DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

REPLY TO
ATTENTION OF

CECW-MVD

28 APR 2009

MEMORANDUM FOR COMMANDER, Mississippi Valley Division (CEMVD-PD)

SUBJECT: Implementation Guidance for Section 7013 of the Water Resources Development Act (WRDA) of 2007 – MISSISSIPPI RIVER-GULF OUTLET

1. Section 7013(a)(1) of WRDA 2007 deauthorizes the navigation channel portion of the Mississippi River-Gulf Outlet (MRGO) element of the project for navigation, Mississippi River, Baton Rouge to the Gulf of Mexico, authorized by the Act entitled "An Act to authorize construction of the Mississippi River-Gulf Outlet", approved 29 March 1956 (70 Stat. 65) and modified by Section 844 of the WRDA 1986 and Section 326 of WRDA 1996, which extends from the Gulf of Mexico to Mile 60 at the southern bank of the Gulf Intracoastal Waterway (GIWW), effective beginning on the date of submission of the plan required by Section 7013(a)(3). Section 7013(a)(2) specifies that the Inner Harbor Navigation Canal replacement project authorized by the Act of 29 March 29 1956 is neither modified nor deauthorized. A copy of Section 7013 is enclosed.

2. The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234) authorized the development of a comprehensive plan to deauthorize deep draft navigation on the MRGO from the GIWW to the Gulf of Mexico. At the time this comprehensive plan was being released for State and Agency review, Section 7013 of WRDA 2007 became law and expanded the scope of the plan. The 29 January 2008 Chief's Report, which presents the results of the comprehensive plan, recommended deauthorizing the portion of the MRGO navigation channel from the Gulf of Mexico to Mile 60 at the southern bank of the GIWW and physical modifications to the MRGO and, based on the requirements of Section 7013 of WRDA 2007, includes a plan to address ecosystem restoration. With submission of the MRGO report to Congress on 5 June 2008, the MRGO channel from the Gulf of Mexico to Mile 60 at the southern bank of the GIWW became deauthorized. The plan for ecosystem restoration, inclusive of the considerations set forth in Section 7013 of WRDA 2007, is preliminarily addressed in an addendum to the Integrated Final Report to Congress and Legislative Environmental Impact Statement for the Mississippi River Gulf Outlet Deep –Draft De-authorization Study (November 2007 – Revised June 2008) and is to be further addressed in a supplement to the 29 January 2008 Chief's Report discussed in paragraph 5, below.

3. Title VII of WRDA 2007 authorizes the Secretary to carry out a program for ecosystem restoration for the Louisiana Coastal Area (LCA), Louisiana, substantially in accordance with the

Printed on Recycled Paper

restoration plan set out in the Report of the Chief of Engineers, dated 31 January 2005. Included within this LCA plan is a project for MRGO environmental restoration which is referenced in Section 7006(c)(1)(A) of WRDA 2007. This project shall be held in abeyance until the tentatively selected plan for ecosystem restoration, authorized by Section 7013 of WRDA 2007, is identified. The feasibility report and NEPA compliance document developed for the plan for ecosystem restoration authorized by Section 7013 of WRDA 2007 will include recommendations regarding the project for MRGO environmental restoration referenced in Section 7006(c)(1)(A) of WRDA 2007.

4. Section 3083 of WRDA 2007 authorizes the design and implementation of a diversion at or near Violet, Louisiana, which is located within the study area of the plan for ecosystem restoration authorized by Section 7013 of WRDA 2007. Initial investigations under the study authorized by section 7013 have identified that a diversion at or near Violet, Louisiana should be included in the study. Development of alternative plans shall include feasibility phase activities, as appropriate, for the diversion project at or near Violet, Louisiana, including but not limited to plan formulation, technical analyses and environmental and regulatory compliance activities. If a determination is made during the feasibility phase activities that a diversion at or near Violet, Louisiana will not be part of the recommended plan for MRGO ecosystem restoration, then the remaining analysis for a diversion at or near Violet, Louisiana will be subject to future appropriations in response to Section 3083 of WRDA 2007.

5. A supplement to the 29 January 2008 Chief's Report will be developed by preparing a feasibility report in accordance with ER 1105-2-100 at 100 percent Federal cost. Alternative plans shall be formulated for the purpose of ecosystem restoration inclusive of the requirements set forth in Section 7013 of WRDA 2007. The formulation process will consider a full range of restoration alternatives and shall include plans that would: (i) restore the areas affected by the navigation channel; (ii) restore natural features of the ecosystem that would reduce or prevent damage from storm surge; (iii) prevent the intrusion of saltwater, (iv) integrate the recommendations of the LCA Chief's Report dated 31 January 2005; and, (v) consider use of native vegetation and diversions of fresh water to restore the Lake Borgne ecosystem as outlined in Section 7013 (a) (3) (B). In addition, the provisions of Section 7008 shall apply to the development of the plan. The feasibility report shall be fully compliant with the National Environmental Policy Act (NEPA) and provide sufficient detail to ensure that the recommended plan is consistent with Section 7013 of WRDA 2007, is implementable, and is supported by a non-Federal sponsor. The feasibility report will be submitted for Washington level review and approval by ASA(CW), if the Secretary determines that the proposal is cost-effective, environmentally acceptable, and technically feasible. Upon approval, the Secretary shall coordinate the project with the Office of Management and Budget, sign the Record of Decision if needed, and submit the final report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives in accordance with Section 7013(a)(3)(A) of WRDA 2007.

6. Implementation of the recommended ecosystem restoration plan shall be cost shared 65% Federal and 35% non-Federal and OMRR&R is a 100% non-Federal responsibility. However, no construction may be undertaken until such time funds as are appropriated.

FOR THE COMMANDER:

Encl

THEODORE A. BROWN, P.E.
Chief, Planning and Policy Division
Directorate of Civil Works

SEC. 7013. MISSISSIPPI RIVER-GULF OUTLET.

(a) DEAUTHORIZATION.—

(1) IN GENERAL.—Effective beginning on the date of submission of the plan required under paragraph (3), the navigation channel portion of the Mississippi River-Gulf Outlet element of the project for navigation, Mississippi River, Baton Rouge to the Gulf of Mexico, authorized by the Act entitled ''An Act to authorize construction of the Mississippi River-Gulf outlet'', approved March 29, 1956 (70 Stat. 65) and modified by section 844 of the Water Resources Development Act of 1986 (100 Stat. 4177) and section 326 of the Water Resources Development Act of 1996 (110 Stat. 3717), which extends from the Gulf of Mexico to Mile 60 at the southern bank of the Gulf Intracoastal Waterway, is not authorized.

(2) SCOPE.—Nothing in this paragraph modifies or deauthorizes the Inner Harbor navigation canal replacement project authorized by that Act of March 29, 1956.

(3) CLOSURE AND RESTORATION PLAN.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a final report on the deauthorization of the Mississippi River-Gulf outlet, as described under the heading ''INVESTIGATIONS'' under chapter 3 of title II of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (120 Stat. 453).

(B) INCLUSIONS.—At a minimum, the report under subparagraph (A) shall include—

(i) a plan to physically modify the Mississippi River-Gulf Outlet and restore the areas affected by the navigation channel;

(ii) a plan to restore natural features of the ecosystem that will reduce or prevent damage from storm surge;

(iii) a plan to prevent the intrusion of saltwater into the waterway;

(iv) efforts to integrate the recommendations of the report with the program authorized under section 7003 and the analysis and design authorized by title I of the Energy and Water Development Appropriations Act, 2006 (119 Stat. 2247); and

(v) consideration of—

(I) use of native vegetation; and

(II) diversions of fresh water to restore the Lake Borgne ecosystem.

(4) CONSTRUCTION.—The Secretary shall carry out a plan to close the Mississippi River-Gulf Outlet and restore and protect the ecosystem substantially in accordance with the plan required under paragraph (3), if the Secretary determines that the project is cost-effective, environmentally acceptable, and technically feasible.