

American Society of Landscape Architects * Audubon Louisiana * Audubon Mississippi
Baton Rouge Audubon Society * CLIMB CDC * Coalition to Restore Coastal Louisiana
Coastal Conservation Association – Mississippi * Environmental Defense Fund
Gulf Islands Conservancy, Inc. * Gulf Restoration Network * Jackson Audubon Society
Louisiana Audubon Council * Louisiana Wildlife Federation
Lower Pearl River Watershed Conservation District * Mississippi Ornithological Society
Mississippi Chapter Sierra Club * Mississippi Commercial Fisheries United
Mississippi Forestry Association * Mississippi Wildlife Federation * National Audubon Society
National Wildlife Federation * North Gulfport Community Land Trust
Orleans Audubon Society * Pearl Riverkeeper * Rural Property Rights Association of MS
Wolf River Conservation Society

July 3, 2018

Via Email

Board of Directors
Rankin Hinds Pearl River Flood & Drainage Control District
P.O. Box 320790
Flowood, MS 39232

Re: Integrated Draft Feasibility & Environmental Impact Statement; Pearl River Basin, Mississippi
Federal Flood Risk Management Project Hinds and Rankins Counties, MS

Dear Board of Directors:

On behalf of our millions of members and supporters, our organizations request that you put a hold on the current public comment period for the above-referenced study. We ask that you then properly notice a new 60-day public comment period, including through a formal notice in the Federal Register, once a series of required reports are made available to the public (the Fish and Wildlife Coordination Act Report, Biological Assessment and any needed Biological Opinion, and Independent External Peer Review Report).

Because of the deficiencies in the public comment and study process outlined in this letter, we have submitted a request to the Commander of the U.S. Army Corps of Engineers' Vicksburg District asking that the District take control of the public comment process. We also called on the Vicksburg District to immediately initiate an independent external peer review for the Pearl River study as required by 33 U.S.C. 2343. A copy of this request is attached.

A. Section 211 Requires Full Compliance with Environmental Laws and Planning Requirements

Section 211 of the Water Resources Development Act of 1996 does not waive any laws or planning requirements. As a result, the Rankin Hinds Pearl River Flood & Drainage Control District (Rankins Hinds District) is required to comply with all federal environmental laws and planning requirements that would apply if the Pearl River study was being prepared by the Corps of Engineers.

Full compliance with these laws and requirements—including the National Environmental Policy Act (NEPA) and the Water Resources Development Act—is absolutely critical for the Pearl River project in light of the severe and extensive harm that would be caused by the tentatively selected One Lake alternative. As you know, the One Lake alternative would dam and dredge an ecologically rich section of the Pearl River to create an artificial lake in the heart of Jackson Mississippi, bury more than 1,800 acres of vital floodplain wetlands and other waters, eliminate miles of habitat for two federally protected species, and reduce vital freshwater flows reaching the Gulf of Mexico.

B. The Current Public Comment Process Is Fundamentally Flawed

Among other things, NEPA requires federal agencies to facilitate public involvement in decision making to the fullest extent possible, including providing a meaningful opportunity for the public to provide comments on draft environmental impact statements (“draft EIS”). These same requirements apply to the Pearl River section 211 study.

To satisfy these NEPA requirements the Rankin Hinds District must, at a minimum, provide the public with: sufficient notice of the opportunity to provide comments; sufficient time to review the draft EIS and prepare comments; and access to the entire analysis of alternatives and impacts. As the U.S. Court of Appeals for the Tenth Circuit has so aptly stated, “[a] public comment period is beneficial only to the extent the public has meaningful information on which to comment”¹ Regrettably, these fundamental requirements have not been satisfied.

First, the public notice is inadequate. The highly controversial nature of the One Lake alternative, the project’s severe and extensive adverse impacts, and the strong opposition from many downstream communities warrants a much more robust effort to notify the public. The public comment period for the Pearl River study should be noticed in the Federal Register, through direct mailings to the many interested parties (including to the individuals and organizations that filed scoping comments and to the communities that have formally opposed the project), and through the many other means recommended in the NEPA implementing regulations.

Second, the 45-day public comment period is far too short. The draft EIS is extensive and proposes a major project that would cause significant harm to the environment. The One Lake alternative will destroy extensive wetland and natural river habitats that support a vast array of fish and wildlife species, eliminate the vital natural flood protection provided by 1,800 acres of floodplain wetlands and other waters, and negatively impact water levels in the lower Pearl River and salinity levels in the estuary. Analyzing the draft EIS and providing meaningful comments on this major project proposal will take longer than 45 days. The difficulty in providing effective comments in this short time period are greatly amplified by the materials that are missing from the draft EIS. These missing materials include the Fish and Wildlife Coordination Act Report, the Biological Assessment and any needed Biological Opinion, and the Independent External Peer Review Report.

Third, the draft EIS is missing critical information that is fundamental to fully understanding the impacts of the One Lake Project and alternatives to that project. As noted above, this missing information includes the Fish and Wildlife Coordination Act Report, the Biological Assessment and any needed Biological Opinion, and the Independent External Peer Review Report. The absence of the information

¹ *New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 708 (10th Cir. 2009).

provided by these critical and mandatory reports creates enormous barriers to the effective public and expert scrutiny that is essential to proper implementation of NEPA.

These deficiencies create significant barriers to the public's ability to meaningfully comment on this environmentally destructive and highly controversial project. To correct these deficiencies, our organizations urge the Rankins Hind District to put a hold on the current public comment period and then properly notice a new 60-day public comment period, including through a formal notice in the Federal Register, once the required Fish and Wildlife Coordination Act Report, Biological Assessment and any needed Biological Opinion, and Independent External Peer Review Report are made available to the public.

C. The Pearl River Study Requires an Independent External Peer Review

The Pearl River study must be reviewed under the Independent External Peer Review (IEPR) process established by the Water Resources Development Act of 2007. 33 USC 2343. The Pearl River study clearly triggers mandatory IEPR under this provision as it evaluates a highly controversial civil works project that will cost well over \$200 million. 33 USC 2343(a). The Corps is required by law to provide the public with information on the timing of the IEPR, the entity that has the contract for the IEPR review, and the names and qualifications of the IEPR panel members. 33 USC 2343(c).

Our organizations have been advised that an independent review process is underway for the Pearl River study, but we have been unable to locate any IEPR information online and we do not know whether this study is being carried out under the requirements of 33 USC 2343. We ask that you provide us with the IEPR information required by 33 USC 2343 and the IEPR study as soon as possible.

D. Conclusion

Our organizations urge the Rankin Hinds District to take the steps outlined in this letter, which are essential for complying with the National Environmental Policy Act and the Water Resources Development Act. Please contact Melissa Samet at the National Wildlife Federation (sametm@nwf.org, 415-762-8264) if you have any questions or require additional information.

We look forward to a written response to this letter. Thank you for your assistance in this important matter.

Sincerely,

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National Wildlife Federation
North Gulfport Community Land Trust
Orleans Audubon Society
Pearl Riverkeeper
Rural Property Rights Association of MS
Wolf River Conservation Society

cc: Colonel Michael C. Derosier, Commander, USACE Vicksburg District

Attachment

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July 3, 2018

Colonel Michael C. Derosier
Commander, Vicksburg District
U.S. Army Corps of Engineers
4155 Clay Street
Vicksburg, MS 39183

Re: Integrated Draft Feasibility & Environmental Impact Statement; Pearl River Basin, Mississippi
Federal Flood Risk Management Project Hinds and Rankins Counties, MS

Dear Colonel Derosier:

On behalf of our millions of members and supporters, our organizations ask that the Vicksburg District take control of the public comment process for the Pearl River study as required by ER 1105-2-100, and immediately initiate an independent external peer review for this study as required by 33 U.S.C. 2343. These actions are essential for ensuring compliance with the National Environmental Policy Act (NEPA) and the Water Resources Development Act.

As you take control of the public comment process we ask that you put a hold on the current public comment period and then properly notice a new 60-day public comment period, including through a formal notice in the Federal Register, once the required Fish and Wildlife Coordination Act Report, Biological Assessment and any needed Biological Opinion, and Independent External Peer Review Report are made available to the public.

A. Section 211 Requires Full Compliance with Environmental Laws and Planning Requirements

As you know, the Pearl River study is being conducted by the Rankin Hinds Pearl River Flood & Drainage Control District (Rankins Hinds District) under section 211 of the Water Resources Development Act of 1996. This study's tentatively selected alternative, known as the One Lake Proposal, would dam and dredge an ecologically rich section of the Pearl River to create an artificial lake in the heart of Jackson Mississippi, bury more than 1,800 acres of vital floodplain wetlands and other waters, eliminate miles of

habitat for two federally protected species, and reduce vital freshwater flows reaching the Gulf of Mexico.

Critically, section 211 does not waive any laws or planning requirements. As a result, all federal environmental laws and planning requirements that apply to a study carried out by the Corps of Engineers also apply to the Pearl River study. This is fully recognized by the Corps' Engineering Regulations which explicitly require the District to "retain responsibility for fulfilling the NEPA requirements, including any necessary scoping meetings, public reviews, filings with EPA" for section 211 studies.¹ ER 1105-2-100 Appendix H, Amendment #1 20 Nov 07. The District also "should expect to conduct peer, policy and legal reviews" for section 211 studies. *Id.*

B. The Current Public Comment Process Is Fundamentally Flawed

Among other things, NEPA requires the Corps to facilitate public involvement in decision making to the fullest extent possible, including providing a meaningful opportunity for the public to provide comments on draft environmental impact statements ("draft EIS"). At a minimum, this requires providing the public with: sufficient notice of the opportunity to provide comments; sufficient time to review the draft EIS and prepare comments; and access to the entire analysis of alternatives and impacts. As the U.S. Court of Appeals for the Tenth Circuit has so aptly stated, "[a] public comment period is beneficial only to the extent the public has meaningful information on which to comment"²

Regrettably, the Rankin Hinds District has not satisfied these fundamental requirements for at least the following three reasons.

First, the public notice provided by the Rankin Hinds District is inadequate. The highly controversial nature of the One Lake Project, the project's severe and extensive adverse impacts, and the strong opposition from many downstream communities warrants a much more robust effort to notify the public. The public comment period for the Pearl River study should be noticed in the Federal Register, through direct mailings to the many interested parties (including to the individuals and organizations

¹ The full text relevant provision is as follows: "H-8. Decision Documents Prepared by Sponsors. For a decision document prepared by a non-Federal interest, such as under the authority of Section 211 of WRDA 1996, the District should encourage the non-Federal interest to utilize the review and approval processes described in this appendix in order to receive timely input on the adequacy of their report and maximize the opportunity for approval by the Secretary. If the non-Federal interest chooses some other path, the District should expect to conduct peer, policy and legal reviews of the final decision document, or possibly some interim product, and to provide the results of their reviews to the MSC and RIT along with advice on whether the report should be approved. The MSC will endorse the District's findings with its own views on approval and advise the RIT regarding the adequacy of the District's reviews. The RIT will engage an OWPR policy and legal compliance review, and forward the results to ASA(CW) with summary advice regarding the consistency of the document with technical, policy and legal requirements, and a recommendation to approve or not approve the report. The District will retain responsibility for fulfilling the NEPA requirements, including any necessary scoping meetings, public reviews, filings with EPA, executing a FONSI, and/or providing the draft ROD for HQUSACE or ASA(CW) signature, as appropriate. A report prepared by non-Federal interests may still require a Chief's Report (i.e., Section 203 reports), so a CWRB and follow-on procedures may be necessary." ER 1105-2-100 Appendix H, Amendment #1 20 Nov 07 (available at https://www.publications.usace.army.mil/Portals/76/Publications/EngineerRegulations/ER_1105-2-100.pdf).

² *New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 708 (10th Cir. 2009).

that filed scoping comments and to the communities that have formally opposed the project), and through the many other means recommended in the NEPA implementing regulations.

Second, the 45-day public comment period is far too short. The draft EIS is extensive and proposes a major project that would cause significant harm to the environment. The One Lake Project will destroy extensive wetland and natural river habitats that support a vast array of fish and wildlife species, eliminate the vital natural flood protection provided by 1,800 acres of floodplain wetlands and other waters, and negatively impact water levels in the lower Pearl River and salinity levels in the estuary. Analyzing the draft EIS and providing meaningful comments on this major project proposal will take longer than 45 days. The difficulty in providing effective comments in this short time period are greatly amplified by the materials that are missing from the draft EIS. These missing materials include the Fish and Wildlife Coordination Act Report, the Biological Assessment and any needed Biological Opinion, and the Independent External Peer Review Report.

Third, the draft EIS is missing critical information that is fundamental to fully understanding the impacts of the One Lake proposal and alternatives to that proposal. As noted above, this missing information includes the Fish and Wildlife Coordination Act Report, the Biological Assessment and any needed Biological Opinion, and the Independent External Peer Review Report. The absence of the information provided by these critical and mandatory reports creates enormous barriers to the effective public and expert scrutiny that is essential to proper implementation of NEPA.

These deficiencies create significant barriers to the public's ability to meaningfully comment on this environmentally destructive and highly controversial project. To correct these deficiencies, our organizations urge the Corps to take control of the public comment process as directed by ER 1105-2-100. We ask that you put a hold on the current public comment period and then properly notice a new 60-day public comment period, including through a formal notice in the Federal Register, once the required Fish and Wildlife Coordination Act Report, Biological Assessment and any needed Biological Opinion, and Independent External Peer Review Report are made available to the public.

C. The Pearl River Study Requires an Independent External Peer Review

The Pearl River study must be reviewed under the Independent External Peer Review (IEPR) process established by the Water Resources Development Act of 2007. 33 USC 2343. The Pearl River study clearly triggers mandatory IEPR under this provision as it evaluates a highly controversial civil works project that will cost well over \$200 million. 33 USC 2343(a). As noted above, ER 1105-2-100 states that the District "should expect to conduct peer, policy and legal reviews" for section 211 studies. ER 1105-2-100 Appendix H, Amendment #1 20 Nov 07.

Our organizations have been advised that an independent review process is underway for the Pearl River study, but we have been unable to locate any IEPR information online. As you know, "in all cases" the IEPR peer review is to be carried out "during the period beginning on the date of the signing of the feasibility cost-sharing agreement" and ending "not more than 60 days after the last day of the public comment period for the draft project study," unless the Chief of Engineers determines that more time is necessary. 33 USC 2343(b) and 2343(d). The Corps provides IEPR plans online, and is required by law to provide the public with information on the timing of the IEPR, the entity that has the contract for the IEPR review, and the names and qualifications of the IEPR panel members. 33 USC 2343(c).

If the IEPR study required by 33 USC 2343 is underway, we ask that the Corps provide us with the information outlined above as soon as possible. If the required IEPR study is not underway, we ask that the Corps immediately initiate the IEPR process and provide us with the required information as soon as it becomes available.

D. Conclusion

Our organizations urge the Corps to take control of the public comment process and take all other steps necessary to ensure that the Pearl River study complies with the National Environmental Policy Act and the nation's other bedrock environmental laws, and with the Water Resources Development Acts. Please contact Melissa Samet at the National Wildlife Federation (sametm@nwf.org, 415-762-8264) if you have any questions or require additional information.

We look forward to a written response to this letter. Thank you for your assistance.

Sincerely,

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