



April 24, 2009

President Barak Obama
1600 Pennsylvania Avenue
Washington, DC 20500

Dear President Obama,

We are writing to express our deep concerns that the Army Corps of Engineers has deliberately deceived and systematically misled the public and decisionmakers and abused the public process and the public trust in their planning of the Delaware Main Channel Deepening Project ("Delaware Deepening"). It is already well documented that they have misrepresented facts and science and inflated economic benefits to the chagrin and challenge of no less than the Government Accountability Office in attempts to move forward a project they have been unable to justify for over 17 years because of agency, expert and public concerns over the level of environmental and community harm it would pose. But seeing the opportunity to press this bad project forward under the guise of stimulus, the Army Corps has reinvigorated its efforts to move forward at all cost.

The most recent abuse occurred this past December when the Army Corps engaged in a charade clearly intended to induce the White House, Congress, and the Appropriations Committees into funding this undeserving project.

On December 17, 2008 at 7:25 pm the Army Corps announced a 14-day public comment period for the Delaware Deepening. The comment period spanned the nationally recognized holiday season and was set to end New Years Eve, December 31, 2008. Such a short period of comment over such a major holiday time on such a major issue is not only a transparent effort to avoid receiving any meaningful level of comment, but it is a clear repudiation of the importance and value of the public process and securing meaningful input from state and federal agencies charged with protecting the environment, from regional experts and from the concerned public that would be affected by the final decision.

There was no articulated nor demonstrated need for public comment during the holiday season – there were no deadlines nor time sensitivities that mandated a holiday comment period. The timing was clearly selected in order to minimize the quality, quantity and value of the comment received. It seems clear that rather than seek comment which would inform sound decisionmaking, the Army Corps was merely seeking a heads up on the arguments and data it would have to refute in its pre-determined decision that an updated Environmental Impact Statement for the project was not needed.

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The minimal 11th hour extension ultimately issued by the Army Corps was clearly timed to minimize its value. Several organizations and agencies involved with the Delaware River requested extensions of time for the unreasonable comment period set by the Corps which also indicated confusion as to why the Corps was requesting the comments in the first place and under these conditions. A minimal extension was only granted on New Year's Eve, at 1:15 pm. By this time the agencies, experts and public who were intending to comment had invested their time in crafting and submitting comments which were likely hurried and truncated due to the timing limitations already in place, but, it was done. In addition, by 1:15 on December 31 it is likely that many of the key agency personnel responsible for providing input on the project or scientific experts commenting in their expert role, had already left, or likely were about to leave, their offices for the New Year holiday, making it unlikely they would see or take advantage of the additional time granted to January 5th, leaving only 8 working days on the extension.

The disregard and lack of respect for sister agencies and the public demonstrated by the Army Corps through this process should not be accepted from a federal agency funded by public dollars to carry forth a public mission.

Despite its failure to give clear indication in the notice documents as to how comments from sister agencies, experts and the public were going to be used, the Army Corps ultimately used submissions to craft and release an Environmental Assessment (EA) used to justify its pre-determined decision not to update the 12-year outdated Environmental Impact Statement on the project – a decision it had already made earlier in the year as demonstrated by an April 22, 2008 Army Corps memorandum in which it states: “it is concluded that current circumstances do not warrant re-study, and that NEPA compliance requirements have been adequately met.” (See attached)

Of further concern, the Army Corps used the Environmental Assessment (EA) to formally announce and confirm its intent to ignore its legal obligation to secure a valid Coastal Zone Consistency Determination from the State of New Jersey. The EA asserts the Army Corps was in possession of a valid NJ CZM Certification and ignores the legal reality that NJ legally revoked that certification by letter September 30, 2002; the Army Corps position is also stated in a December 24, 2008 correspondence (See attached). As recently as the December public comment period New Jersey reiterated the need for an updated and valid CZM Determination. And in its December 2008 comment, the State of Delaware stated that it was expecting to conduct a supplemental CZM determination for their state – another legal obligation the Army Corps chose to ignore in its EA findings. It is incomprehensible that the Army Corps would treat sovereign states and the requirements of the Clean Water Act with such calculated disregard.

And while the Army Corps asserts that it will continue to pursue a needed State permit from Delaware, in its December 24, 2008 correspondence to the Delaware Congressional Delegation and in the Project Partnership Agreement (neither subject to public review or comment) the Army Corps clearly asserts its position that it has no legal obligation to secure it. The Corps' assertion that it has no obligation to honor the environmental protection laws of the States that make up this great nation is untenable, legally challengeable, and should not be asserted in private documents out of the hearing of the public, the sovereign states or our federal elected officials.

The Corps' assertions that there are no outstanding environmental issues with regards to this project, that there is no new information worthy of Environmental Impact Statement review, and no opposition

from other environmental agencies, are demonstrably false. The record is full of letters and comments over the past 12 years documenting questions, concerns, new data, new information and significant changes to the Delaware River and Bay ecosystem that need to be fully considered and addressed – items that took years to develop and cannot be reasonably disposed of in a truncated EA process conducted without full and fair participation by sister agencies, experts and the public. Letters and documents on the record raising issues, questions and concerns in need of full review come from a variety of sources including: the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Delaware River Basin Commission, the Delaware Department of Natural Resources and Environmental Control, the New Jersey Department of Environmental Protection, the Environmental Protection Agency, the University of Delaware’s Sea Grant Program, and the Estuary Program for the Delaware River. Environmentally, the Delaware River Main Channel Deepening project threatens endangered and threatened species, risks the millions spent in oyster rehabilitation in the River and the livelihood of those who rely upon their harvest, threatens the Philadelphia drinking water intakes, reintroduces toxins into the River, will harm wetlands important for habitat as well as flood and storm protection, increases the risk and harm from catastrophic oil spills, and threatens to harm a wide variety and amount of critical ecosystems and species that are ecologically and economically important.

Of the dozens of comments received during the December comment period – 9 alone from resource agencies and dozens more from experts and the public – only one supported the project and that was the comment issued by the project’s local sponsor.

In addition, the Army Corps’ recent efforts to press this project forward ignores the most recent review being undertaken by the Government Accountability Office in response to Congressional request. A review conducted by the Government Accountability Office (GAO) and released June 2002 revealed that “The Corps’ analysis of project benefits contained or was based on “miscalculations, invalid assumptions, and outdated information.” When the GAO’s improved information and figures were used, the deepening was shown to generate less than 50 cents of economic benefits for every dollar that would be invested in it.

Then in 2006, the GAO used the Delaware River Deepening as an example of ongoing concerns about Army Corps process and projects nationwide. In a statement before the House Subcommittee on Energy and Resources, Ms. Anu Mittal, on behalf of the GAO, testified:

- “Generally, GAO found that the Corps’ studies understated costs and overstated benefits, and therefore did not provide a reasonable basis for decision-making.”
- “[T]he Corps’ three-tiered internal review process did not detect the problems GAO uncovered during its reviews of these analyses, raising concerns about the adequacy of the Corps’ internal reviews.”
- “In closing, Mr. Chairman, we have found that the Corps’ track record for providing reliable information that can be used by decision makers to assess the merits of specific Civil Works projects and for managing its appropriations for approved projects is spotty, at best. ... the Corps’ planning and project management processes cannot ensure that national priorities are appropriately established across the hundreds of civil works projects that are competing for scarce federal resources.”

Again this year the GAO is reviewing the Delaware River Deepening. Rather than awaiting the findings of that review the Corps is choosing to ignore it and most of the comments and warnings of virtually all

other agencies responsible for and comments of the public concerned about this important public resource.

In our view, to provide any financial backing of this project at a time when there are so many other legitimate projects in need of funding and under these appalling conditions would seem to be both irresponsible and unwise.

Yours sincerely,

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Cc:
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