



American Rivers
Rivers Connect Us®

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Dear Mr. Koontz and Mr. Ward:

On behalf of American Rivers' members and supporters across the nation, I am writing to submit comments on the Draft Environmental Impact Statement (DEIS) for the St. Johns Bayou and New Madrid Floodway Project. American Rivers strongly opposes the Tentatively Selected Plan (TSP), and urges the U.S. Army Corps of Engineers (Corps) to abandon the TSP and select the no action alternative. The TSP violates federal law and policy, is fundamentally at odds with modern water resources management, and will cause devastating harm to fish, wildlife, and the environment that cannot be mitigated.

The Tentatively Selected Plan would adversely impact the Floodplain, Wetlands, and Fish and Wildlife

The project's defining component – the New Madrid Floodway closure levee – will sever the last remaining connection in the State of Missouri between the Mississippi River and its natural floodplain habitat. Closing the levee will end annual backwater flooding and eliminate valuable fish spawning and rearing habitat that is formed when floods inundate the project site. Regular flood pulses are the driving force behind the robust ecology of riverine floodplains. Annual flooding allows the backwater area of the New Madrid floodway to perform floodplain functions critical to nationally significant fish and wildlife resources. According to the U.S. Fish and Wildlife Service, the river-floodplain connection that will be eliminated by the closure levee is “absolutely vital to maintaining a healthy, sustainable fishery in this section of the Mississippi River.”¹

The findings of the U.S. Fish and Wildlife Service (USFWS) clearly indicate that the TSP impacts to fish and wildlife habitat are unacceptable. The USFWS has concluded that the project will “cause substantial, irretrievable losses of nationally significant fish and wildlife resources, and greatly diminish rare and unique habitats found in southeast Missouri.”² USFWS further concludes that “project-related wetlands losses are at odds with the federal conservation policy goals and sustainable water resources development.”³

¹ March 15, 2006 U.S. Fish and Wildlife Service Supplemental Fish and Wildlife Coordination Act Report (included at pages 510-515 of the Revised Supplemental Environmental Impact Statement Number 2 for the St. Johns Bayou-New Madrid Floodway Project)

² July 2013 Draft U.S. Fish and Wildlife Service Fish and Wildlife Coordination Act Report, DEIS Appendix Q, Part 1. Page vii.

³ *Id.*

The DEIS understates the impacts to wetlands affected by the project and their assessments differ substantially from the assessments of the Environmental Protection Agency (EPA) and the USFWS. Even though the EPA and USFWS used different methodologies in their wetlands assessments, the agencies “are surprisingly consistent in their estimates of wetlands within the proposed project area.”⁴ The Corps’ failure to accurately distinguish farmed wetlands from prior converted cropland “accounts for the biggest divergence between the three agencies’ estimates,”⁵ and underestimates the project’s wetland impacts by 10,000 or more wetland acres.⁶

The USFWS report finds that “While the proposed mitigation plan could potentially compensate some portion of fish and wildlife habitat losses that can be quantified with current models for estimating wildlife effects of water development projects, it would not, unfortunately, retain ecological functions of a connected floodplain-river ecosystem in the project area”⁷. The USFWS concerns regarding fish passage through box culverts to access the New Madrid Floodway is very concerning and identifies a serious flaw in the Corps’ DEIS. This failure to mitigate environmental impacts makes the TSP unacceptable.

The Tentatively Selected Plan violates Clean Water Act Section 404

The flaws in the Corps’ analysis lead us to believe that the construction and operation of the TSP would violate Section 404 of the Clean Water Act. The magnitude and severity of the environmental harm that would be caused, the ability to avoid those impacts through the use of nonstructural and restoration efforts, and the Corps’ failure to require adequate compensatory mitigation result in an unacceptable proposal. In carrying out its civil works activities, the Corps must comply with the requirements of Clean Water Act Section 404 and the Section 404(b)(1) Guidelines.⁸ Critically, the 404(b)(1) Guidelines prohibit the Corps from proceeding with a project if:

- (a) The project “will cause or contribute to significant degradation of the waters of the United States;”⁹ or
- (b) A less damaging practicable alternative is available;¹⁰ or
- (c) The project fails to adequately minimize and compensate for wetland and other aquatic resource losses;¹¹ or
- (d) The project evaluation fails to establish that the project will not have unacceptable adverse environmental impacts.¹²

The adverse impacts of the TSP would unquestionably cause or contribute to significant degradation of the nation’s waters. The Corps failed to fully assess less damaging practicable alternatives. As the USFWS has shown, the Corps has not taken the steps needed to avoid, minimize and mitigate for the adverse impacts of the TSP. Finally, the Corps has not properly carried out these necessary evaluations, and has not accounted for the full range of aquatic impacts.

⁴ *Id.* at 18.

⁵ *Id.*

⁶ *Id.* at 23-24.

⁷ *Id.* at vi

⁸ 33 U.S.C. § 1323; 33 C.F.R. § 336.1(a).

⁹ 40 C.F.R. § 231.10(c).

¹⁰ 40 C.F.R. § 230.10(a).

¹¹ *See* 40 C.F.R. 230.10(a)–(d).

¹² 40 C.F.R. § 230.1(c).

The Tentatively Selected Plan promotes outdated water resources management

As the USFWS states, “The proposed project TSP attempts to solve a local flooding problem for a select group of stakeholders within a river floodplain that influences populations of fish, wildlife, and people at much larger scales.”¹³ The closure levee and proposal to cut off the Mississippi River’s ability to access its floodplain perpetuates outdated water resources management approaches that are not consistent with current flood risk management or floodplain management practices. In recent years the Obama Administration – including the Corps – has increasingly implemented integrated water resources management at the watershed scale and incorporated climate change impacts into planning. This proposal rolls back the Administration’s progress on water resources management. It fails to adequately consider climate change impacts, instead relying on the hydrologic period of record. And it relies on these outdated approaches to justify a project that will benefit a tiny minority of stakeholders who are knowingly farming in a floodway.

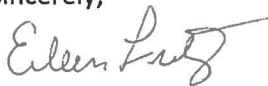
The New Madrid Floodway is a critical component of the Mississippi River and Tributaries Project, which provides flood risk management for the lower Mississippi River. Use of the project area as a floodway is critical for lower flood stages at Cairo, Illinois, among other places during a project flood. In 2011 the Corps activated the floodway, overcoming political opposition so intense as to prompt the State to seek an injunction.¹⁴ Despite the Corps’ assessment that “The Birds Point-New Madrid Floodway would continue [to] be operated as authorized,”¹⁵ it is logical to conclude that completion of the TSP, which would result in the development of structures that permit and encourage the intensification of agriculture in the floodway, will result in increased political pressure against activating the floodway, putting communities that depend on it for flood protection at increased risk.

Conclusion

American Rivers strongly opposes the TSP, and urges the Corps to abandon the TSP and select the no action alternative. The TSP and the New Madrid Floodway closure levee in particular, would adversely impact the Mississippi River’s last connection to its historical floodplain and adversely affect wetlands habitat and fish and wildlife. The project is based on outdated water resource management approach and is in violation of the Clean Water Act. Because of these impacts, and the fact that it is not possible to mitigate for adverse impacts, the Corps should select the no action alternative.

Thank you for the opportunity to comment on the DEIS for the St. Johns New Madrid Floodway Project. Extensive comments submitted by the National Wildlife Federation and other groups further support the points raised here. If you have any questions about these comments, please feel free to contact me.

Sincerely,



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Director, Flood Management
American Rivers

¹³ 2013FWCA Report at vi.

¹⁴ Missouri *ex rel.* Koster v. U.S. Army Corps of Eng’rs, No. 1:11CV00067SNLJ, 2011 WL 1630339 (E.D. Mo. Apr. 29, 2011).

¹⁵ July 2013 U.S. Army Corps of Engineers, Memphis District. Draft Environmental Impact Statement for the St. Johns Bayou New Madrid Floodway Project. Page 213.