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

June 16, 2006

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

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

Re: Data Quality Act Petition
AR River Navigation Study, McClellan-Kerr AR River Navigation System
Arkansas and Oklahoma.

Dear General Strock,

Please find enclosed a "Petition for Correction of Information" filed pursuant to the Data Quality Act of 2000. The Arkansas Wildlife Federation is challenging US Army Corps of Engineer findings, accounting methodology, NEPA compliance, narrative conclusions and accuracy of data relied upon to develop an Environmental Impact Statement, Feasibility Study and 9-27-05 Record of Decision on the above Navigation Study. This Study began as an effort to solve AR River flow regime/flood related problems and a later separate parallel Study would search out solutions for improving low Navigation demand problems. But through pre study authorization in 2003, produced by special navigation interest lobbying and key political donations, COE chose to combine both unrelated Studies into justifying the already made 12' channel authorization through employing an analysis that screened out equal consideration of non structural solutions.

AWF does not lightly or casually challenge results or methods used in this Study that cost taxpayers $9.4 million, consumed 5 years, and affects resource trade-offs on 445 miles of MKARNS and numerous tributary projects. However, we conclude that strategy for developing documentation for this Study fails compliance with NEPA, Agency's own Engineering Planning Regulations and Data Quality Act, while COE declares otherwise.

The Petition seeks various information correction and cost/benefit reanalysis of specific accounting methods. Thank you for giving this your serious consideration. We look forward to your response.

Respectfully,

Jim Wood

Jim Wood, Chairman
AR River Study Committee

Encls.

Cc Dr. Linton Wells
Chief Information Officer
Department of Defense

Dr. John Graham, OMB
Office of Information and Regulatory Affairs

James L. Connaughton, Chairman
Council on Environmental Quality

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 17th 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

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

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 barley 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-

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

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 3rd 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 CFR1503.1 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 3rd 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, 3rd 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.

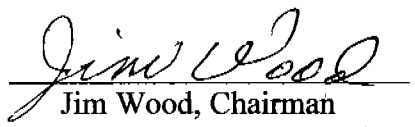
CONCLUSION

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

qualify under DQA for Correction of Information.

Respectfully Submitted,

Arkansas Wildlife Federation

By: 

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

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.

2

Jim Wood

From: Anslow, Patricia M SWL [Patricia.M.Anslow@swl02.usace.army.mil]
Sent: Monday, May 19, 2003 11:22 AM
To: 'jrmiajim@arkwest.com'
Cc: Mclean, Johnny L SWL
Subject: RE: AR River Study Public Scoping?? AR Wildlife Federation/Yell County Wildlife Federation.

Dear Mr. Wood.

Thank you for your interest in the Arkansas River Navigation Study Environmental Impact Statement (EIS). We are actively seeking input like your comments to help us define the scope of our EIS. As you probably already know, our primary missions are navigation, flood damage reduction, and ecosystem restoration. The Arkansas River Navigation Study was initiated to address these needs. Phase I of the Study was designed to address both navigation and flood damage reduction issues, while Phase II will address navigation improvements along with ecosystem restoration and environmental enhancement. Our Phase I study focused on operational changes and the Phase II study will focus on structural changes. For this reason, we decided to consider the proposed actions in separate documents.

We feel that the Council on Environmental Quality regulations (40 CFR 1500) implementing the National Environmental Policy Act validate this approach in accordance with 40 CFR 1508.25 Scope which states:

"Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (Secs.1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

1. Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.
(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

2. Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

3. Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include:

4. No action alternative.
5. Other reasonable courses of actions.
6. Mitigation measures (not in the proposed action).

(c) Impacts. which may be: (1) Direct; (2) indirect; (3) cumulative."

We do realize that these proposed actions are similar in geography, however, we determined that the best way to evaluate these actions is in two statements. If conducted independently, the Phase I and Phase II Proposed Actions: (i) would not trigger other actions, (ii) may proceed without the other actions having taken place previously or simultaneously, and (iii) are not interdependent parts of a larger action and do not depend on the larger action for their justification.

Additionally, the proposed actions do not appear to have cumulatively significant impacts. Therefore, there is not a need to address these actions in the same statement. The Phase I and Phase II Environmental Impact Statements will both contain cumulative impacts analysis. These analyses include consideration of the effects of past, present, and reasonably foreseeable future activities.

The Notice of Intent to prepare an EIS was published in the Federal Register on May 31, 2002. I am including a copy of that Notice with this e-mail.

Please let Johnny McLean or myself know if you need additional information. We look forward to working with you on this study as it proceeds.

Regards,

Tricia Anslow
Chief, Environmental Section
PER Division
USACE, Little Rock District
700 West Capital
Little Rock, AR 72203
501-324-5032
501-324-5605 (FAX)

[Federal Register: August 23, 2000 (Volume 65, Number 164)]
[Notices]
[Page 51298-51299]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr23au00-45]

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Arkansas River Navigation Study, Arkansas and Oklahoma

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

[[Page 51299]]

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers, DoD, Little Rock District will prepare an Environmental Impact Statement (EIS) for the Arkansas River Navigation Study.

The purpose of the EIS will be to present alternatives and assess the impacts associated with the Arkansas River Navigation Study. Under direction of the U.S. Congress, the U.S. Army Corps of Engineers (USACE) is conducting a study of the Arkansas River Basin in Arkansas and Oklahoma. The study purpose is to develop and evaluate alternatives for implementing solutions to problems resulting from sustained high flows on the McClellan-Kerr Arkansas River Navigation System (MKARNS). These high flows have resulted in decreased navigation traffic, flooding, losses to recreation use, and other adverse conditions. Proposed improvements resulting from the study could impact (positively or negatively) agriculture, hydropower, recreation, flood control, and fish and wildlife along the MKARNS.

The EIS will evaluate potential impacts (positive and negative) to the natural, physical, and human environment as a result of implementing any of the proposed project alternatives. Proposed alternatives are currently being developed and include structural and non-structural measures for reducing sustained high flows on the MKARNS.

Elements of the structural alternatives identified to date include:

1. Removal of channel restrictions,
2. Construction of high flow relief structures (e.g. spillways) along the MKARNS for navigation flow management,
3. Construction of additional levees along the MKARNS for navigation flow management,
4. In-stream modification/alteration of existing navigation structures,
5. Restoration/enhancement of aquatic and riparian habitats along the MKARNS.

Elements of the non-structural alternatives identified to date include:

1. Operational changes to MKARNS reservoirs resulting in changes in the flow regime within the Arkansas River,
2. Adjustments/increases in flowage easements.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the proposed action should be addressed to: Mr. Jim Ellis, Environmental Team Leader, Planning Branch, P.O. Box 867, Little Rock, Arkansas 72203-0867, Telephone 501-324-5033, e-mail: James.D.Ellis@usace.army.mil.

SUPPLEMENTARY INFORMATION:

1. MKARNS

The McClellan-Kerr Arkansas River 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. River flow in the Arkansas River is modified primarily by 11 reservoirs in Oklahoma. The reservoirs are: Keystone, Oologah, Pensacola, Hudson, Fort Gibson, Tenkiller Ferry, Eufaula, Kaw, Hulah, Copan, and Wister. These lakes provide flood control, water supply, hydropower, fish & wildlife, water quality, recreation, and other benefits.

2. Study History

The Arkansas River Navigation Study is being undertaken by USACE Little Rock and Tulsa Districts under the direction of the U.S. Congress. The study includes major hydraulics investigations, economics analyses, alternatives development and related analyses in addition to the EIS. Throughout May and June of 2000 the USACE conducted public information meetings at locations throughout Arkansas and Oklahoma to inform the public of the Arkansas River Navigation Study and solicit information regarding the study.

3. Comments/Scoping Meeting

Interested parties are requested to express their views concerning the proposed activity. The public is encouraged to provide written comments in addition to or in lieu of, oral comments at the scoping meeting. To be most helpful, scoping comments should clearly describe specific environmental topics or issues, which the commentator believes the document should address. Oral and written comments receive equal consideration.

Scoping meetings will be held with government agencies and with the public. Public Scoping Meetings will be held in the fall of 2000 in Pine Bluff Arkansas, Fort Smith Arkansas, and Tulsa Oklahoma. The location, time, and date will be published at least 14 days prior to each scoping meeting. Comments received as a result of this notice and the news releases will be used to assist the Districts in identifying potential impacts to the quality of the human or natural environment. Affected local, state, or Federal agencies, affected Indian Tribes, and other interested private organizations and parties may participate in the Scoping process by forwarding written comments to the above noted address. Interested parties may also request to be included on the mailing list for public distribution of meeting announcements and documents.

4. Alternatives/Issues

The EIS will evaluate the effects of structural and non-structural alternatives of the authorized project and other identified concerns. Specific project alternatives will incorporate the elements previously identified in this notice. Anticipated significant issues identified to date and to be addressed in the EIS include: (1) Impacts on navigation, (2) impacts on flood control, (3) impacts on hydropower, (4) impacts on recreation and recreation facilities, (5) impacts on river hydraulics,

(6) impacts on fish and wildlife resources and habitats, and (7) other impacts identified by the Public, agencies or USACE studies.

5. Availability of the Draft EIS

The Draft Environmental Impact Statement is anticipated to be available for public review in the spring of 2002 subject to the receipt of federal funding.

6. Authority

The River and Harbor Act of 1946 authorized the development of the Arkansas River and its tributaries for the purposes of navigation, flood control, hydropower, water supply, recreation, and fish and wildlife. Public Law 91-649 stated that the project would be known as the McClellan-Kerr Arkansas River Navigation System. The Arkansas River Navigation Study began as a Fiscal Year (FY99) Congressional Add to investigate flooding problems along the Arkansas River in Crawford and Sebastian Counties in the vicinity of Fort Smith, Arkansas.

Thomas A. Holden, Jr.,
Colonel, Corps of Engineers, District Engineer.
[FR Doc. **00-21447 Filed** 8-22-**00**; 8:45 am]
BILLING CODE 3710-57-U

000300030172

Clerk of the House of Representatives	Secretary of the Senate
Legislative Resource Center	Office of Public Records
B-106 Cannon Building	232 Hart Building
Washington, DC 20515	Washington, DC 20510

SECRETARY OF THE SENATE
03 FEB -6 PM 2:43

LOBBYING REGISTRATION

Lobbying Disclosure Act of 1995 (Section 4)

Check if this is an Amended Registration ☐ 1. Effective Date of Registration

2. House Identification Number Senate Identification Number

REGISTRANT

3. Registrant name JD CONSULTING CO.

Address POST OFFICE BOX 6038

City PINE BLUFF State AR Zip 71611-6038

4. Principal place of business (if different from line 3)

City State/Zip (or Country)

5. Telephone number and contact name

870.536.3956 Contact JAY DICKEY E-mail (optional) jaydickey@cablebyrne.com

6. General description of registrant's business or activities

Lobbying and governmental consulting

CLIENT

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7. Client name Pine Bluff Sand & Gravel Company

Address 1501 Port Road (P.O. Box 7008)

City Pine Bluff State ARK Zip 71601

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River Contracting and Dredging

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Name	Covered Official Position (if applicable)
JAY DICKEY	

Form LD-1 (Rev. 06/99) Page 1

00030030173

Registrant Name _____ Client Name _____

LOBBYING ISSUES

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DAR TBA All matters related to river transportation

12. Specific lobbying issues (current and anticipated)

Facilitating river traffic on the Arkansas River

AFFILIATED ORGANIZATIONS

13. Is there an entity other than the client that contributes more than $10,000 to the lobbying activities of the registrant in a semiannual period and in whole or in major part plans, supervises or controls the registrant's lobbying activities?

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Name	Address	Principal Place of Business (city and state or country)

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Signature _____ Date 2/5/03

Printed Name and Title JAY DICKEY PRESIDENT

THE CENTER FOR PUBLIC INTEGRITY

Investigative Journalism in the Public Interest

<< Go Back

Company or Organization

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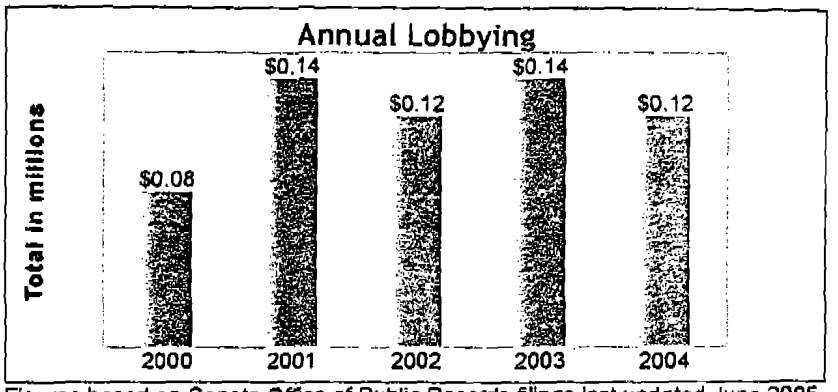
Rank: 2699th
Lobbying 1998-2004: $600,000
Lobbying 2004: $120,000

What these numbers mean



Figures based on Senate Office of Public Records filings last updated June 2005

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Washington Post Staff Writer
Saturday, September 13, 2003; Page A01

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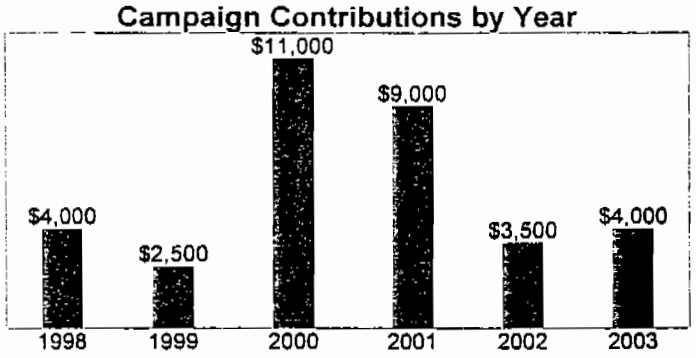
Influence

Campaign Contributions



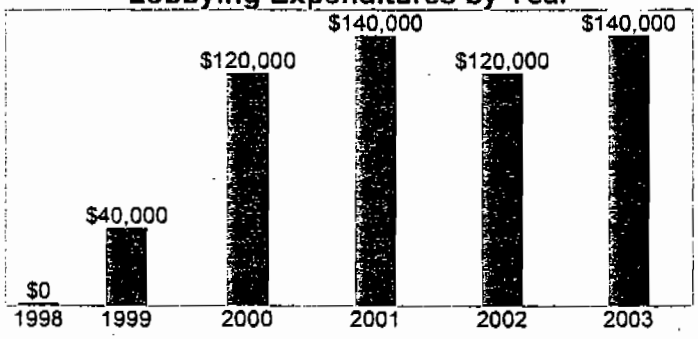
Party	Contributions	%
Democrat	$3,000	8.82%
Republican	$31,000	91.18%

Top Recipients

Rep Jay Dickey (R-AR)	$7,500
Republican Party Committees	$4,500
President George W Bush (R)	$3,000
Rep Marion Berry (D-AR)	$2,250
Rep Rodney P Frelinghuysen (R-NJ)	$2,000
Sen James M Inhofe (R-OK)	$2,000
Rep Asa Hutchinson (R-AR)	$2,000
Sen Tim Hutchinson (R-AR)	$1,500
Sen Pete V Domenici (R-NM)	$1,000
Rep Sonny Callahan (R-AL)	$1,000
Rep Ron Packard (R-CA)	$1,000
Rep Henry E Brown Jr (R-SC)	$1,000
Phillip Wyrick (R-AR)	$1,000
Boozman, Fay W III	$1,000
Rep John J Duncan Jr (R-TN)	$1,000
Rep John Boozman (R-AR)	$1,000
Rep Mike Ross (D-AR)	$750
Rudolph W Giuliani (R-NY)	$500

Lobbying

Total Lobbying Expenses (1998-2003): $560,000



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Lobbying & governmental consulting

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Signature Jay Dickey Date 2/15/03

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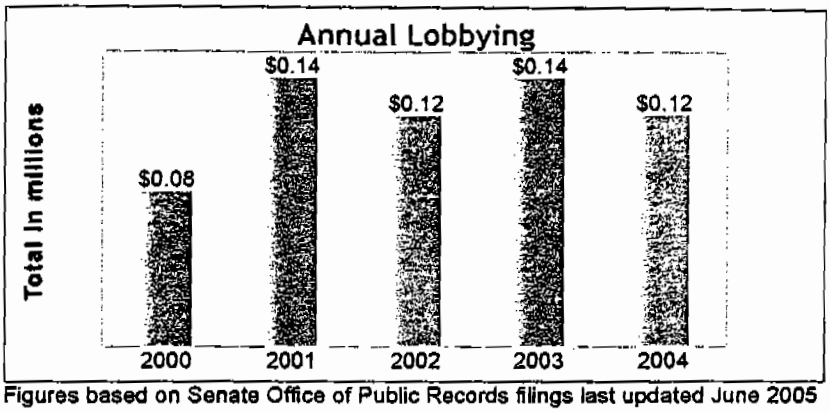

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Sec. 1014. Access to Water Resources Data.

Subsection (a) directs the Secretary to carry out a program to provide public access to water resources and related water quality data.

Subsection (b) requires that the program include access to data generated in water resources project development and regulation under section 404 of the Federal Water Pollution Control Act and employ geographic information system technology and linkages to water resources models and analytical techniques.

Subsection (c) requires the Secretary to develop partnerships with States, tribal, and local governments and other Federal agencies in carrying out this program. Subsection (d) authorizes $5,000,000 to carry out the section.

The committee is aware that the Army Corps of Engineers collects significant amounts of water resources and related data in the development of water resources projects and the regulation of wetlands. This data, including models and analytical techniques developed and maintained by Army Corps of Engineers laboratories, are valuable to States, tribal, and local governments and the general public, yet, in this age of modern information technology, are not accessible. The committee believes the program established by this section will improve water management and save money at all levels of government.

TITLE II—NAVIGATION

SUBTITLE A—INLAND WATERWAY

CHAPTER 1—STUDIES

Sec. 2001. McClellan-Kerr Arkansas River Navigation System.

The deepening of the McClellan-Kerr Arkansas River Navigation System (MKARNS) from 9 feet to 12 feet, authorized by Section 136, Energy and Water Development Act, 2004, Public Law 108–137, may allow for more efficient movement of commodities, may be beneficial to the national economy; and may reduce the use of fossil fuels, thereby improving air quality, reducing transportation congestion and improving public safety. Before proceeding with actual deepening of the channel, the Secretary must satisfy the provisions of the National Environmental Policy Act to disclose the impacts associated with deeper dredging of the waterway. Accordingly, the Secretary is directed to document these positive and negative economic and environmental effects of deepening the MKARNS, to facilitate a thorough and complete analysis of the project. In addition, as part of the Endangered Species Act coordination, the committee has seen no evidence that deepening the channel will or will not demonstrably effect endangered sturgeon species. Accordingly, the Secretary is to convene a panel of experts in conjunction with the Oklahoma State University to address this issue.

Table 5-2 - Recommended vs. NED Channel Deepening Plan (FY2003 Dollars)

Item	Recommended Plan - 12 foot	NED Plan - 11 foot
Economic Life (Years)	50	50
Construction Period	3	3
Interest Rate (Percent)	5.625%	5.625%
Project First Costs	$149,139,233	$119,722,744
Interest During Construction	12,571,542	10,091,909
Associated Non-Federal Req's:		
Local Facilities	488,372	348,577
Local Facilities IDC	41,167	29,383
Total Investment Cost	$162,240,314	$130,192,613
Annual Costs:		
Interest	$9,126,018	$7,323,334
Amortization	632,480	507,545
Major Replacements	0	0
Operation & Maintenance	2,451,137	1,907,119
Total Annual Costs	$12,209,635	$9,737,998
Average Annual Benefits:		
Navigation benefits	$12,261,200	$10,854,600
Benefit-to-Cost Ratio	1.004	1.115
Excess Benefits Over Costs	$51,565	$1,116,602

Although the NED plan is the 11-foot channel, the recommended plan is the 12-foot channel. The 12-foot channel is the recommended plan based on the following: the industry standard is the lower Mississippi, where the project benefits would be realized, is 12 feet. It is highly unlikely the industry could take advantage of channel deepening as shallower depths; (2) the navigation industry strongly favors the 12-foot alternative as being the only viable alternative as related to the no action plan, and (3) the environmental impacts are not substantially different for each of the depth alternatives, in that all the alternatives involve the same areas and size of area for aquatic and terrestrial effects.

5.3. Maintenance Dredging and Disposal Recommended Plan (for existing 9-foot channel)

The recommended plan is disposal via 5 new disposal sites. So Oklahoma's 20-year plan will now have a total of 26 disposal sites.

Notice of
REOPENED PUBLIC COMMENT PERIOD

Concerning the
REVISION of the SCOPE of the
ENVIRONMENTAL IMPACT STATEMENT (EIS)

For the
ARKANSAS RIVER
NAVIGATION STUDY

WHAT: The U.S. Army Corps of Engineers (USACE) intends to prepare one Environmental Impact Statement (EIS) for use in evaluating alternatives for the **Arkansas River Navigation Study**. The study would address the Corps of Engineers' Civil Works mission that includes supporting navigation by managing river flows and improving and maintaining the navigation channel. Proposed system changes could impact agriculture, hydropower, recreation, flood control, and the environment along the McClellan-Kerr Arkansas River Navigation System (MKARNS).

PURPOSE: The Arkansas River Navigation Study was originally a two-phase project. Phase I concentrated on river flow management aspects while Phase II focused on deepening and widening the Arkansas River navigation channel. **Comments from the public, government agencies, and private organizations during the Phase I and Phase II public scoping periods were key in the decision by the USACE to combine the two phases into a single comprehensive EIS addressing all the issues of the navigation study.** The public was notified of the U.S. Army's intent to prepare the EIS for the combined Arkansas River Navigation Study through the publication of a Notice of Intent in the July 9, 2004 issue of the *Federal Register*. Therefore, a third scoping period is being held to address the combined EIS. The public is invited to submit any additional comments on and to identify issues that should be considered in the EIS. Especially sought is information that would assist the USACE in analyzing the impacts of the combined study alternatives.

WHY: The study is being undertaken by the USACE Little Rock and Tulsa Districts under the authority of the U.S. Congress. The study will investigate possible operational and structural changes to the entire MKARNS that could improve the productivity of commercial navigation on the system, while maintaining the other MKARNS project purposes of flood control, recreation, hydropower, water supply, and fish and wildlife. The preparation of an EIS is required by Section 102 (2)(c) of the National Environmental Policy Act of 1969 (NEPA) to document the positive and negative effects of major government actions such as the proposed changes to the MKARNS. The EIS will identify and evaluate the environmental and socioeconomic aspects of viable alternatives. Several proposed alternatives for the study were reviewed and included structural and non-structural measures. The alternatives to be evaluated in detail are associated with three elements that influence navigation on the MKARNS. The elements and associated alternatives include the following:

1) **River Flow Management** – Sustained high flows on the MKARNS have adversely influenced the safety and efficiency of commercial navigation operations and have resulted in flood damages along the river. The reliability and predictability of river flows affect navigation traffic utilization of the MKARNS. The following river flow alternatives include operational changes to MKARNS reservoirs resulting in changes in the flow regime within the Arkansas River:
   - Flow Management – No Action Alternative – no changes in existing river or reservoir operations
   - Flow Management – 175,000 cfs Alternative – modify current operations plan by increasing target flow at Van Buren, Arkansas to 175,000 cfs
   - Flow Management – 200,000 cfs Alternative – modify current operations plan by increasing target flow at Van Buren, Arkansas to 200,000 cfs
   - Flow Management – Operations Only Alternative – modify the current operations plan slightly (60,000 cfs in place of the 75,000 cfs flow rate at Van Buren, Arkansas)

2) **Navigation Channel Depth Increase and Modification** – Commercial navigation is not at optimum productivity within the MKARNS since its 9-foot draft navigation channel limits towboat loads compared to the Lower Mississippi River's authorized 12-foot draft channel. Alternatives considered include deepening the channel via dredging along the entire MKARNS or only certain segments. It is also anticipated that as part of the dredging alternatives, the Corps will explore beneficial uses of dredged material such as making habitat improvements along the MKARNS. Channel deepening alternatives include the following for six river segments along the MKARNS including 1) the mouth to Pine Bluff; 2) Pine Bluff to Little Rock; 3) Little Rock to Dardanelle; 4) Dardanelle to Fort Smith; 5) Fort Smith to Muskogee; and 6) Muskogee to Catoosa:
   - Channel Deepening – No Action Alternative (9 ft navigation channel)
   - Channel Deepening – 10 Foot Channel Alternative
   - Channel Deepening – 11 Foot Channel Alternative
   - Channel Deepening – 12 Foot Channel Alternative

3) **Navigation Channel Depth Maintenance** – As part of the ongoing operation and maintenance of the current 9-foot navigation channel on the MKARNS, periodic dredging is required in some locations within the river. Since the completion of the MKARNS in 1971 some authorized maintenance dredged material disposal sites have reached capacity and new disposal sites are required to continue channel maintenance activities.
   - Maintenance Dredging and Disposal – No Action Alternative (Dredged material will continue to be disposed of at existing sites until they reach their holding capacity)
   - Maintenance Dredging and Disposal – Disposal via Approved Sites in Original O&M Plan and EIS
   - Maintenance Dredging and Disposal – Disposal via New Disposal Sites.

WHAT YOU CAN DO: All interested parties are urged to respond to this notice, including representatives of Federal and non-federal agencies; agricultural, commercial, industrial, business, transportation and utility interests; civic, environmental, recreational, and fish & wildlife organizations; and concerned citizens, property owners and other interests. **All comments received during the Phase I and Phase II scoping periods are on record and will be considered for the combined EIS. There is no need to re-submit duplicate comments.** In order to be heard and to facilitate proper consideration, you should send your additional written comments to Little Rock District Corps of Engineers, ATTN: CESWL-PR-P (Mr. Johnny McLean), P.O. Box 867, Little Rock, Arkansas 72203-0867, or e-mail to Johnny.L.McLean@usace.army.mil. All comments should be received by August 9, 2004.

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

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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,

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

resources in the study area; preparation of a predictive model to determine low, moderate or high probability areas; and implementation of a Phase I remote sensing survey based on a sampling strategy for low, moderate and high probability areas.

ES.7 Conclusions

This EIS was prepared in accordance with the requirements of the National Environmental Policy Act, regulations promulgated by the President's Council on Environmental Quality (40 CFR 1500-1508), and Army Regulations.

The analysis of environmental consequences indicates that implementation of any of the Project Alternatives will not produce significant impacts, either by itself, or through cumulative effects of past, present, or reasonably foreseeable actions.

Based on the analysis and evaluation of the alternatives presented in this EIS, along with the information and analysis contained in the Feasibility Study Report associated with this study, the following alternative has been selected for implementation:

Alternative E: 1) Flow Management – Operations Only, 2) Navigation Channel Deepening – 12 ft. Navigation Channel Mouth to Catoosa, and 3) Navigation Channel Depth Maintenance – New Disposal Sites.

Consultation with regulatory agencies will be ongoing to ensure compliance with all Federal, state and local regulations and guidelines.

on deepening the channel; however, the Act incorrectly cited Public Law 108-357. Congress has since passed a technical correction citing the correct Public Law (P.L. 108-137). Once the feasibility report and EIS are final, and the ROD has been signed, these O&M funds will be used to initiate mitigation, dredging, and dike/revetment work. Work will begin to initiate the flow management changes as soon as the feasibility report and EIS are final and the ROD has been signed. Should additional funding not be forth coming for the project, it would still be appropriate to implement the new flow management plan due to its high benefit without new costs.

EIS: The Final EIS was produced in parallel with this feasibility study, dated August 2005, and was prepared in accordance with the requirements of the National Environmental Policy Act, regulations promulgated by the President's Council on Environmental Quality (40 CFR 1500-1508), and Engineering Regulations. The analysis of environmental consequences indicates that implementation of any of the alternatives would not produce net significant adverse effects to the human environment, either by itself, or through cumulative effects.

Schedule: A Director's Report is scheduled for completion in September 2005. Plans and specifications are scheduled to be initiated in September 2005. Construction can begin in October 2005. Assuming optimum funding, it is anticipated that construction will take a minimum of four years and will be based on the rate at which funds are provided. Longer periods of construction would result in cost increases. If construction of Alternative E were to extend beyond seven years the BCR would fall slightly below 1.

The recommendations contained herein reflect the information available at this time and current Departmental policies governing formulation of individual projects. They do not reflect program and budgeting priorities inherent in the formulation of a national Civil Works construction program nor the perspective of higher review levels within the Executive Branch. Consequently, the recommendations may be modified before they are transmitted to the Congress as proposals for authorization and implementation funding. However, prior to transmittal to Congress, the sponsor, the States, interested Federal agencies, and other parties will be advised of any modification and will be afforded an opportunity to comment further.

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as a function of improvement in habitat quality and/or quantity and expressed quantitatively in physical units or indexes (but not monetary units). These net changes are measured in the planning area and in the rest of the Nation. Single purpose ecosystem restoration plans shall be formulated and evaluated in terms of their net contributions to increases in ecosystem value (NER outputs), expressed in non-monetary units. Multipurpose plans that include ecosystem restoration shall contribute to both NED outputs and NER outputs. In this latter case, a plan that trades off NED and NER benefits to maximize the sum of net contributions to NED and NER is usually recommended.

2-3. The Planning Process. The Corps planning process follows the six-step process defined in the P&G. This process is a structured approach to problem solving which provides a rational framework for sound decision making. The six-step process shall be used for all planning studies conducted by the Corps of Engineers. The process is also applicable for many other types of studies and its wide use is encouraged. The six steps are:

Step 1 - Identifying problems and opportunities
Step 2 - Inventorying and forecasting conditions
Step 3 - Formulating alternative plans
Step 4 - Evaluating alternative plans
Step 5 - Comparing alternative plans
Step 6 - Selecting a plan

A detailed description of each step is presented in subsequent paragraphs. Corps decision making is generally based on the accomplishment and documentation of all of these steps. It is important to stress the iterative nature of this process. As more information is acquired and developed, it may be necessary to reiterate some of the previous steps. The six steps, though presented and discussed in a sequential manner for ease of understanding, usually occur iteratively and sometimes concurrently. Iterations of steps are conducted as necessary to formulate efficient, effective, complete and acceptable plans.

a. Step 1 - Identifying Problems and Opportunities.

(1) Problems and opportunities statements will be framed in terms of the Federal objective and the specific study planning objectives. Problems and opportunities should be defined in a manner that does not preclude the consideration of all potential alternatives to solve the problems and achieve the opportunities. Problems and opportunities statements will encompass current as well as future conditions and are dynamic in nature. Thus, they can be, and usually are, re-evaluated and modified in subsequent steps and iterations of the planning process.

(2) Properly defined, statements of problems and opportunities will reflect the priorities and preferences of the Federal Government, the non-Federal sponsors and other groups participating in the study process; thus active participation of all stakeholders in this process is strongly recommended. Proper identification of problems and opportunities is the foundation for

Table E-8. Summary of Incremental Net Benefits and Costs Alternative E Average Annual Equivalent Values (July 2004 $) 5.375% Discount Rate, 50-year Period of Analysis			
	Flow Management Operations	**Channel Deepening 12'**	**Alternative E**
Period of Analysis (years)	50	50	
Construction Period (years)	1	4	
Interest Rate (percent)	5.375%	5.375%	
Project First Costs[1]	$0	$148,966,200	$148,966,200
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
Total Project Cost	**$0**	**$166,418,500**	**$166,418,500**
Annual Costs:			
Interest	0	$8,945,000	$8,945,000
Amortization	0	704,100	$704,100
Operations & Maintenance	0	2,823,700	$2,823,700
Total Annual Costs	**$0**	**$12,472,800**	**$12,472,800**
Annual Benefits[2]:			
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)
Total Annual Benefits	**$8,800,700**	**$13,482,600**	**$22,283,300**
Incremental Net Benefits for Components	$8,800,700	$1,009,800	
Incremental Net Benefits for Alt. E over Alt. B			**$9,810,500**
Incremental Benefit-to-Cost Ratio for Components	incalculable	1.08	
Benefit-to-Cost Ratio for Alt. E over Alt. B			1.8

[1] *Incremental Costs - costs in addition to those existing under Alternative B.*

[2] *Incremental Benefits - benefits in addition to those existing under Alternative B.*

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

3.3.2. Navigation Channel Depth and Width

Channel Depth: Commercial navigation is not at optimum productivity within the MKARNS since its 9-foot deep navigation channel limits towboat loads compared to the Lower Mississippi River's authorized 12-foot draft channel. Changing the channel depth to 12-foot would allow tow drafts on the MKARNS to be more compatible with navigation on the Mississippi River. Though only 9-foot navigation is maintained on the Mississippi River during the low flow season, tows drafting 12-feet can navigate the reach up to Memphis most of the time because of the higher flows and corresponding depths characteristic of the Mississippi River. Typically, water depth a minimum of three feet deeper than the tow draft is available though tows have been known to navigate with as little as one-half to one foot of clearance between the bottom of the tow and the river bed in isolated, short reaches. The disparity between the navigation channel depths in the two river systems results in less efficient barge operations than could be achieved with a consistent 12-foot navigation channel throughout the MKARNS and lower Mississippi River commercial navigation systems.

In addition, a number of private and public ports on the system can currently only accommodate tow and barges capable of operating in a 9-foot channel. In order to realize the benefits of the deeper channel, these ports would have to modify their facilities to accommodate barges with deeper drafts. Although this will not be a federal cost it is included in the total project cost.

Another problem to be addressed during this phase is disposal of the dredged material from construction and maintenance of the deepened channel. Dredged material can be placed in existing or newly built disposal areas, unconfined directly on the bank, and in-stream. Portions of the Arkansas River navigation system in Oklahoma are listed as impaired (303(d)-listed) waters by the State of Oklahoma. This impairment is largely associated with high turbidity that is related to both naturally occurring and human induced conditions. Under impaired water categorization, any action, such as dredge disposal, would be closely evaluated for adverse impacts on water quality. Disposal in any unconfined area, including those on the banks or in open water is considered in-stream disposal in Oklahoma. With the initiation of the study, the Oklahoma Department of Environmental Quality (ODEQ), along with other state and federal agencies, has been incorporated into the project delivery team. As part of the study efforts, the ODEQ and SWT initially met to discuss options and to work together to determine the most cost effective means of operating and developing the navigation system while addressing water quality concerns. This discussion included options for disposal of dredge materials, including the potential for in-stream disposal of materials in limited areas. The study will develop an adaptive and best management practices strategy to minimize dredge disposal impacts on water quality in all areas of the river and especially those portions of the system designated as impaired. The ODEQ has agreed to consider these options provided that the most feasible measures are employed for turbidity control. Dredge disposal techniques such as submerged silt screens and other innovative technologies will be explored during detailed pre-construction planning to insure that water quality impacts are minimized. The Corps will monitor water quality parameters during dredge disposal activity to insure that minimizing impacts is being achieved. If needed, additional measures will be implemented to meet the overall goal of minimizing impacts. Such evaluations will consider the most cost effective means to accomplish protecting water quality in the system. By doing so, both in-stream and upland disposal techniques will potentially be part of the dredge disposal strategy. This study will also

We appreciate ...

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-----Original Message-----
From: Carman, Ron R SWL [mailto:Ron.R.Carman@swl02.usace.army.mil]
Sent: Tuesday, April 12, 2005 3:05 PM
To: jrmiajim@arkwest.com
Subject: Arkansas River Navigation Study

Jim,

I got your request for a hard copy of the Arkansas River Navigation Study and EIS. The cost for reproducing and shipping the documents will be approximately $700. If you wish, I can send you a free CD containing the report and EIS and you can get it printed at a local printer at your expense. This would at least save the shipping costs. If you want to proceed with us furnishing a hard copy to you, please submit a check for $700 payable to "FAO - U.S. Army Engineers - Little Rock District". We will send the report and EIS upon receipt of your check. Let me know how you want to proceed. Thanks.

Ron Carman

Hydrology and hydraulic investigations were performed to assess the impacts of a deeper navigation channel for the MKARNS. Possible impacts to the existing locks and to the channel stability were investigated. However in order to accommodate the funding and schedule limits of this study, the hydrology and hydraulics (H&H) study approach was scaled back from the typical feasibility level of detail. The H&H study focuses on conceptual structure designs, a sediment impact assessment and identifying the needed detailed studies to be done during the PED Phase. The conceptual design approach was accomplished using the available original design information, past experience, and engineering judgment. In addition, a 2-D numerical sediment transport model was developed for the upper 10 miles of Pool 2. For additional areas requiring channel deepening, the approach of the study was to extrapolate and correlate the findings from the 2-D modeling for the remainder of the study area. The 2-D modeling results were correlated to results from HEC-RAS models to size the necessary hydraulic structures for providing a maintenance-free navigation channel. Due to this conceptual design approach, lack of design criteria, and the uncertainty in designing alluvial river systems, it will be necessary to verify the estimated structures (size, location, and impacts) with proposed 2-D numerical or physical modeling in the PED phase of the study. More-detailed surveys will be required in order to build these models. Also, the deeper drafting barges have unknown impacts to the present lock designs. Prototype testing at Lock 2 lead to the following findings: for barges that draft 11.5′: (1) There will be a negligible chance of the barges striking the downstream lock sill when the minimum expected tailwater depth of 14′ occurs at the MKARNS projects. (2) It is highly unlikely that the barges will strike the downstream lock sill at Lock #2 due to surging in the canal. (3) Some operational changes at Lock #2 will be required in order to reduce the chance of a barge striking the upstream miter gate. (4) The current filling and emptying operations will be satisfactory for all the side port system locks, except the Ozark and Webbers Falls projects due to the greater lifts of 34′ and 30′, respectively. ERDC recommends using the numerical models HAWSER and LOCKSIM to determine the impacts to hawser forces and lock filling and emptying times for these projects. Also, ERDC conducted an evaluation of all the upstream lock approaches. This evaluation was based on guidance in EM 1110-2-1611 and the results of recently completed Lock Approach Guidance research, ERDC/CHL TR-04-4. Based on this review, ERDC recommends that the projects having the highest potential for approach problems be evaluated with the use of a physical model. This evaluation may require only a single model study, but possibly as many as four model studies may be needed to answer the effects of the deeper draft vessels on navigation conditions in the upper lock approaches.

5.4.3. Environmental Mitigation

The Corps is continuing to coordinate with the USFWS and state resource agencies to ensure compliance with the NEPA, Fish and Wildlife Coordination Act (FWCAR), Endangered Species Act, Clean Water Act, National Historic Preservation Act, and Clean Air Act. The USFWS provided a FWCAR on June 24, 2005, which outlines their concerns, recommendations, and position. The USFWS will submit a supplemental letter to the FWCAR after review of the final EIS.

USFWS's general concerns center around the expedited schedule for the EIS and the constraints it places upon collecting sufficient data to adequately assess impacts and make decisions regarding a final mitigation plan. They are also concerned about funds being properly allocated for long term monitoring and an adaptive management plan and requested that the Corps seek

8.3.2.1.2 Aquatic Habitat Mitigation

Introduction

Impacts. The primary impacts to aquatic habitat as a result of dredging and deepening the channel were determined to be the following:

- The loss of side channel/slack water habitat resulting from open water dredge disposal in dike fields;
- The loss of side channel/slack water habitat resulting from raising dikes and revetments, which accelerates fill rates;
- Removal or alteration of gravel bars through dredging; and
- Impacts to aquatic organisms and habitat through dredging.

Other impacts which are of concern, but can only be adequately assessed through monitoring and additional field work include geomorphologic impacts such as incision and headcutting in tributary streams; impacts to freshwater mussels; and the presence of contaminants in dredge areas.

Gravel bar surveys in proposed dredging locations indicated that 165 acres of gravel could potentially be impacted and would require mitigation by relocating or creating gravel bars. Mitigation would also be conducted for loss of gravel substrate associated with dredging. Gravel substrate is important habitat to aquatic life for spawning, food production, shelter, and hydrologic diversity. The goal would be no net loss of gravel substrate/habitat. This would be accomplished through strategic redeposition of gravel from within the navigation channel to locations adjacent to the channel and side channel locations, which would be determined by the involved agencies. Gravel deposition sites would then be monitored in subsequent years to determine what, if any, movement has occurred, or the level of sediment deposition on the re-deposited gravel substrates.

For dike field impacts, the 11-foot channel project would result in a loss of 583.7 AAHU in Arkansas and 35.4 AAHU in Oklahoma. Impacts from the 12-foot project would similarly result in a loss of 963.1 and 58.5 AAHU in Arkansas and Oklahoma, respectively. Under the 11-foot project alternative, benefits from approved and partially approved mitigation projects in Arkansas resulted in a gain of 459.1 AAHU, while avoid/minimize projects contributed 299.3 AAHU. The 12-foot alternative for the Arkansas portion yielded 439.4 AAHU from mitigation, but avoid/minimize projects could not fully compensate for the higher impacts and resulted in a deficit of 43.3 AAHU. Proposed mitigation in Oklahoma generated 199.0 and 197.3 AAHU for the 11- and 12-foot alternatives, respectively. Avoid/minimize actions in Oklahoma resulted in a gain of 22.8 AAHU with the 11-foot project and a loss of 1.3 AAHU with the 12-foot alternative. Uncertainty in impacts and mitigation would require a long-term monitoring program. The resulting net gain/losses are included in Table 8-5 and indicate that more mitigation is needed for the 12 foot alternative. It is the Army's intent to fully mitigate for aquatic habitat impacts. This additional mitigation would be determined via coordination with USFWS and state agencies prior to the publication of the FEIS.

RECORD OF DECISION
ARKANSAS RIVER NAVIGATION STUDY
M^{C}CLELLAN-KERR ARKANSAS RIVER NAVIGATION SYSTEM
ARKANSAS AND OKLAHOMA

1. DECISION. After consideration of the Final Environmental Impact Statement (FEIS), the Feasibility Report, and other information relevant to the Arkansas River Navigation Study, I have decided that the USACE will proceed with implementation of Alternative E as described in the Feasibility Report and FEIS. The Feasibility Report and FEIS identify Alternative E as the preferred USACE action. Alternative E includes:

- deepening the navigation channel from 9 feet to 12 feet from the Mississippi River to Catoosa, Oklahoma;
- disposing of material from the deepening in new and existing dredge material disposal sites;
- maintaining channel depth by dredging, construction/modification of river training devices, and construction/modification of revetments;
- modifying operational flow management; and
- implementing measures to protect aquatic, terrestrial and wetland environs, and protected species.

This decision was made while balancing essential considerations of applicable laws and regulations, national and USACE policy, the views of interested agencies and publics, the National Economic Development Plan, the USACE Environmental Operating Principles, the authorized purposes of the existing project, and potential impacts to the natural, social, and economic environment. I find Alternative E feasible from engineering and economics perspectives, acceptable from the environmental and social perspectives, and in the public interest. Implementation of the proposed action will be consistent with the terms of this Record of Decision (ROD).

2. BACKGROUND. The MKARNS is approximately 445 miles in length and includes a series of 18 locks and dams that provide for commercial navigation throughout the length of the MKARNS. River flows on the MKARNS are primarily influenced by rainfall in the upper Arkansas River watershed upstream of its confluence with the Verdigris River (river mile 394); as well as water storage and release from 11 reservoirs in Oklahoma. The Little Rock and Tulsa Districts of the USACE constructed the MKARNS and are charged with the operation and maintenance of the system for commercial navigation and other project purposes of flood control, recreation, hydropower, water supply, and fish and wildlife.

Three primary factors influence navigation on the MKARNS:

Maintenance of the Navigation Channel. The navigable channel is maintained by periodic dredging and river training structures. Many of the current dredge material disposal areas are nearly full, and many of the sites approved in 1974 have succeeded into high-quality floodplain habitats.

River Flow Management. Various flows are achieved by modifying operational releases from upstream flood control reservoirs.

Navigation Channel Depth. The present 9-foot draft navigation channel was originally authorized for the MKARNS. The Mississippi River below the mouth of the MKARNS has an authorized 12-foot channel. A 12-foot channel has been authorized for the MKARNS.

3. FEATURES AND ALTERNATIVES CONSIDERED. Formulating alternatives that would improve commercial navigation efficiency on the MKARNS, while maintaining project purposes of flood control, recreation, hydropower, water supply, and fish and wildlife was an iterative process.

Alternatives comprised of various components and several specific components were eliminated from detailed consideration. Raising the elevation of the present pools was eliminated because of extensive ecological, economic, and social impacts, as well as real estate costs. Alternatives to deepening various combinations of selected reaches, to deepen only a portion of the length of the navigation channel, or deepening the channel to a depth of 10 feet by dredging were eliminated since they would not be cost effective. Several flow management ranges were considered and eliminated because they were not effective or were ecologically unacceptable. However, some flow management levels were retained for detailed consideration.

Two components involving Navigation Channel Depth Maintenance were evaluated in detail:

- disposal of maintenance dredged material in areas approved in the 1974 Operations and Maintenance (O&M) Plan, after currently utilized disposal sites reach their capacity, regardless of the quality or type of habitat present; and
- disposal of maintenance dredged material only in selected areas approved in the 1974 O&M Plan, and in new disposal sites designated in the 2003 Long-Term Dredged Material Disposal Plan (DMDP).

Both of these components include the use of new disposal sites to accommodate continued maintenance dredging and the construction of additional river training structures to facilitate maintenance of the navigation channel.

Three River Flow Management components were evaluated in the second iteration. These components each focused on a range of flows as measured at Van Buren, Arkansas and Sallisaw, Oklahoma. These components are referenced in the EIS and Feasibility Report as the:

- 175,000 cfs Component,
- 200,000 cfs Component, and the
- Operations Only Component.

Only the Operations Only Flow Component would achieve the desired navigation improvement, have a positive cost benefit ratio and have minimal adverse environmental impacts. The 175,000 cfs and 200,000 cfs Components were not considered in the final array of alternatives.

Two Navigation Channel Deepening Components were considered in the final detailed analysis.

- Navigation Channel Deepening to 11 feet, and
- Navigation Channel Deepening to 12 feet.

These components vary in the amount of material dredged and disposed as well as the length and number of new or modified river training structures.

The FINAL ARRAY of ALTERNATIVES included the No Action Alternative, and four alternatives developed by combining components from those listed above. The alternatives evaluated in the FEIS are identified below:

Alternative A - No Action (the environmentally preferred alternative). Alternative A would maintain the current channel depth of 9 feet. Although Alternative A would have the least adverse effects to terrestrial and aquatic resources, it would have significant adverse impact to several sites previously approved for dredged material disposal that are now covered with mature forest habitats. Alternative A was not selected because it did not result in improvements to the Navigation system.

Alternative B – Navigation Channel Maintenance Only. Alternative B is similar to Alternative A; both would maintain a 9-foot channel. However, Alternative B would allow use of new disposal sites. Dredged material disposal sites for Alternative B would impact more terrestrial and aquatic habitat than Alternative A. Alternative B was not selected because it would not provide all the desired benefits to navigation.

Alternative C - Navigation Channel Maintenance and Operations Only Flow Management. The dredging and disposal impacts associated with Alternative C are similar to Alternative B. Flow management changes would also be incorporated along with channel maintenance. Alternative C would enhance the efficiency and reliability of commercial navigation associated through reduction of high flows. Alternative C would have positive economic benefits, but it would not capture all the potential economic benefits, and was therefore not selected.

Alternative D - Navigation Channel Maintenance, Operations Only Flow Management, and 11-Foot Navigation Channel. Impacts associated with increased noise, sediment suspension, and impacts to recreational and aesthetic resources would occur during the initial deepening of the navigation channel. Implementation of Alternative D would impact more terrestrial and aquatic habitat along the length of the MKARNS than Alternatives A, B or C. The expanded river bottom dredging relative to the 9-foot channel may affect submerged archeological sites and documented shipwreck sites. Alternative D was not selected because it did not provide net positive economic benefits to the navigation system.

Alternative E - Navigation Channel Maintenance, Operations Only Flow Management, and 12-Foot Navigation Channel (the National Economic Development Plan alternative). The types of impacts resulting from Alternative E would be similar to those identified for Alternative D. The terrestrial impacts of Alternative E would be essentially the

same as Alternative D, however it would degrade a larger area of river bottom by dredging. The expanded river bottom dredging relative to the 9-foot of channel may affect more submerged archeological sites and documented shipwreck sites than the11-foot channel. Alternative E was selected because it would provide the greatest net economic benefits to the navigation system.

4. MITIGATION. Mitigation measures would be implemented by the USACE to eliminate or reduce unavoidable adverse impacts. Compensatory mitigation has been substantially reduced through efforts to avoid and minimize effects to high quality habitats.

Approximately 302 acres of forested habitat and 390 acres of grassland habitat would be lost with the use of all potential dredged material disposal sites over the 50-year economic life of the project. Creation of approximately 130 acres of higher quality bottomland forest and 248 acres of higher quality marsh would mitigate for these lost acres.

The mitigation for dike field/slackwater impacts would include notching approximately 200 dikes/revetments, maintaining or dredging the openings to about 30 backwaters or side channels, modifying or moving about 75 disposal areas, and constructing islands in 30 locations.

Alternative E will impact approximately 165 acres of in stream gravel bars. To achieve no net loss of gravel substrate/habitat, gravel from within the navigation channel will be deposited in selected locations adjacent to the channel and side channel locations.

Mussel (unionid) surveys estimated that there are approximately 2 million individuals in the Arkansas Post Canal. The San Bois and Sallisaw Creeks have been identified as particularly sensitive areas. Mitigation for Alternative E impacts would consist primarily of avoiding specific areas, utilizing silt curtains, relocating beds, monitoring and additional adaptive management measures as needed.

5. THREATENED AND ENDANGERED SPECIES. The U.S. Fish and Wildlife Service (USFWS) Biological Opinion (BO) says the proposed action is not likely to jeopardize the continued existence of either the American burying beetle or interior least tern. The BO continues that the proposed action would likely result in incidental take of American burying beetles and interior least terns. Measures suggested in the USFWS BO for the interior least tern will include a series of in-channel islands to be created through dredged material disposal within each river pool. For the burying beetle, the emphasis would be on avoidance and minimization of impacts.

6. LONG TERM MONITORING AND ADAPTIVE MANAGEMENT. An MKARNS Adaptive Management Plan will serve as a template for task requirements to achieve defined goals and measurable objectives to accomplish mitigation results. It is the ultimate goal of the USACE to achieve a functioning, self-sustainable ecosystem by mitigating for impacts as a result of the navigation deepening and flow modification project. Long term monitoring will be based on Biological Evaluation Criteria Data evaluated in the context of projected future without project condition baseline data.

7. CULTURAL RESOURCES. The USACE has determined that project-related activities may have an effect upon properties potentially eligible for inclusion in the National Register of Historic Places (NRHP). The USACE has consulted with the Arkansas State Historic Preservation Officer (SHPO), the Oklahoma SHPO, and the Oklahoma Archaeological Survey (OAS) pursuant to Section 106 of the National Historic Preservation Act (NHPA). The USACE and the Arkansas SHPO have agreed that subsequent to completion of the NEPA documentation, a Programmatic Agreement (PA) shall be implemented to satisfy the USACE Section 106 responsibility. The USACE, Oklahoma SHPO, and the OAS have agreed that a PA is not necessary for the USACE to satisfy NHPA responsibilities for activities proposed as part of this project. In Oklahoma, the USACE will follow normal Section 106 procedures for all undertakings that may have an effect on historic properties. Mitigation of historic properties will be determined on a case-by-case basis in consultation with the Oklahoma SHPO and the OAS.

8. CONCLUSION. On behalf of the U.S. Army Corps of Engineers, I have decided to proceed with actions required to implement the Arkansas River Navigation Project. I have carefully considered all applicable laws, Executive Orders, regulations, the FEIS, supporting studies, and all comments provided during scoping and formal review comments throughout the NEPA process. Based on these considerations, I have determined that the USACE preferred action (Alternative E) strikes the proper balance between the necessary protection of the environment and achievement of the study purpose. Furthermore, I have determined that the USACE has identified and adopted all practicable means to avoid or minimize harm to the environment that may be caused by implementation of the planned action.

Date: SEP 2 7 2005

DON T. RILEY
Major General, USA
Director of Civil Works