



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

MAR 8 2004

REPLY TO
ATTENTION OF:

Directorate of Civil Works

Mr. Jeff Ruch
Executive Director
Public Employees for Environmental Responsibility
2001 S Street, N.W. – Suite 570
Washington, DC 20009

Dear Mr. Ruch:

This is in response to your August 20, 2003 Data Quality Act Challenge (Encl. 1), concerning the *Monthly Status Report, July 2003, Upper Mississippi River - Illinois Waterway System Navigation Study*, published August 7, 2003 (*2003 July Status Report*) by the Rock Island District. Your complaint concerns the Corps' release of the *2003 July Status Report* and asserts that information in the report relies "on newly created, non-transparent, non-reviewed, proprietary models that themselves use non-reviewed, proprietary economic data, arbitrarily created economic model parameters, uncorrected and biased navigation traffic future forecasts" You have requested that the Report be withdrawn from distribution.

Background

The Upper Mississippi River - Illinois Waterway navigation system consists of 29 locks and dams between St. Louis and the Twin Cities on the Mississippi River and 8 lock facilities on the Illinois River. The U.S. Army Corps of Engineers constructed most of these locks and dams in the 1930s at the direction of Congress and operates these structures as a central national navigation system. Commercial navigation on the lower portion of the Upper Mississippi River has experienced periodic congestion at the locks and dams, slowing transit times and ultimately raising the economic costs associated with shipping.

The impacts of present and future congestion on the economy and welfare of the upper Midwest region and on the nation concerned the Congress which directed the Corps in the 1980's to begin reconnaissance studies to determine if there is a federal interest in making structural and/or non-structural improvements to the Upper Mississippi River system. In 1993 the Corps combined its multiple study efforts and began a single, system-wide feasibility study for both the Upper Mississippi River and Illinois Waterway (UMR-IWW).

Due to controversy surrounding the study, including a 2001 report by the National Research Council (NRC) entitled, *Inland Navigation System Planning: The Upper Mississippi River - Illinois Waterway*, the Corps paused the study and formed a Federal Principals Task Force¹ to provide recommendations for a restructured Study. The Corps restarted the Study in

¹ The Corps also formed a Regional Interagency Work Group comprising regional representation of the five federal agencies on the Federal Principals Task Force to support the Task Force.

August 2001, incorporating some of the recommendations of the NRC and the Federal Principals Task Force. The restructured Study has two primary components to be balanced and harmonized for sustainability: navigation efficiencies and ecosystem restoration.

Throughout the study effort and more extensively since the restart, the Corps has collaborated with many stakeholders representing both navigation and ecosystem interests. These include the Governor's Liaison Committee ("GLC", representing the five upper Midwest states), the Navigation Environmental Coordinating Committee (NECC), the Economic Coordinating Committee (ECC) and the Engineering Steering Committee. The GLC, NECC and ECC are composed of representatives of federal, state and private sector organizations, including environmental non-governmental organizations.

The Corps' July 2002 "*Interim Report for the Restructured Upper Mississippi River – Illinois Waterway System Navigation Feasibility Study*,"² states:

A collaborative process has been applied in restarting the restructured navigation study and preparing the Interim Report. An important aspect of this collaboration is the Federal Principals Group that was established to assist the Corps in formulation of guidance and oversight. In addition to the U.S. Army Corps of Engineers, the Principals Group consists of senior level representatives of the U.S. Department of Agriculture, U.S. Fish and Wildlife Service, Environmental Protection Agency, and the Maritime Administration. . . . Collaboration has also been emphasized on the regional level to include other Federal agencies, state agencies, the public, and economic and environmental non-governmental organizations.

The study process has continued since the Interim Report. Work on the study has involved extensive collaboration and information sharing with the entities identified above and with the public via Study newsletters and monthly status reports. Public meetings to present the progress of the Study to date were held in many cities of the Upper Midwest during the fall of 2003. Input from these public meetings and stakeholders will be used to develop a recommended plan that will be documented in the Draft Feasibility Report, currently scheduled for completion in April 2004. Public meetings are planned for May 2004. See the *Monthly Status Report July 2003* for details of the remaining Study schedule (Enc. 2, pages 20-21).

The monthly status reports are a key, working piece of the collaboration and facilitate stakeholder input into the study process. The Interim Report contained a statement that addressed economic modeling efforts as follows:

The Principals Group is aware of the controversy surrounding the development of a spatial equilibrium model for the economic evaluation of navigation improvements. The Principals reviewed the findings of the National Research Council and, while endorsing these findings, concluded that a fully developed and tested spatial equilibrium model was unlikely to be achieved in a reasonable

² The lengthy Interim Report is published on the Study web page, www2.MVR.USACE.ARMY.MIL/umr-iwwsns/.

timeframe for feasibility study completion consistent with stakeholders and congressional expectations. The Principals support use of existing economic models while research and development on improved models moves forward but within the context of an adaptive management process that would review study results as new models are developed, tested, and accepted. The Principals also note that the recommendation development process for the feasibility study will recognize the high level of uncertainty surrounding projections of navigation system traffic and anticipate that decision makers will seek alternative plans that are justified under a wide range of future system traffic conditions and enjoy a broad level of stakeholder support.

The Corps further addressed the economic modeling efforts at Section 3.6 of the Interim Report. The Corps is conducting the economic analysis within the parameters outlined in the Interim Report and has fully involved and informed the public and interested stakeholders of all aspects of the study, including the limitations of the economic models the Corps is using. The Corps is continuing its efforts to develop new and improved models.

In addition to the main study effort, an independent research and development effort led by the Corps' Institute for Water Resources is underway to review and improve Corps economic modeling for navigation projects. The research and development product will be incorporated into the Study as appropriate, dependent on the Corps' formal Independent Technical Review (ITR) process within the constraints of the Study schedule and resources.

To further ensure the accuracy and reliability of the study results, in early 2003, the Corps asked the National Research Council (NRC) to review the methodology and findings of the restructured Study. The Corps entered into a Memorandum of Understanding with the NRC in July 2003. The initial impressions of the NRC committee, including their review of the Corps models, was provided to the Corps and released to the public on December 11, 2003. This was the first of three NRC reports on the restructured study. The NRC will review the draft Feasibility Report after its issuance, currently scheduled for April 2004. Then the NRC will perform a review of the Final Feasibility Report currently scheduled for August of 2004. NRC's review will take the form of a panel report and recommendations. The Chief of Engineers will consider this input in preparing his recommendations for the final Chief's report.

Data Quality Act Challenge

In the spirit of close collaboration with stakeholders that is the hallmark of the Study, the Corps will assume that PEER has standing to file this administrative complaint, notwithstanding the lack of a clear showing that PEER is an "affected party" within the meaning of Section (b) 2(B) of the Data Quality Act.

PEER's DQA complaint basically challenges the Corps' collaborative process by questioning the Corps' dissemination of the *2003 July Status Report*. (Enclosure 2) The *2003 July Status Report* is provided directly to the representatives of the States of Illinois, Iowa, Missouri, Minnesota and Wisconsin other Federal agencies and to non-Governmental

organizations that represent a range of interested segments of the population (stakeholders) who could be impacted by any decision that Congress makes following completion of the Study. The *2003 July Status Report* is also made available to the public at large via the Study website at www2.mvr.usace.army.mil/umr-iwwsns. The purpose of the *2003 July Status Report* is set forth in its first paragraph:

These monthly reports are intended to provide team members, partners, stakeholders and other interested parties with a regular update on important events and activities associated with the UMR-IWW System Navigation Feasibility Study. We welcome your comments and input on the topics covered in these status reports in order to ensure they continue to provide timely and useful information.

In the *2003 July Status Report* the Corps provided explanations of the Tow Cost Model (TCM) and the Essence Model, and stated that *"the benefits of the navigation efficiency alternatives will be evaluated under each scenario and under each model condition"* with the results displayed *"in an evaluation assessment matrix"*. (See Encl. 2, pages 8 and 9.) The *2003 July Status Report* concludes this section with the explanation that:

The process the study team will use will not focus on any one economic condition since this implies the most likely future economic condition is known. Instead, it will look at the broad range of economic conditions and search for alternatives that perform well across the entire matrix. (Encl. 2, page 9)

The Preliminary Economic Model Computations of Net Benefits (w/o mitigation) are presented in Table 2 of the status report which sets forth the net benefits derived from the Tow Cost Model and two runs of the Essence model.³

It is the dissemination to the public of the data in Table 2 in the Monthly Status Report which PEER specifically asks the Corps to rescind. PEER also requests that the Corps cease disseminating substantive information regarding the Study until the conclusion of a review by the National Research Council.

PEER's requests for relief would interfere with the Corps collaborative process of disseminating information for review and comment by stakeholders and the public.

The DOD guidelines allow a requestor to offer documentation of an alleged error for evaluation by the agency. PEER has not offered any information for consideration by the Corps, recommended use of any other models, nor offered any evidence that the information in the

³ The first Essence model run assumes a "lower bound" of demand elasticity based on available information and expert opinion. The second run assumes an "upper bound" of demand elasticity. (Encl. 2, page 13). As explained at Encl. 2, page 9, the two Essence model runs, upper and lower bound, are used as a sensitivity analysis in acknowledgment of the limitations of the state of the art of economic forecasting of grain shipments over a fifty year period and the limitations of the Tow Cost Model which does not account for demand elasticity.

status report is erroneous. Rather, PEER's claim is limited to the procedural assertion to stop a government process of sharing information with the public concerning economic modeling results - even the preliminary *2003 July Status Report* complained of - until the completion of the on-going review of the models by the National Research Council. However, neither the Act nor the implementing guidelines of OMB or DOD restrict an agency from disseminating information in the course of a study process to collaborators and the public without peer review prior to a final agency decision. The restriction of information dissemination requested by PEER would impede the long-established collaborative process established by the Corps. The ten-year Study process has featured detailed collaboration with stakeholders and periodic updates of the progress of the Study for the public. Extraordinary effort has been made by the Corps to be fully inclusive in the sharing of information with representatives of interested organizations directly and with the public through public meetings and the Navigation Study Web site. PEER's request would severely limit the ability of federal agencies to collaborate with non-federal participants and to inform the public. It would clearly chill and set back the efforts of federal agencies to advance the concept of participatory government. No useful purpose could be served by forbidding dissemination of status reports that share preliminary information with the public, and there is no indication that such a prohibition is consistent with the intent of Congress in the enactment of the Data Quality Act.

Dissemination of *preliminary* information, which is presented as pre-decisional when released, is not restricted by the Act or its implementing regulations. In the instant case, the public was advised by the *2003 July Status Report* that the National Research Council would be conducting a review of the Study on a parallel path. (Encl 2, page 20) Until the Final Feasibility Report is published, all information contained in the monthly status reports, the Study newsletter, the Web site and the Draft Feasibility Report, remains predecisional and thus preliminary.

The OMB Information Quality Guidelines include a "reproducibility requirement," V.3.B.ii, as follows:

[A]gency guidelines shall include a high degree of transparency about data and methods to facilitate the reproducibility of such information by qualified third parties....

A....[A]gency guidelines shall not require that all disseminated data be subjected to a reproducibility requirement...It is understood that reproducibility of data is an indication of transparency about research design and methods and thus a replication exercise (i.e., a new experiment, test, or sample) shall not be required prior to each dissemination.

The transparency requirement is set forth in the DOD guidelines at 3.2.3.1. The sharing of information in the *2003 July Status Report*, supports the concept of transparency. The Corps is disclosing its process and the preliminary findings in the midst of the Study to better inform the public and receive feedback. By doing so, interested parties are better equipped to provide formal comments during the public comment period, as well as to provide feedback as the Study progresses, all to the benefit of interested parties and the Study.

While the Corps is not prohibited from distributing preliminary information, the information in question is of a quality appropriate for the proposed use—to inform the public of the current status of the study and elicit feedback. The Corps established and published a Quality Control Plan for the Navigation Study. The Plan is a “living document” that is periodically updated as the Study progresses to reflect the completed quality control actions for the Study. The most recent edition, 14 March 03, is attached as Encl. 3. Upon completion of the Study, the final Quality Control Plan will reflect the procedures that the Corps used to ensure compliance with technical requirements. The current version of the Plan sets forth at paragraph 4 that:

All products described in the original Project Study Plan (PSP) and subsequent revisions, will be managed, planned, and executed in such a way that will provide the maximum level of quality commensurate to the level of committed resources. All individuals involved in product development are responsible to ensure quality in their efforts. In turn, specific individuals will lead the quality development of specific efforts/products, and an individual which is independent of the product development will lead the Independent Technical Review (ITR) of a specific product.

Responsibilities of the ITR team are described at paragraph 7 as follows:

Independent technical review team members are to perform their review of a product for compliance with established policy principles and procedures, and utilization of justified and valid assumptions. This effort includes review of: assumptions; methods; procedures; alternatives evaluated; the appropriateness of data used; and, reasonableness of results.

Team members have been drawn from various Corps districts and divisions, Corps Headquarters in Washington DC, the Corps' Engineer Research & Design Center, the Corps' Institute of Water Resources, the U.S. Geological Survey – Upper Mississippi Environmental Science Center (UMESC) and consulting firms under contract. Encl. 3, para. 8. Throughout the Study the technical expertise of many other resources have been engaged to produce or review interim study products, to include members of the GLC, NECC and ECC members, other federal agencies, state agencies, universities and private consulting firms.

The two components of the review process are internal review and independent technical review. The processes of each are set forth in paragraph 10 of the Quality Control Plan. A description of the review initiatives to date are provided at Enclosure B of the Quality Control Plan, including in-progress reviews, work group meetings, Governor's Liaison Committee meetings, Coordination Committee meetings, the Modeling Integration & Simulation Team meetings, the Engineering Steering Committee meetings, Technical Manager meetings, Technical Review Conference meetings, Regional Navigation Design Team meetings, Alternative Formulation Briefings and the Feasibility Review Conference. A list of the economic documents that have been released to the public is provided at Enclosure C of the Quality Control Plan (page C-2 of Enclosure 3). Note that ten of the twelve study documents

were prepared Corps contractors and all have been approved by ITR reviewers. Consistent with Corps regulations, policy and practice to assure a quality Study, the ITR reviewers are unaffiliated with the Study team. For example, an independent technical review of "*Economic Scenarios and Resulting Demand for Barge Transportation; Supplemental Scenario: Ethanol; and Supplemental Scenario: Less favorable; Sparks Companies, Inc.: May 2002*" was conducted by Daryll E. Ray, PhD, University of Tennessee, John M. Urbanchuk, PhD, Director, LECG, LLC, Wayne PA. and Harold Hommes, Marketing Bureau Chief, Iowa Department of Agriculture and Land Stewardship.

The ESSENCE model at issue has itself been formally ITRed in accordance with Corps regulations by members of a review team drawn from the Economics Coordinating Committee. (See Quality Control Plan Encl. C, Economic Item 5, attached hereto as Encl. 3). It further was the primary subject of discussion at a series of four meetings held from May-July 1998. These meetings were attended by representatives of the Corps Headquarters, the Mississippi Valley Division, five Corps Districts (St. Louis, Rock Island, St. Paul, New Orleans and Huntington), Oak Ridge National Laboratories, TVA, U.S. Department of Agriculture, Iowa Department of Agriculture, Iowa Department of Transportation, Wisconsin Department of Transportation, Minnesota Department of Transportation, University of Minnesota, Texas A&M, National Corngrowers, MARC 2000, CF Industries and Cargo Carriers. The NRC reviewed the ESSENCE model in a 2001 report and also more recently in December of 2003.

Additionally, as stated above, the NRC is providing peer review of the Study, to include the Economic Appendix of the Study. The advantages and shortcomings of both models, TCM and ESSENCE, have been fully disclosed to the public throughout the restructured study process. Indeed, the *July 2003 Status Report*, the very document that PEER seeks to expunge, clearly explains to the public the limitations of TCM and ESSENCE. See pp. 8-9 of Enclosure 2.

This disclosure of the limitations of the models satisfies the intent of the Data Quality Act to maximize the integrity of information disseminated. The information is open to challenge. It is open to comment. It is transparent. It is under technical review in a formal established quality control program, including independent review by the National Research Council. It is subject to change. It is pre-decisional. Once all comments are considered and appropriately incorporated, it will be disseminated again in the Draft Feasibility Report for public comment and then published in the Final Feasibility Report.

The sharing of preliminary results via the *Monthly Status Reports* is critical to the overall Study success and informed dialogue with stakeholders and the public. The Corps has continued to receive numerous comments from participants in the Study and interested parties supporting the open sharing of information as the Study progresses. To undermine this process as requested by PEER would jeopardize the collaboration and would unnecessarily restrict the acquisition of important feedback from stakeholders and the public.

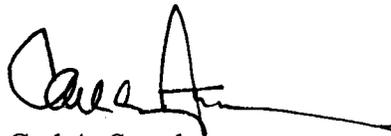
Conclusion and Right to Appeal

I find that PEER has not shown an adequate reason for the Corps to withdraw the *2003 July Status Report*. The requested relief is contrary to a participatory governmental process. The information contained in the *2003 July Status Report* was of a quality appropriate for the use intended. The information was provided by the Corps in an effort to conduct an open and transparent study process in keeping with the goals of the Data Quality Act. The information provided serves to effectively inform the public and elicit from them information which will be useful in preparing the final study report.

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 through Mr. Wilbert Berrios, CIO, U. S. Army Corps of Engineers, 441G St. NW, Washington, D.C. 20314-1000 for review and forwarding to the Department of the Army CIO. The Army CIO will process the appeal within 60 working days unless the Army CIO determines that a fair review cannot be made within that time. If additional time is required, you will be notified in writing at the expiration of the 60 working day period.

If the Army CIO determines correction of the record as requested is unwarranted, the Army CIO will advise you of the denial and explain the reason for the denial. If the Army CIO determines the information should be corrected, the Army CIO will direct the Corps to correct the information in question, and advise you of the action taken.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carl A. Strock', with a long horizontal line extending to the right.

Carl A. Strock
Major General, U.S. Army
Director of Civil Works