DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
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The Honorable Sally Jewell
Secretary of the Interior
1849 C Street NW
Washington, DC 20240

The Honorable Christy Goldfuss
Managing Director
Council on Environmental Quality
Executive Office of the President
722 Jackson Place NW
Washington, DC 20506

Dear Secretary Jewell and Director Goldfuss:

I am writing in response to the Department of the Interior's (DOI's) letter dated December 6, 2016 that seeks to refer to the Council on Environmental Quality (CEQ) a 2014 working draft Final Environmental Impact Statement (EIS) for the St. Johns Bayou and New Madrid Floodway, Missouri Project. The Department of the Army (Army) believes that the referral of the 2014 working draft final EIS to CEQ is not appropriate at this time. Significant changes have been made to the working draft document since 2014, including changes to the draft's proposed Federal action. The revised working draft document is still under review, so those changes are not addressed in DOI's letter or statement.

This project has a long history. The U.S. Army Corps of Engineers (Corps) has been working hard to improve the final EIS by addressing specific recommendations from the U.S. Fish and Wildlife Service (FWS) as well as feedback by an independent external peer review panel (IEPR), better modeling, reducing environmental impacts, and mitigating for impacts that are unavoidable. In light of those changes to the 2014 working draft EIS, the local project sponsor has informed the Corps that it is currently evaluating the changes to the updated draft EIS. Accordingly, there is no proposed Federal action to refer at this time. If the local sponsor decides to move forward with the latest draft, the next step in the National Environmental Policy Act (NEPA) process is for the Corps to complete the analysis, finalize the EIS, and make it available to the commenting agencies and the public. That is the time when referral would be appropriate under CEQ's regulations that establish "procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions." 40 CFR § 1504.1. This avoids CEQ having to consider evolving working drafts of a document that may substantially differ and which have not received final approval from agency decisionmakers or the local sponsor.

If CEQ decides to consider DOI's referral, it should take into account the additional reviews and revisions that have occurred since the 2014 draft document that DOI's letter and statement discuss. As mentioned above, the November 2014 working copy of the final EIS that the DOI has referred was provided to an IEPR. This independent peer review is required as part of implementing Section 2034 of the Water Resources Development Act of 2007 and the Corps' internal planning process. The Corps conducted further revision and reconsideration based on the IEPR feedback. Since November 2014, the draft final EIS has been subject to, and continues to undergo, several levels of review by numerous centers of expertise, by the Mississippi Valley Division (MVD), by internal Corps experts through Agency Technical Review and District Quality Control, and in consultation between the MVD and Corps Headquarters.

One of the most significant changes to the working draft's recommendations responds to the FWS's April 2015 Fish and Wildlife Coordination Act Report and Biological Opinion. The Report recommended that if the Corps proceeds with the New Madrid component of the project, it select Alternative 4.1, which maintains floodplain connectivity up to a higher elevation of 289.5 feet year-round, thereby reducing both flood protections and environmental impacts by allowing flooding on an additional 16,912 acres beyond the Tentatively Selected Plan in the earlier draft. There is general agreement between the agencies on the extent of the impacts to habitats in the project area if Alternative 4.1 is implemented. Additionally, the working draft incorporates many of the other measures recommended in the Coordination Act Report. The attached Table 1 provides a summary of major changes that the latest working draft EIS has made from previous NEPA documents, including the 2014 draft.

The Corps' extensive, peer reviewed, and certified models disagree with several of DOI's claimed impacts on wetlands, fish, and wildlife. The Corps' use of an independent peer review and model certification process validates project impacts and ensures the adequacy of compensatory mitigation, which was developed in accordance with its Federal law governing fish and wildlife mitigation, 33 U.S.C. § 2283. Furthermore, the interagency team collaborated on a number of habitat assessment methods to determine the impacts that potentially could occur if the project is implemented. The acres and functional value in habitat units of any project lands impacted and a mitigation plan that fully mitigates for unavoidable impacts to the environment will be presented in the final EIS.

DOI's December 6, 2016, letter claims that the project would result in reduced backwater flooding on as much as 53,556 acres of functional wetlands. The vast majority of acreage referenced in the DOI reports is prior converted cropland and not jurisdictional wetlands, as documented by the Corps in collaboration with the Natural Resources Conservation Service. DOI's estimate is not consistent with the Corps analysis in the draft EIS (which finds reduced flooding on approximately 15,000 acres of wetlands) or the Environmental Protection Agency's conclusions provided in its November 25, 2013 comments on the draft EIS (13,376 acres of wetlands impacted). How to characterize acreage is less important than appropriately modeling and validating the impacts of the project and mitigation measures on functional habitat

services for fish and wildlife. The Army is committed to fully mitigating for unavoidable impacts concurrently during the construction phase of the project.

State-of-the-art modeling has been used to determine impacts to fish and wildlife resources for the area impacted if the proposed action were implemented. Multiple models were used to ensure that impacts were modeled across the full range of various land uses, time periods, flood frequencies, and flood durations. Compensatory mitigation was formulated in a consistent manner in which impacts were determined using the same models. As reflected in Table 1, the most recent working draft also updates the planned mitigation, including concrete proposals to restore 515 acres of vegetated wetland within the batture (the area between the levee and the Mississippi riverbed), restore 432 acres of floodplain at Riley Lake, and apply an adaptive management plan that contains objectives, monitoring requirements, reporting periods, and thresholds for incorporating changes. If the project moves forward, the Army will work with commenting agencies and the non-Federal sponsor to ensure, before a record of decision is approved, that all impacts to wetlands, fish, and wildlife will be fully mitigated with specific measures to compensate with functionally equivalent habitat in accordance with governing laws and Federal principals for mitigation, including those of additionality, durability, and performance measurement. *See* Presidential Memorandum: Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment (November 3, 2015).

The Army appreciates the assistance provided by the DOI and the other Federal and State agencies in the formulation and revision of the EIS. This assistance continues to shape the final EIS that is still very much in the working draft stage. The Army strongly recommends that the NEPA process be allowed to continue and that CEQ defer consideration of any potential interagency dispute until there is a proposed Federal action. In the interim, the Army is available to provide additional information to CEQ regarding the issues raised by DOI's December 6, 2016 letter and statement.

Very truly yours,

Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)

Enclosure: Table 1

Table 1. Major Changes from 2014 Draft FEIS to 2015 Draft FEIS.

ITEM	2002 to 2014	2015
Independent External Peer Review (IEPR)	Not conducted	IEPR panel consists of an eight person panel whose members were independently selected and are nationally recognized experts in the fields of wetland ecology, fishery biology, shorebird ecology, waterfowl ecology, water quality, H+H engineering, economics, and NEPA. IEPR conducted during four key phases including a review of past NEPA documents (Phase 1), a review of a Project Work Plan that describes overall methodologies and fundamental assumptions that would be followed during the completion of the new EIS (Phase 2), a pre-draft EIS (Phase 3), and a pre-final EIS (Phase 4).
H+H Period of Record	1943-1974	1943-2009
WRP Enrollment	Did not estimate.	Estimates future Natural Resources Conservation Service Wetlands Reserve Program (WRP) enrollment of 1,445 acres and 765 acres in the St. Johns Bayou Basin and New Madrid Floodway, respectively.
Social	Assessed	Updated to reflect current social conditions.
Economic	Benefit to Cost Ratio (BCR) of 1.01 at the authorized interest rate of 2.5%.	BCR of 1.9 at the current interest rate of 3.125%
Environmental		
Wetlands	• Wetland impacts determined by WETSORT Model and NRCS estimate. • Hydrogeomorphic Wetland Classification (HGM) Model used to quantify impacts. o HGM Model developed and analysis conducted by Corps Engineering,	• Wetland impacts determined for all potential vegetated wetlands located at and below the pre-project five year flood frequency and NRCS farmed wetland estimate. • HGM Model used to quantify direct impacts and indirect impacts as a result of reduced flooding.

	Research, and Development Center (ERDC) staff without conducting field work.	○ HGM Model underwent a peer review by independent experts. ○ ERDC staff revised the model based on peer review recommendations. ○ ERDC staff conducted the analysis with extensive fieldwork.
St. Johns Bayou Basin	• Direct Impacts = 155 vegetated acres, • Indirect Impacts = 374 farmed wetlands • Reduced Flooding = 554 vegetated acres, EIS concluded that the reduced flooding would not result in an impact since wetlands would still remain, although flooding would be reduced.	• Direct Impacts = 409 vegetated acres • Indirect Impacts = 4,824 vegetated acres, 1,445 future Wetlands Reserve Program acres, and 792 acres of farmed wetlands.
New Madrid Floodway	• Direct Impacts = 12 vegetated acres • Indirect Impacts =138 farmed wetlands • Reduced Flooding = 3,426 vegetated acres, EIS concluded that the reduced flooding would not result in an impact since wetlands would still remain, although flooding would be reduced.	• Direct Impacts = 9 vegetated acres • Indirect Impacts = 8,807 vegetated wetlands, 306 acres of farmed wetlands, and 765 acres of future WRP acres.
Terrestrial Wildlife	• Terrestrial wildlife assessed based on the Habitat Evaluation Procedure Model (HEP). • Representative species consisted of the barred owl, fox squirrel, pileated woodpecker, Carolina chickadee, and mink. • Direct impacts would result in a loss of -1,993 Average Annual Habitat Unit (AAHU) and -66 AAHU in the St. Johns Bayou Basin and	• No changes to model. • No changes to representative species. • Direct impacts would result in -765 AAHU and -16.9 AAHU in the St. Johns Bayou and New Madrid Floodway, respectively. Changes are a result of updated land use, HSI values, and HEP assumptions. Changes in modeling results are not comparable to previous results.

	New Madrid Floodway, respectively.	
Waterfowl	• Waterfowl Assessment Method developed by U.S. Fish and Wildlife Service (USFWS). • Model assessed habitat during waterfowl season at a depth of less than 18 inches. Model utilized median flood elevations during specific months to determine 18 inch depth. • Recommended Plan Impacts = -204,039 Duck Use Days (DUD) in Feb/March.	• DUD model developed by Dr. Mickey Heitmeyer and run with up to date values. • Model underwent independent peer review. • Model has been regionally certified for use in Civil Works projects. • Model assesses habitat during waterfowl season with no depth requirement. The hydrologic variable is based on a three consecutive days of flooding recurrence interval. Model quantified habitat up to the .01 three-day recurrence interval frequency. • Results are not comparable due to changes in model.
Shorebirds	• Shorebird model developed by USFWS. • Old Recommended Plan = -761 AAHU	• Previous shorebird model abandoned due to numerous fundamental issues identified by a model review panel. • New model developed by Dr. Dan Twedt. • Model underwent peer review. • Model approved for project-specific use. • Tentative Selected Plan(TSP) -116 and -323 optimal equivalent acres. • Results are not comparable to previous NEPA documents due to a changed model.
Fish Spawning and Rearing Habitat	• EnviroFish Model used to quantify impacts. • Assessed habitat up to the 2-year floodplain. • Spawning and rearing habitat quantified separately.	• EnviroFish Model updated. • Model underwent independent review, • Model approved for project-specific use. • Assesses habitat up to the 5-year floodplain for optimal habitat and the 2-year floodplain for sub-optimal habitat.

	• Habitat Suitability Index (HSI) values based on representative species. • Fish access assumed to occur.	• Spawning and rearing habitat combined. • Community level HSI values based on expert opinion and inter-agency team concurrence. • Fish access assessed based on fish access study.
Water Quality	Impacts/benefits to water quality assessed. EIS concludes that the project will not have a significant impact on water quality as a result of the project. Water quality will improve as a result of mitigation.	Impacts/benefits to water quality updated with most up-to-date water quality values. EIS concludes that the project will not have a significant impact on water quality. Water quality will improve as a result of mitigation.
Freshwater Mussels	Surveys indicated the presence of significant mussel population that required mitigation.	Updated surveys did not indicate the presence of significant mussel populations. No mitigation is recommended. Changes are likely the result of the recent channel maintenance program.
Endangered Species	• Bald Eagle – USFWS granted a take • Pallid Sturgeon – USFWS concurred with no effect • Least Tern – USFWS granted an unquantifiable take. • Indiana and northern long-eared bat – not assessed	• Bald Eagle – no longer endangered • Pallid Sturgeon – USFWS concurred with no effect. • Least Tern – USFWS did not concur with USACE Biologic Assessment. USFWS reasonable and prudent measures include implementation of alternative B4.1 in the New Madrid Floodway, monitoring of tern colonies adjacent and immediately downstream of the project area. Indiana and northern long-eared bat – USFWS did not address in Biological Opinion. Prior to construction, surveys would occur following standard USFWS procedures.
Operation Plan		
St. Johns Bayou	Close gates whenever river stage is higher than the interior sump stage. Use pumps to	No change

	evacuate impounded interior runoff.	
New Madrid Floodway	Allow flooding up to an elevation of 284.4 feet (2,790 acres).	Allow flooding up to an elevation of 289.5 feet (19,702 acres).
Winter Waterfowl Management		
St. Johns Bayou Basin	Inundate up to 286 feet from 1 December to 31 January	No change
New Madrid Floodway	Inundate up to 285.4 feet from 1 December to 31 January	No change
Compensatory Mitigation		
St. Johns Bayou Basin	• Reforest 1,293 acres of agricultural lands • Ecologically design and construct 387 acres of borrow pits • 105 acres of moist soil management	• 2,175 acres of vegetated wetland restoration • Ecologically design and construct 387 acres of borrow pits • 244 acres of seasonally inundated farmland • Vegetated grass buffer on construction reaches • Vegetated tree buffer on 1,062 acres adjacent to ditches • Bank stability structures • Channel habitat structures
New Madrid Floodway	• Restore hydrology to Big Oak Tree State Park • Reforest 1,800 acres surrounding Big Oak Tree State Park • Reforest 2,326 acres of agricultural lands in New Madrid Floodway. • 660 acres of moist soil units • 64 miles of vegetated buffer strips • Establish Wildlife Corridor between Big Oak Tree State Park and Ten Mile Pond Conservation Area • Additional Techniques to be determined during mitigation acquisition:	• Restore hydrology to Big Oak Tree State Park • Vegetated wetland restoration on 1,800 acres surrounding Big Oak Tree State Park • Additional 1,458 acres of vegetated wetlands restoration within the New Madrid Floodway. • 515 acres of vegetated wetland restoration in the batture. • 676 acres of seasonally inundated farmland • Ecologically design and construct 60 acres of borrow pits • Restore 432 acres of floodplain lakes (Riley Lake)

	○ Additional reforestation (New Madrid Floodway or batture) ○ Increase Flood Duration ○ Create/Restore Permanent Waterbodies (Riley Lake) ○ Restore/enhance small waterbodies ○ Modified Gate Operation (spawning and rearing pool) – all scenarios required the spawning and rearing pool.	