

## MEMORANDUM FOR THE RECORD

SUBJECT: Sabine-Neches Waterway Channel Improvement Project, TX and LA, Civil Works Review Board (CWRB), 25 May 2010.

1. On 25 May 2010, the Civil Works Review Board (CWRB) met to review and act on the Sabine-Neches Waterway (SNWW) Channel Improvement Project. The Board members included Mr. Steve Stockton (DCW, Chair), Mr. Theodore "Tab" Brown (Planning CoP Leader), BG John McMahon (Commander NWD), Mr. Michael Enschede (Operations and Regulatory CoP Leader), and Mr. Scott Whiteford (SPD RIT Leader). Participants included the CWRB members, representatives from the Office of the Assistant Secretary of the Army for Civil Works (OASA (CW)) Office of Water Project Review (OWPR), Southwestern Division (SWD), Galveston District (SWG), Sabine-Neches Navigation District (SNND), Deep-Draft Navigation Planning Center of Expertise (DDN-PCX), and the Independent External Peer Review Team (IEPR). Representatives from the Office of Management and Budget were unable to attend.
2. Mr. Steve Stockton opened the meeting with introductions of those in attendance. He discussed the purpose of the CWRB meeting as a way to ensure that a good investment would be recommended. The procedure allows for transparency into the USACE planning process. The Board would be asking hard questions to ensure that the planning process was followed and that the final result is the best project.
3. The District Engineer, Colonel David Weston, presented the briefing of the project including a summary of the Feasibility study and the resulting recommended plan. Mr. Clayton Henderson from the SNND presented the non-Federal Sponsor's support of the project and the importance of the project for the local area. Colonel Anthony Funkhouser followed with the Division Commander Briefing supporting the District's recommendation for the project.
4. Questions were raised by the Board members and discussion on each was addressed by the District Engineer and team. The questions included:
  - a. Steve Stockton requested additional information regarding the types of cargo transported on the waterway (whether it was primarily oil imports and petroleum exports, or any containers) and the impact that the Panama Canal improvements would have in the future. This question was answered with the Sponsor's presentation. There are many private terminals handling steel, lumber, bulk cargo, breakbulk, oil and gas, but no container facilities. About 90% of the port's cargo goes to private terminals. Regarding the Panama Canal, different cargos are involved. SNWW and other Gulf ports are expected to experience some beneficial impacts from the increased Panama Canal traffic.
  - b. Mr. Brown asked a question regarding the forecasts used and their alignment with the Department of Energy forecasts. This was discussed further during the IEPR review presentation.
  - c. Mr. Enschede noted that the bridge fender protection is cost shared as a project feature but Aids to Navigation (ATON) costs are approximately \$1.4 million for this project and are identified

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as additional Federal costs. The Coast Guard is responsible for the funding and implementation of ATON. He expressed concern that often USACE does not coordinate and cooperate with them ahead of time so that they may budget for this expense. They should be notified of this expense when the construction is budgeted so that they can also prepare for their part. The costs in this particular project are not large and should be handled by the Coast Guard. However, with larger projects this is something that we may need to offer to cost-share with the Coast Guard if they are not prepared to cover the entire cost.

d. Mr. Brown raised a question as to how the mitigation requirements were quantified and why such a large impact area (182,000 ac.) was identified. He also asked how sea level change was considered. The project impact area was defined by the extent of hydrologic impacts throughout the estuary. Mitigation is based on habitat units established by the Wetlands Value Assessment (WVA) model. The WVA model was run for the without-project conditions and then again for the recommended plan, and the mitigation was developed from the incremental change. Projection of relative sea-level rise was included in the modeling (1 to 1.5 feet over 50 years). When sea level rise was put into the salinity model the mitigation requirements came out about the same. It was determined that there was a very small impact over a very large area.

e. Mr. Brown raised questions as to how the mitigation and beneficial use (BU) costs of monitoring the mitigation features had been estimated and whether USFWS had any objections to the finding that no mitigation was needed in Texas. Mitigation construction will be concurrent with project construction. FWS has concurred on the mitigation plan. The mitigation monitoring costs are included in the total project cost estimate. The BU costs are included as O&M costs.

f. Mr. Stockton noted there is an issue with CZMA compliance in Louisiana. Will the consistency issue be resolved? RIT vertical team is working this issue. At present, Louisiana is asking for things USACE cannot comply with or agree to, so it may not be resolved.

g. Regarding the increase in projected O&M costs, Mr. Ensich asked how the District plans to accommodate such an increase when the O&M budget has been not been sufficient to cover the current O&M needs and whether the team is prepared to support increased O&M. The Harbor Maintenance Trust Fund is one way that the District foresees the O&M issue to be resolved. However, the current restrictions on this tool need to be loosened in order to have a viable tool to handle O&M costs. Additionally, there should be a risk-based decision making method, similar to the dam safety program, which would prioritize the O&M needs and rank them according to importance. It was noted that if there was no adjustment to increase the O&M funding then the District would not be able to pay for the additional O&M requirements.

h. Mr. Ensich also asked whether the sediment to be dredged was contaminated. This sediment is not contaminated.

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i. BG McMahon asked about the nature of cost sharing for the deep draft utility relocations and removals. It was explained that costs for deep draft utility relocations are shared 50%/50% by the facility owners and the sponsor and that removals are the responsibility of the facility owners.

5. Mr. Tom Hughes from OWPR made a presentation on the policy review of this project and noted the key issues that were raised and resolved during the review process. Outstanding issues with the project were pipeline/utility identification and cost sharing and IEPR backcheck. The discussion on these two issues along with additional discussion on O&M costs was as follows:

a. Pipeline/Utility Identification and Cost Sharing - The report has identified two deep-draft utilities which should be cost-shared between the local sponsor and the pipeline owners as is described in PGL 44. The remaining 46 pipelines have been identified to be removed at the owner's expense through navigation servitude. This issue does not affect the Federal cost share as it only relates to the non-Federal share and associated costs for the project. These 46 pipelines were constructed under the Section 10 permit process and, as such, are required to be removed if they are an impediment to the navigability of the waterway. The main issue is the definition of a utility since PGL 44 does not define it. The State of Texas has established the definition of utility through court cases. Additional information needs to be provided to HQ by the District and the sponsor so that HQ can make a final determination as to the appropriateness of this cost sharing allocation. However, it was stressed that this issue does not affect the Federal cost share, and so does not have implications for project approval. Mr. Doug Lamont noted that resolution of the deep draft utility relocation issue is needed to establish the credit against the additional 10 percent of GNF over time, and the timeline may be critical to signing a Chief's report.

b. IEPR Backcheck – This was the first study to undergo IEPR and therefore, the requirements for IEPR have been evolving since this review was performed in December 2007. It was decided recently that a backcheck was needed to allow the IEPR team to see the revised report. This backcheck was performed, and the comments were received on 24 May 2010. There are some comments for which the IEPR panel requested additional information or clarification. A conference call was held on 24 May 2010 to discuss one of the main comments that was still outstanding and helped to clarify the information. From this call, it was decided that the District would provide additional clarification for this comment and others as determined necessary by the IEPR backcheck. These comment responses would be provided in an addendum to the final report. Ms. Karen Johnson-Young stated that this process has been changing since the December 2007 review and that the current reports being reviewed and backchecked results in 99% resolution of comments. For the SNWW report, the comments to which the IEPR panel has not concurred will be addressed further by the District and coordinated with the IEPR panel for a final backcheck and closeout report. The panel members participating telephonically summarized the conference call and information that was shared which helped resolve the main question regarding the economic analysis. This question pertained to the use of the Department of Energy forecast and the District's forecast differences and the need to further explain the forecasts used in the report in the addendum.

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c. Mr. Michael Ensch stated that the incremental O&M costs were an issue. Since USACE currently cannot fund all of the O&M costs from existing projects, approving more projects would greatly increase the annual O&M requirement. Mr. Steve Stockton stated that his personal viewpoint was that the Nation cannot stop making new water resource project investments because of this issue. USACE should look at the whether the project is sound based on engineering and environmental factors and approve projects on that basis. Then the authorized projects can compete for the available O&M resources. This project may compete very well with other projects in the USACE portfolio. Approving projects should not be stopped or the Nation would just stop growing. Mr. Ensch stated that this issue will continue and deserves review as USACE moves forward with future projects.

6. Mr. Hughes recommended approval of the SNWW Channel Improvement Project contingent upon resolution of the deep-draft utility issue and the final IEPR backcheck.

7. Following a motion by Mr. Brown, the Board unanimously approved release of the report for State and Agency review, contingent upon HQUSACE approval of the deep-draft utility issue and other changes as deemed necessary.

8. The District presented "Lessons Learned" for the study. SWD stressed the use of vertical teaming, using IEPR throughout the process. IEPR panel stressed that IEPR should start early in the study process and should be done periodically. ASA (CW) representatives stated that IEPR is an important issue for their office with the ASA (CW) asking specifically about its resolution. Agency Technical Review and IEPR should be done at key times throughout the project. However, OWPR should not be brought in to review incomplete products. Regarding the Civil Works Review Board read-ahead packets, Mr. Tab Brown wants HQ to revisit the guidance to improve the content of the Report Summary. Following the current guidance in ER 1105-2-100 left Mr. Brown wanting more details.

9. The remaining issues need a firm commitment and timeline. The District plans to have the pipeline issue resolved in the next week. The IEPR backcheck closeout will be completed in the next 2 to 3 weeks. By the third week of June, the report should be ready for State and Agency review.

10. The SNND thanked the Board and everyone who helped with this project.

11. Mr. Stockton thanked everyone for their attendance and participation and closed the meeting at 1530 hours Eastern Time.