation data and methods that could be reproduced by a 3<sup>rd</sup> party, under excuse they don’t have time to gather readily available baseline aquatic data. While claiming to meet NEPA mitigation requirements, COE fails to fully develop quantifiable criteria that is “clear, objective and transparent” and with sufficient “completeness” to produce a legally enforceable mitigation plan, as required by NEPA. COE chose to rush past and short-change mitigation in favor of accelerating the Study to a ROD. In addition, they chose to circulate the Draft EIS and**

**Feasibility Study for public review and comment, while acknowledging aquatic mitigation plans were incomplete, an action that fails NEPA's requirement, that the Draft meet the same level of sufficiency and completeness as the Final EIS at 40 CFR 1502.9(a). Thus, declaration that the EIS was developed in accordance with the NEPA Process fails DQA, and further constitutes disseminating information COE knows is inaccurate.**

COE acknowledges their application of NEPA shortchanges aquatic habitat mitigation alleging an exemption under excuse that they don't have time to gather data. Their claim does not excuse DQA compliance. COE established their own study schedule and chose to trade off mitigation, an option for which they are not legally entitled. COE chose to compromise developing a "objective, clear, transparent, 3<sup>rd</sup> party reproducible" aquatic resource mitigation plan, substituting an unknown long-range, after-the-fact, future monitoring/adaptive management process over 50 year life of the project. COE's plan for mitigating adverse impacts fails NEPA's premier requirement that impacts first be avoided where possible. AWF requests COE provide corrected information through a letter supplement to MKARNS ROD, that the aquatic resource mitigation plan was not developed in accordance with the NEPA Process and that copies of this supplemental letter be provided to all Study participants, Ex Office of President, and OMB.

#### CONCLUSION

COE pursued a public involvement strategy that created difficulty for MKARNS sportsmen and recreation users to secure printed NEPA documents needed to fully participate in this \$9.4 million, 5 year Study. Regardless, over this time period AWF timely raised our numerous concerns regarding Agency favoritism toward navigation interference, biased alternative screening processes, accounting methodology, short-changing aquatic mitigation, and had our request for Independent Peer Review rejected. We respectfully submit for review the above five actions AR Wildlife Federation alleges

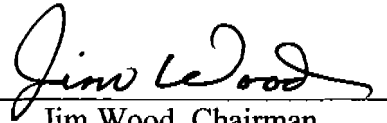
Data Quality Act Petition  
McClellan-Kerr AR River Study

qualify under DQA for Correction of Information.

Respectfully Submitted,

Arkansas Wildlife Federation

By:

A handwritten signature in black ink that reads "Jim Wood". The signature is written in a cursive style and is positioned above a horizontal line.

Jim Wood, Chairman  
AR River Study Committee  
AR Wildlife Federation  
56 Delaware Bay Road  
Dardanelle, AR 72834  
(479) 229-4449