

Attachment 5B (1)

Explanatory Note for U.S. Army Corps of Engineers Civil Works Program Report February 1, 2010

This note provides the U.S. Army Corps of Engineers Civil Works Program response to the requirement for information for the report to Congress, as outlined by section 1609(c) of the American Recovery and Reinvestment Act (ARRA). As requested, also enclosed some examples of the benefits provided as a result of National Environmental Protection Act (NEPA) actions.

The enclosed information addresses 827 ARRA funded projects or activities. Of those, 765 require compliance with NEPA and 2,120 NEPA actions are reported as of December 31, 2009. Since the last report the list has been updated to include eight new studies/projects that are not applicable. Seven are in the investigations program and one is in the construction program. After further review, it was determined that these studies and projects would only be used for environmental coordination and not result in decisions on projects or activities that require a NEPA analysis and documentation.

As reported in previous quarters, there are many cases where multiple NEPA actions apply to a single Civil Works project or activity. Reasons for multiple NEPA actions on one project or activity include a significant change to the scope of the original project, such as a disposal site on a dredging project or a design change on a flood control project. In addition, there are programmatic NEPA documents on some of the projects involving multiple separable elements or projects, for each of which the NEPA analysis and documentation must be updated.

We have significantly reduced the number of pending items from our September 2009 report from 297 to 131. Of the 131 pending actions, 3 are new pending actions in this quarter's report. Another 29 actions are still pending from last report because the ARRA work has either just started or will start shortly. The remaining 99 pending actions are for projects that have issues such as scope changes, site selection delays, extensive coordination with other agencies, and sponsor delays that will take multiple reporting cycles to complete. In our first submission of funded projects in June 2009, we marked all funded projects as pending even if the preliminary project work necessary to begin the NEPA process had not started and that has led to these actions being pending on multiple reports. Of these remaining 99 pending actions, 22 are expected to be completed by the next reporting cycle and we expect the remaining 77 actions to be completed without NEPA related delays.

As stated previously, the majority of the Regulatory Program funding is being used to hire temporary employees and to acquire products that would support regulatory decision-making. Examples of the products that will be purchased include aerial photography or other remote sensing information that will be used to aid permit decisions or jurisdictional determinations, as well as the collection of stream information that will be used to develop stream assessment protocols used in permit decision-making.

There are several reasons why NEPA is not applicable on all studies/projects within the Army Civil Works program. Specifically:

- The Formerly Utilized Sites Remedial Action Program is excluded because it is covered under the Comprehensive Environmental Response, Compensation, and Liability Act.
- NEPA is not required for studies under the Planning Assistance to States Program or the Floodplain Management Services Program. Also, this funding is being used towards research and development, as well as providing technical assistance, guidance, and assessments. There are two projects that have been withdrawn: one due to a lack of non-Federal sponsor and one due to lack of Federal funding for the separable study identified on the NEPA report.
- There are three projects within the Construction Program that do not require NEPA. One project is a research program; the other project is a water quality contamination study that will not lead to construction; and the other is environmental coordination work only. In addition, there are three new projects that have been withdrawn from this report: one because the project is no longer being accomplished with ARRA funding; one because the work being done is for design activities and not NEPA documentation; and one because no additional NEPA documentation is needed.
- In the Operation and Maintenance program the funding included is for national studies not resulting in individual projects requiring NEPA. In addition, this reporting period there are eight NEPA actions that have been withdrawn due to changes in project scope.

Examples of the benefits provided as a result of the NEPA process:

EXAMPLE #1: *Winter Harbor Federal Navigation Project - Environmental Assessment (row 503)*

The Norfolk District, U.S. Army Corps of Engineers conducts maintenance dredging at the Winter Harbor Federal navigation project, located in Mathews County, Virginia. The outer channel sediments are classified as ~99% clean sand and are deposited along approximately 4,500 feet of eroding beach shoreline just north of the channel entrance. The shoreline area consists of a narrow berm section fronting a moderately-vegetated dune structure, with a steep foreshore slope. The shoreline is inhabited by the Federally endangered Northeastern beach tiger beetle.

The NEPA process alerted the District of the potential impacts of dredged material placement operations on this species of tiger beetle. The District requested initiation of an Endangered Species Act (ESA) Section 7 Consultation, and the U.S. Fish & Wildlife Service issued a Biological Opinion in 1999, amended in 2001, to provide conservation recommendations, an incidental take statement, and terms & conditions to insure the protection of the species.

Both the project and tiger beetle population benefited from the project. The District is able to complete necessary maintenance dredging and creates additional habitat for the tiger beetles. The last maintenance event occurred in 2002, and monitoring of tiger beetles post-placement operations depicted increases in the tiger beetle population. A study was published which concluded that few or no impacts occurred to the tiger beetle population, and the project likely benefited the species.

In line with the mitigation measures developed during the NEPA and EA processes, the ARRA funded maintenance event at Winter Harbor commenced in December 2009, after the time-of-year restriction period opened. This serves to protect adult tiger beetles utilizing the area in the fall.

EXAMPLE #2: Lorain Harbor, OH ARRA Maintenance Dredging - Environmental Assessment (row 243)

The NEPA process allowed a reiteration and reconsideration of dredged material management alternatives and provided opportunity for public interest review. Analysis conducted in conjunction with the NEPA action verified that a greater volume of dredged material was suitable for unconfined open-lake placement thereby obviating the need to provide additional confined disposal capacity than was previously planned through the Lorain Harbor Dredged Material Management Plan (DMMP).

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