

**American Rivers * Center for International Environmental Law
Clean Water Action * Coalition to Restore Coastal Louisiana
Defenders of Wildlife * Earthjustice * Environmental Defense
Friends of the Earth * League of Conservation Voters
National Audubon Society * National Wildlife Federation
Republicans for Environmental Protection * Restore America's Estuaries
Sierra Club * The Wilderness Society * World Wildlife Fund**

July 6, 2007

The Honorable Barbara Boxer
Chairman
Committee on Environment and Public Works
456 Dirksen Office Building
Washington, DC 20510

The Honorable James L. Oberstar
Chairman
Committee on Transportation and Infrastructure
2165 Rayburn House Office Building
Washington, DC 20515

The Honorable James M. Inhofe
Ranking Member
Committee on Environment and Public Works
410 Dirksen Office Building
Washington, DC 20510

The Honorable John Mica
Ranking Member
Committee on Transportation and Infrastructure
2163 Rayburn House Office Building
Washington, DC 20515

Dear Chairmen Boxer and Oberstar and Ranking Members Inhofe and Mica:

On behalf of our millions of members and supporters nationwide, we urge you to ensure inclusion of the strongest possible reforms of the U.S. Army Corps of Engineers (Corps) in the Water Resources Development Act (WRDA) of 2007 conference report. The independent review and mitigation reforms approved by the Senate, and the planning principles and guidelines reforms adopted by both chambers, are essential for protecting communities, taxpayers, and the environment and must be included in the final conference report.

Hurricane Katrina provided a stark wake-up call to Americans that our nation's current approach to water resources planning does not work. Fundamentally flawed federal policies, unchecked engineering defects, poorly planned projects, and a severely degraded wetlands system led to the devastating flooding of New Orleans.

The Government Accountability Office (GAO) has made it clear in testimony before Congress that flawed planning is not limited to Corps projects in New Orleans. Recent Corps studies "did not provide a reasonable basis for decision-making" because they "were fraught with errors, mistakes, and miscalculations, and used invalid assumptions and outdated data." The GAO also reports that the Corps has failed to implement any mitigation at all for almost 70 percent of its projects. Wetlands and streams impacted by Corps projects protect communities from flooding, improve water quality, provide essential fish and wildlife habitat, and support exceptional recreational opportunities. As a result, failure to offset these losses has very real adverse consequences. The Senate WRDA includes much needed reforms that will address these problems with Corps planning.

Section 2007 of the Senate bill establishes an independent review process developed with the lessons of Katrina and the GAO testimony firmly in mind. The Senate language gives the reviewers the essential opportunity to review a completed draft project study and consider and respond to public comments on that draft study. The Senate's clear review triggers bring certainty to the planning process. The Senate also establishes a critical safety assurance review during the detailed design and construction phases of flood control projects to protect public safety. The independent review provision in the House bill does not establish these key requirements. Section 2037 of the House bill allows the Corps to complete independent peer reviews before there is a project study or environmental impact statement to actually review. Further, that timing would prevent the public's comments on both documents to be reviewed by the panel. The House bill also gives the Corps complete control over the scope of review, in effect authorizing reviews that ignore critical issues. The House bill also gives the Corps discretion to evade "mandatory" reviews, and discretion to ignore recommendations of independent panels without cause. Finally, the House bill does not include the critically important safety assurance review.

Sections 2008(c) and (e) of the Senate bill require the Corps to meet the same mitigation requirements as everyone else. The Senate provision also requires that mitigation be monitored until ecological success criteria are met, that the Corps consult yearly with appropriate federal and state agencies on the status of individual mitigation efforts, and that the Corps ensure that mitigation consists of habitat that is at least as valuable as the habitat affected by the project. It also requires the Corps to establish a publicly accessible mitigation tracking system. However, we urge that you not include the provisions of Senate Section 2008(a), which would roll back existing law that requires mitigation to be carried out prior to or concurrently with project construction. While

House Section 2014 does identify some items that must be included in Corps mitigation plans, it does not establish the key requirements of Senate Sections 2008(c) and (e). In addition, House Section 2014 rolls back existing monitoring requirements and explicitly allows mitigation outside affected watersheds.

We applaud both chambers for including language (Senate Section 2006 and House Section 2036) requiring modernization of the long outdated Principles and Guidelines (“P&G”) and implementing guidance. We strongly prefer the more detailed criteria for modernizing the P&G contained in the Senate language. For years, experts have called for a comprehensive updating of the P&G, which have not be reviewed or changed since they were finalized in 1983. In 2004, the National Research Council reported that the P&G should be revised “to better reflect contemporary management paradigms, analytical methods, legislative directives, and social economic and political realities.” In February 2007, the National Academy of Public Administration reported that updating the P&G was essential for improving the Corps’ program. We urge that the revision be carried out by a cabinet-level interagency working group, be subject to public comment, and that the final language provide as much direction as possible to guide the revision process, as prescribed in the Senate bill.

House Section 2028 undermines the National Environmental Policy Act (NEPA) as applied to Corps projects. It would give the Corps a new statutory authority to limit the evaluation and discussion of alternatives in environmental impact statements for Corps projects. It could also be misinterpreted to allow the Corps to review less than a full range of alternatives for a project as required by longstanding NEPA regulations and case law, and will create additional layers of paperwork and bureaucracy. House Section 2028 should not be included in the final WRDA conference report.

Section 2027 could also seriously undermine NEPA because, as written, it could be misinterpreted to cede responsibility and authority for the preparation of environmental impact statements for non-Federal projects to local project proponents. This would be in direct violation of longstanding NEPA regulations, which require the Corps to prepare (or if the Corps hires an outside contractor, to independently evaluate) the environmental impact statement for such projects. While the Corps may require a project proponent to submit environmental information, the Corps also must independently evaluate that information. 40 C.F.R. § 1506.5. At a minimum, Section 2027 should be amended to unequivocally state that these requirements remain unchanged.

Communities and taxpayers need, and deserve, meaningful reform of the Corps of Engineers. The independent review and mitigation provisions in the Senate bill would ensure that federal monies are being spent on projects that are structurally sound, environmentally friendly, and economically justified. Strong directives for reforming the P&G will ensure that all Corps project planning conforms to current laws, policies, and

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economic methodologies. We urge you to ensure that these provisions are included in the final WRDA conference report.

Sincerely,

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Martha Marks
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Rodger Schlickeisen
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Defenders of Wildlife

Mark Wolf Armstrong
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Brent Blackwelder
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Friends of the Earth

Carter Roberts
President and CEO
World Wildlife Fund

cc: Conferees for the Water Resources Development Act of 2007