**ASSOCIATION OF LEVEE BOARDS OF LOUISIANA**

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 “Without Flood Control, Nothing Else Matters.”

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**POSITION ON FLOOD CONTROL ISSUES**

**December 2015**

**Introduction**

The Association of Levee Boards of Louisiana (ALBL) since its founding in 1941, has continually represented the interests of both the State and local governing bodies in matters of flood prevention and where applicable, Coastal restoration.

**Mission Statement**

The ALBL’s mission is to represent all Levee, Conservation and Drainage Board

Member Agencies in the purpose of Comprehensive Flood Protection Systems and Coastal Restoration that cause proper assurances of protection to Louisiana’s citizens, businesses and industries by constructing, maintaining and constantly improving a comprehensive, effective, and integrated system of flood control infrastructure. The ALBL provides a forum for levee boards throughout the state to work together, promoting, improving and ensuring comprehensive flood protection systems and coastal restoration statewide. The ALBL maintains active relationships with the local governing bodies, the State of Louisiana, primarily through the Office of Public Works in the Department of Transportation and Development, and the Louisiana Coastal Protection and Restoration Authority (CPRA), and with the Federal Government, most often with the U.S. Army Corps of Engineers (Corps) and the USDA Natural Resources Conservation Service (NRCS).

**Levee Certification and FEMA Accreditation**

The ALBL is a strong advocate of all measures currently in motion in the United States Congress which pertain to the certification of existing flood control structures and the further accreditation of those systems to FEMA.

The ALBL insists that the US Army Corps of Engineers be required to provide the certification data to FEMA on all those works that they designed and constructed throughout the Mississippi River Valley including the Red River levee system. This is a service that has always been provided by the Corps and funded within their budget. To the extent that the problem is associated with “authority” we strongly support the Congressional bills which would clarify the streams and rivers which are recognized under the Mississippi Rivers and Tributaries Project. And to the extent that the problems are associated with funding, we fully support the funding of the Corps of Engineers budget items which relate to certification and rehabilitation of existing structures.

The ALBL supports FEMA’s decision to improve the precision of the establishment of flood zones and resulting insurance rates during a FIS by discontinuing the use of the “without levees” approach to flood mapping in favor of more precise modeling methods that properly consider the impact of both riverine and coastal non-accredited levees during a flood event. Further, the ALBL supports FEMA’s efforts to improve the mapping process by further involving the community impacted by changes to such maps in order to assure the maps better reflect real world conditions. The ALBL strongly encourages flexibility in the Levee Analysis Mapping Procedures (LAMP) process currently being piloted in five Louisiana parishes.

**Flood Control and Hurricane Protection**

The ALBL, aware of the necessity and importance of hurricane protection to Louisiana, continuously urges the expeditious completion of projects authorized for construction as local interests provide the necessary right-of-way.

The ALBL member agencies pledge their full support and resources to implement the Louisiana master plan for comprehensive hurricane protection and coastal restoration.

The Association’s worst fears were realized with the landfall of Hurricane Katrina and hurricane Rita in 2005, which exceeded the design capability of the hurricane protection system resulting in overtopping of the levee system, catastrophic failures of floodwalls, unprecedented loss of life, and damages exceeding all previous natural disasters in the United States.

The ALBL requests that the Corps own, operate, and maintain all flood control structures constructed in federally maintained navigation channels.

The ALBL recommends that the Corps continue their efforts to expedite the restoration of the entire hurricane protection system and urge the Corps to construct the projects to their authorized elevation including wave wash and foreshore protection as part of the disaster response reconstruction.

The ALBL requests that a program be developed to provide a consistent flow of Federal, State, and local funds dedicated to the completion of a comprehensive hurricane protection system incorporating levees, wetlands, and barrier islands, and also that a program be approved to finance levee, marsh and barrier island re-nourishment.

The ALBL recommends that the Corps adopt procedures in developing construction plans for hurricane protection systems that will result in phased development to provide early and somewhat uniform levels of protection over the entire area to be protected.

The ALBL further requests that the support of the presently authorized projects be continued, feasibility studies be completed and construction begun, and that all other projects which complete the comprehensive hurricane system be identified and targeted to be completed as soon as possible.

The ALBL supports increased funding for the Comite River Diversion Project in order to make up for the funding that was reprogrammed for the Mississippi river repairs in 2011, as well as for other projects in the past years.

The ALBL supports immediate start of construction for the Morganza to the Gulf Hurricane Protection Project including the features added in the Post Authorization Change (PAC) report. As these PAC items include closures in the GIWW, the ALBL supports installation of locks at these locations as to avoid having the intended flood protection interfering with the needs of the navigation and industry communities.

he ALBL supports the Upper Barataria Risk Reduction Project – Highway 90 Alignment. The abandonment of the USACE Donaldsonville to the Gulf Project leaves gaping holes in sustainability for many areas leaving the upper Barataria Hydraulic Basin vulnerable to flooding from excessive rainfall events.

The project would not only protect the homes and businesses of the residents of our districts, but would also protect U.S. Highway 90, a major hurricane evacuation route, allowing quicker access after a storm not only to our own area, but to Jefferson Parish and the City of New Orleans, as well. The project would also protect the industrial corridor along the Mississippi River, including the Waterford Steam Electric Station, Unit 3, which provides electricity for all of the industry along the river and for approximately 12% of Louisiana. The loss of this facility, alone, could cost our local economy over $250 million per day.

The ALBL supports the Louisiana Coastal Area (LCA), LA Ecosystem Restoration Study and expresses its support for construction.

The ALBL supports completion of the Feasibility Study on the Lake Pontchartrain and Vicinity, Westshore Hurricane Protection and the increased funding needed to complete the study and proceed to PED.

**Mississippi River & Tributaries Project**

The ALBL maintains that flood control, navigation, and water resources development

projects and maintenance of these works is a matter of continual importance for the welfare and economy of the people of Louisiana. The 2005 failure of the hurricane protection system in Southeast Louisiana was a graphic lesson in the critical importance of all flood protection. As such, the Mississippi Rivers & Tributaries (MR&T) Project, containing provisions for flood protection, is equally vital to Louisiana. Also, the 2011 high river event once again demonstrated the need to implement MR&T project features, especially in the Lower Atchafalaya Basin area. Fortunately, through the exhaustive efforts of all stakeholders, a disaster was diverted from backwater flooding by employing temporary measures.

The ALBL urges that every effort be made by all concerned to fully fund and complete the MR&T project in a due and diligent fashion and to implement the project features to their maximum capabilities.

The Association of Levee Boards of Louisiana (ALBL) urges the Corps of Engineers to re-evaluate the Morganza Forebay Drainage and to implement changes to accelerate drainage which would minimize potential seepage issues and promote vegetation regeneration and minimize erosion conditions due to vegetative loss from submerged mainline Mississippi River levees.

The 2011 Mississippi River flood accentuated the need to raise all low segments of the MR&T system that does not have adequate freeboard. And to expedite projects to remedy excessive seepage by adding relief wells and seepage berms in critical reaches.

The ALBL urges the Corps of engineers to restore and rebuild the MR&T project to pre- flood conditions; including necessary dredging and the navigation functions of the project.

The ALBL supports the usage of material from batture borrow pits and requests that consideration be given for the effective usage and replenishment of this necessary resource.

The ALBL recognizes the importance of the Corps dredging program and requests that funding be placed so that this excavated material be utilized in refiling borrow pits and for coastal restoration efforts.

The ALBL encourages the Corps to increase funding to address bank stabilization problems and rectify areas previously identified through the stability analysis program.

The ALBL expresses concern over problems related to wave wash and the loss of foreshore protection and the need for the Corps to provide a permanent low-cost solution to this reoccurring problem.

The ALBL urges the Corps to continue monitoring of the Old River Structure in order to maintain the integrity of the flood control system. In addition, ALBL request that that the Corps work with the state to develop a management regime for the Old River Control Structure to allow flexibility to maximize flood protection, fisheries productivity and restoration for Louisiana's Mississippi River Basin and valuable coastal resources.

The ALBL urges that the U. S. Army Corps of Engineers partner with the CPRA to evaluate the siltation increases in the Mississippi River and Atchafalaya Basin with the potential loss of the ability to pass the Project Flood. Modifications/ (enlargement) of the Wax Lake Control Structure and subsequent modifications to the 70/30 split between the Mississippi/Atchafalaya River should be considered.

The ALBL believes that the potential benefit of these changes would create improved coastal restoration processes, water quality benefits, along with a water control structure that would enhance safety from Morganza to Venice (Mississippi River) and Morganza to Morgan City (Atchafalaya River). The benefits from the ability to accelerate the lowering of the water elevations in the Atchafalaya Basin by increasing the discharge capacity would also help to minimize back water flooding in the Red River as well.

The ALBL strongly opposes continued delays to the completion of the authorized flood control improvements in the Atchafalaya Basin Floodway and also urges that, for the Lower Atchafalaya Basin Reevaluation Study, a balance is necessary to accommodate all interests, while maintaining flood protection and the economic base of the area.

The ALBL supports the construction of a permanent flood control structure to prevent flooding through the Bayou Chene as an advance measure of the MR&T project features which would benefit a vast six parish area.

The ALBL urges support for the timely completion on all aspects of the Red River Backwater Area, with reconsideration for authorization being given to the Bushley Bayou Project.

The ALBL requests that the inadvertent flooding due to construction of the West Atchafalaya Basin Protection Levee (WABPL) be addressed through the MR&T program and considered as part of mitigation for this project.

 The ALBL supports state funding to purchase rights-of-way for the Fifth Louisiana Levee District.

**Red River**

Due to the June 2015 Red River Flood of Record, ALBL supports that the Corps of Engineers conducts a 'Sediment & Hydraulic Study' from the ACME gage, below Lock 1 to the Fulton Gage, on the HWY 71 bridge north of Texarkana, AR. This study is required due to the miscalculation of the river’s crest elevations predictions (too low) and that the river’s observed crest  level was higher than that of the 1990 flood with less flow rate (kcfs).  A study is critical to determine the changes in the river watershed and what protective actions must be taken before the next major flood, to include raising of levees and other flood control improvements to insure lives and properties are protected from future floods.

The ALBL urges that the Red River Waterway, Red River Levees and Bank Stabilization

below Denison Dam and Red River Emergency Bank Protection Stabilization measures, as authorized under these projects, be planned and constructed at critical locations without delay.

The ALBL recommends that the Corps be authorized and directed to maintain all stabilization works on the Red River. Further, it is requested that the Corps seek funds for maintenance of completed channel stabilization works on the Red River.

The ALBL requests that funds for the construction of emergency setbacks be expedited to prevent catastrophic failure of the levee system. In view of the authorized status of the bank stabilization project, this Association requests that the proposed location of each necessary setback be viewed as an individual case in light of planned future bank stabilization construction and that the depth of each setback be held to a minimum distance to preserve the levee until the bank can be stabilized.

The ALBL urges that Congress continue funding of the Red River Chloride Control Project in order to maintain a usable quality of water.

**Amite River and Tributaries – Comite River Diversion Canal Project**

The ALBL recognizes the importance of the Comite River Diversion Canal Project as the single most significant flood control measure in the Baton Rouge Metropolitan Area since the construction of the Mississippi levees were built in the 1930’s.

The ALBL strongly opposes continued delays in the completion of this project. The project has been delayed primarily due to funding shortages. The project was estimated to be completed by 2012 and now it is expected to be completed by year 2019 if funding will be forthcoming in a timely manner. The citizens of portions of East Baton Rouge, Livingston and Ascension Parishes have twice approved an ad-valorem tax as part of the non-federal match. The most recent election took place on October 2, 2010.

**Ouachita River**

The ALBL supports the current study to address bank stabilization problems on the Ouachita-Black Rivers. The ALBL urges Congress to provide funding in order to allow the Corps to accomplish bank stabilization along these rivers.

The ALBL supports the Corps study of the Ouachita River Levee System as part of the comprehensive Ouachita River Basin Study. The ALBL supports and urges Congress to continue to provide funds necessary to complete these improvements.

The ALBL urges the Corps to continue the practice of installing weirs in channel improvement projects.

The ALBL urges Congress to pass legislation to include all of the levees contained in the Ouachita River levee system into the Mississippi River and Tributaries (MR&T) system.

The ALBL supports the usage of material from batture borrow pits and requests that consideration be given for the effective usage and replenishment of this necessary resource.

The ALBL recognizes the importance of the Corps dredging program and requests that funding be placed so that this excavated material can be utilized in refilling borrow pits.

The ALBL encourages the Corps to increase funding to address bank stabilization problems and rectify areas previously identified through the stability analysis program.

The ALBL encourages the Corps to work more closely with the local levee boards and be required to attend the local levee board monthly meetings.”

The ALBL urges the Corps to increase funding to enable local levee boards to gravel all roads traversing the levees.

**Levee Inspections**

The ALBL recognizes that levee inspections are an integral part of a comprehensive operation and maintenance program. Inspections are required to ensure the overall integrity of the levee system, and confirm that the protection structures are adequately operated and maintained to provide the designed level of protection for the citizens and public property within the protected area. The operation, maintenance and inspection of levee systems are regulated by the Code of Federal Regulations Title 33 Part 208.10.

The ALBL opposes the terminology used by the Corps levee inspection ratings. The MR&T levee system successfully passed the 2011 flood that had record gauge elevations in the lower river. But the inspections rating for MR&T levees prior to the record flood were “minimally acceptable” due to insignificant inspection findings. A rating of “minimally acceptable” cast a negative connotation which tends to imply the levee operation and maintenance is sub-standard.

The ALBL urges the Corps to devote those resources necessary to continue improving the computerized Levee Inspection and Reporting System and to implement it for all entities involved in the operation and maintenance of levee systems so as to have seamless access to a centralized levee inspection database capable of documenting the integrity of levee systems on a statewide basis.

The ALBL urges to Corps to share the information in the national levee database with the non federal sponsors and the state agencies.

**Cost Share Issues**

The ALBL is strongly opposed to policies and positions proposed relative to local cost sharing in certain Mississippi River Valley flood control projects. All major and minor structures needed to complete the MR&T project, including the alleviation of local flooding caused by the interception of drainage flows by the levee systems and by backwater due to the project, should be constructed at 100% federal cost.

The ALBL stands on the premise that the need for flood control in the backwater areas and lower tributaries of the Mississippi River area are part of a national flood control problem and should be solved with federal funding. Due to the magnitude of most projects, required non- Federal cost sharing would place these projects out of reach for local authorities.

The ALBL urges Congress and the Corps to reformulate the criteria for the local sponsors to qualify under the “ability to pay” provisions for large flood control and hurricane protection projects and that more flexible cost sharing arrangements are allowed. These criteria should reflect the desires of Congress in helping low-income communities to the greatest extent practicable in order for them to benefit from flood protection projects.

**Issues for Congressional Action**

The ALBL urges changes as reflected in the following listed concerns.

The Homeowners Flood Insurance Affordability Act passed in 2014 fixed the most egregious parts of the previously passed Biggert Water 12 Flood Insurance Reform Bill (BW12) from a home owner’s point of view. But, it left others and Businesses with a disproportionate and crippling change in the cost of their flood insurance. Further, it did not really fix the core issues with the National Flood Insurance Program (NFIP).

The entire NFIP once again expires on September 30th, 2017. Similar to what happened leading up to the passage of BW12, ref or m legislation is again needed for the NFIP’s re - authorization. Learning our lesson as to what can happen if others reform the NFIP for us; we MUST be actively involved with the new re-authorization and reform legislation.

Members of the ALBL have been involved in these issues since 2008, are very well versed in the history of the NFIP and the legislative goals in correcting its weaknesses. In May of 2014, the ALBL officially adopted the Flood Insurance Reform Coalition (FIRC) as a vital initiative of this organization.

The FIRC is envisioned as an assemblage of diverse interested parties consisting of local governmental entities, coastal homeowners and businesses. While the HIFA legislation passed this year is a step in the right direction, it does not accomplish all of the items discussed herein.

We continue to support a “Fi x” approach and not a “Delay” approach to the impacts of BW12 and the National Flood Insurance Program (NFIP) itself. We have been involved in these issues since 2008, are very well versed in the history of the program and the legislative goals in correcting its weakness. We want and need a NFIP that is long-term sustainable, actuarially sound and protects all home and business owners participating in the program. Our focus, as an initiative of the ALBL, will shift to the implementation by FEMA Administration of HFIA as well as other existing NFIP regulations that are beneficial to the health of the NFIP. Further, we propose to work with Congress to develop a solid Legislative fix for the NFIP upon its reauthorization in 2017.

Focus Areas for the FIRC:

1. All corrective actions should be as the NFIP moves forward in time without penalizing past participants in any way. All corrective actions should not destroy the coastal and

 riverine economies which are the backbone of our Nation’s Gross Domestic Product (GDP ).

2. We support addressing the fiscal issues within the NFIP in a fiscally minded and straight forward manner that addresses participation and both revenue and cost of the program, not just the revenue of the program.

3. We want improved Legislation ensuring that re-mapping for communities is both equitable and reasonable while adding elements within the NFIP that will mitigate for residual risk going forward.

Administrative and Re-authorization Legislative Proposals:

We have developed Administrative and legislative proposal for re-authorization to address all of our focus areas. A summary of these proposed actions is provided below.

A) The CBO cost of reform should be paid for through minor increases in premiums widely distributed among all of the policyholders.

B) Changes must be made that increase and enforce NFIP mandatory participation in the program.

C) The Biggert-Waters changes to the actuary calculation methods by including catastrophic loss years are unsound and beyond the current scope of risk mitigated by the program. Impacts of catastrophic lost years should be offset by the creation of a reserve fund and not actuarially included in the rates for insurance.

D) Changes to the administration of the NFIP by FEMA to reduce administrative cost must be implemented.

E) Changes to the NFIP should be made that mitigate residual risk to new construction behind all flood control systems.

F) Nationally, areas that are shown to have a high vulnerability to flooding should be identified by FEMA and funding (within and outside of FEMA) should be shifted from post flood recovery actions towards mitagative strategies to prevent flooding without encouraging new building with high risk of flooding.

The elimination of “continuing contract clauses” on Corps projects is unacceptable. “Continuing contract clauses” are an effective cash-flow management tool that allows multi-year construction contracts to proceed by only providing the actual cash needed in any given year to cover the expenses anticipated to be incurred during that year. To require that all multi-year construction contracts be fully funded at the time of execution will cause untold delays in project starts, especially on projects with big ticket items that cannot be phased or broken down into small parts. This issue is now causing delays in the awarding of construction projects on the MR&T system. The effect on these and other vital projects will have a detrimental impact on their completion. The ALBL strongly urges Congress to reinstate “continuing contract clauses” on all Corps contracts. If this is not possible, then the ALBL strongly urges that procedures be established by Congress to ensure that justified projects are fully funded when authorized.

The Corps originally determined the limits of the right-of-way that was acquired by the sponsors, who have no authority to control land use beyond those limits. If a clear zone is required by the Federal Government to ensure levee integrity we encourage Congress to appropriate funding and authorize the Corps to acquire those lands in order to mitigate flaws in the original design assumptions.

As a result of FEMAs Louisiana Mapping Project (LaMP), the communities are being required to certify levees they operate and control. The Corps has agreed to continue to certify the levees that it maintains and controls (MR&T) but is refusing to certify those levees it designed and built but which were turned over to the local levee boards to maintain. The Corps maintains it does not have funding to certify these levees. If the Corps will not certify levees within the jurisdiction of local Levee Boards, there needs to be clear and consistent criteria for certification. It also needs to contain language releasing a “certifier” from certain liability. There are so many intangibles and unknowns associated with levees that are nearly a century old, there is no way local levee boards will be able to find, much less afford someone to do this certification. This requires further clarification and consideration by the Corps. ALBL strongly feels that Congress should require the Corps to certify all levees that it has designed and built.

The ALBL urges our Congressional Delegation that the Amite River and Tributaries – Comite River Diversion Canal Project be adequately annually funded so that the construction schedule can be maintained before another catastrophic flood occurs in the Baton Rouge Metropolitan Area.

The ALBL very strongly urges that procedures be established by Congress to shorten time requirements for a justified project to be authorized.

The ALBL suggests adoption of a much-streamlined project implementation process that includes explicit authority to proceed immediately to design and construction of comprehensive flood control projects, following engineering analysis.

The ALBL appreciates that over the past decade, the US Supreme Court has limited EPA's authority over isolated wetlands that do not significantly affect navigable waterways. The ALBL opposes the EPA’s 2015 attempt to grab the power to regulate millions of acres of land and water not covered by the Clean Water Act by simply ignoring the word "navigable" as a limit on its authority under that law. The ALBL agrees with the U.S. District Court for the District of North Dakota’s ruling describing the administration's interpretation of the Clean Water Act's jurisdiction as "exceptionally expansive." Further, the ALBL supports the October 9, 2015 ruling by the Court of Appeals for the Sixth Circuit for a nationwide injunction. The court found that EPA's new guidelines are "at odds" with key Supreme Court rulings.

The ALBL requests that Congress direct the Corps and the other agencies undertaking floodplain zoning studies to take under consideration the unique nature of the broad alluvial floodplains of the Lower Mississippi Valley that have been successfully protected by levees for hundreds of years.

The ALBL requests that Congress direct the Corps to include all relevant stakeholders in partnering meetings that request alternate designs to any projects and perform a comprehensive analysis of the designs, and that any decisions are made by consensus for each project.

The ALBL requests that Congress reexamine the laws that provide the Corps immunity from liability for failures of flood control works that the Corps engineered and constructed.

The ALBL requests that Congress call for independent investigations to be performed on all existing federal flood protection projects to determine if those projects are still capable of providing the original authorized levels of protection.

The ALBL requests that Congress reactivate the Levee Policy Review Committee and direct that all levee certifications be renewed, at Federal expense, on a 5-year or 10-year interval based on engineering analysis.

The ALBL requests that Congress authorize the Federal Government to reimburse local levee districts for the “fair market value” of lands taken as required under Louisiana law for all levee purposes including enlargements, berms, and setbacks, thereby providing a statewide uniform policy for payment of lands acquired for levee purposes.

The ALBL requests that Congress amend the Uniform Relocation Assistance and Land Acquisitions Polices Act of 1970 to make the Corps financially liable for carrying out provisions of the act.

The ALBL requests that the Louisiana Congressional Delegation give every consideration to introducing legislation which would allow the use of federal funds for the purpose of providing drainage of borrow areas as a project feature, so that they will be left in a condition suitable for return to cultivation, pasturage, or tree-farming.

The ALBL requests that Congress authorize continued funding for the study to address flood control, water supply, and environmental needs of the Tensas Basin area, along with the Ouachita and Red River Basins.

Concerning Presidental Executive Order 13690:

On January 30th 2015 P resident Obama signed an Executive Order “Establishing a Federal Flood Risk Management Standard and a process for further soliciting and considering stakeholder Input”. Among other things, this EO made amendments t o a Ma y, 1977 EO 11988 on Federal Policy on Floodplain Management. As part of the implementation of this process, FEMA, on behalf of the Mitigation Framework Leadership Group (MitFLG, the multi-agency group that developed the standard) has published a draft of the Guidelines for implementing the amended EO 11988 by all federal agencies consistent with the FFRMS. This draft Guidelines was released for a Public Comment Period that has since been closed and we are awaiting the findings based on the comments received.

The EO supplants an overarching shift in Federal Policy in four (4) fundamental areas.

 1) Away from flood control and protection to a risk management strategy.

 2) To avoid directly or indirectly encouraging development in a floodplain.

 3) The new standard is intended for all federal agencies in all actions.

 4) Where the previous EO relied on the use of the FEMA derived 1% annual flood Plain (100yr.) for federal agency consideration, the new EO broadens the floodplain by directing the agency to consider any and all actions against a floodplain defined by one of the following:

 i) A climate informed science approach that uses best available actionable data and methods that integrate current and future changes in flooding based on climate science.

 ii) Expanding the horizontal and vertical size of the flood plain by adopting a 2 foot freeboard above the FEMA NFIP base flood Elevation for non-critical actions and a 3 foot freeboard for critical actions.

 iii) Using the 0.2 percent annual chance flood (500 yr.)

 iv) Using another elevation and flood hazard area identified in a future update of the FFRMS.

The ALBL has the following expressed Concerns regarding this EO:

1) This Federal Standard is intended to be used by all Federal Agencies in all of their actions. That is, consideration of the expanded floodplain and direct and indirect impact to floodplain development does not simply apply to the consideration of a federal agency building, repairing or expanding a facility for its own purpose. It also must be considered in any and all programs administered by the agency as well as any and all activities which it regulates. The potential implications on an agency by agency basis are huge.

2) The FFRMS is intended as a guiding principle to be implemented and used by all federal agencies. As such, it is more descriptive then it is prescriptive leaving individual agencies, working in consultation with the Water Resources Council, the Federal Interagency Floodplain Management Task Force, FEMA and the Council on Environmental Quality to develop specific implementation standards for each agency. This will make even limited involvement in the shaping of the individual agency implementation and policy a very difficult task both legislatively and from a stakeholder point of view. There are literally hundreds of federal agencies that will each have to develop their individual interpretation of this EO and implement policy accordingly.

3) On the surface, it sounds like a good idea. Why not ask the federal government to more closely consider how it spends federal funds on project and programs from a flood risk management point of view? To that we would add, why not consider the federal investment from a risk management point of view including consideration to earthquakes, wildfires, mudslides, tornados and tsunamis as well? But that’s not happening; just flooding. The trouble is that this FFRMS particularly impacts Louisiana and not the entirety of the US. Just like NFIP reform, it was easy to push through when most did not feel it would impact them. They were wrong then and they would be wrong now.

4) The proposed FFRMS does not recognize that the situation in Louisiana is truly unique. The geography of the Mississippi River Delta in Louisiana is unique in the United States. This delta has built up a broad coast unlike anything anywhere else in the US. With more traditional coast, such as in New Jersey where much of this standard has been derived from Hurricane Sandy recovery efforts, it might be possible to reconsider the location of a structure or program by moving landward a few hundred feet. In traditional coast, moving inland from the sea will take one from seal level to 30+ feet in elevation in less than a mile in many cases. In Louisiana, to reach a similar elevation requires a transect of 40 to 70 miles. Most other river deltas in the US are estuarine or inverted deltas and they are much smaller than the Mississippi River flood plain / Gulf Coastal flood plain. We simply must live and work on our delta in order to bring the resources of this delta to the US. (Not to mention preserving our unique history and culture.)

5) The EO is not really set up to seriously consider public input. This new standard was developed by the MitFLG without input from Congress, State or Local government and other stakeholders even though the very charter that created the MitFLG required such input. It is now being implemented by the Administration over objections from Congress stating it should have input from others. The EO itself provides a fast track to implementation that includes a 60 day, after the entire thing has already been developed, public comment period. This public Comment period is followed by consideration of the public comments received by MitFLG who will make recommendations to revise the FFRMS based on public comments if required and then pass this along to the Water Resources Council. But, within 30 days of the end of the public comment period the EO states:

“each agency shall submit an implementation plan to the National Security Council staff that contains milestones and a timeline for implementation of this order and the Standard, by the agency as it applies to the agency's processes and mission.”

So, while we are just getting a first look at all of this, the individual agencies will simultaneously be preparing to submit a plan on how they will implement it. That timing, and the use of “listening sessions” does not b ode we ll f or earnest consideration of the public comments.

6) The foundation of the FFRMS is based on an emphasis on moving away from flood control and protection to a flood risk management strategy. The idea is that the risk of flooding can never be completely eliminated from the use of protection strategies. In Louisiana, we all know this.

In some circles, Flood risk management is code for avoid the floodplain altogether, and that can be done in some places. Making room for the river initiatives and building a bit higher; but, in the same general area can work in some places. The problem in Louisiana is that we have few options other than structural flood control and protection for a large part of our population. This change in strategy, coupled with a desire to not directly or indirectly encourage further (future) development in areas not aligned with this new strategy should be a huge concern for us. The ALBL is concerned that investment or re-investment in our communities will be denied because we live where we live and are protected by systems (some of them federal) that do not align themselves with this new flood risk management strategy.

7) The stated preferred method for determining the floodplain elevation, size and area is through the use of a climate informed science approach that uses best available actionable data and methods that integrate current and future changes in flooding based on climate science. The ALBL believes we should be responding to things we can and have accurately measured over the years. We should build and plan accordingly. Such is the case with localized data on Relative Sea Level Rise. We would ignore these historically measured changes at our own peril. But, the preferred and describe actionable climate informed science approach is rather nebulous and hard to pin down. Each agency could come up with its own idea of just what this entails. Each agency will in fact have to come up with something. But, again, these things are localized and it will be difficult to develop a strategy that works across the nation. There is plenty of room for an agency to hide its true intentions on the selection of projects and programs when the justification for or against proceeding with the project, program or regulation can be based on such an analysis.

8) Is this EO an infringement on State’s rights? Is it what the government is supposed to do?

The ALBL asks our State Delegation to demand answers by the Administration of the following questions previously posed by Senator Vitter.

1. What potential restrictions on federal investments have been reviewed as a potential impact of expanding floodplain area designations?

2. How would new standards impact permit issuance, emergency preparation response and recovery programs administered by the Corps; USDA agricultural assistance programs; Federal highway aid and USDOT TIGER grants; HUD CDBG grants; Federal loan guarantees; FEMA flood insurance; and floodplain management and disaster response programs?

3. What considerations have been given to federally funded activities, and how would those impact specific regions of the country where the expansion is proposed?

4. What cost-benefit analysis has been completed in promulgating the flood risk management standards, and how can the public obtain access to that analysis? Where can discussion documents be found on alternatives that have been considered, including alternatives for restructuring or improving floodplain use and occupancy?

5. Who was involved in developing the science and technical knowledge upon which the standard is based?

6. If agencies have refused to give the appropriate consideration of alternatives as required under the National Environmental Policy Act, please explain why there was no consideration of alternatives.

7. Why has the Administration chosen to forego any public participation in developing the standard? In particular, why have regions of the country with known floodplain risks been excluded from the development process?

8. In developing the increased flood base elevation requirements what processes were used to develop those requirements? What costs-benefit analysis was performed, and in particular, what scientific research are you using as a baseline from which to develop the flood risk associated with climate change?

The ALBL believe these changes are all very valid and just a small sampling of what we really must know about the impacts of this new FFRMS. We hope that others can propose an effective approach to stopping this new standard from destroying Louisiana, its industry, its people and our culture. The FFRMS is an attempt at social engineering that will be very bad for Louisiana and much of our nation. There is no doubt that our Government can and should be smarter about decisions it makes; but, doing this through an EO and not through Congress is ill advised.

Concerning Executive Memo titled *Presidential Memorandum: Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment*

On November 3rd, 2015, President Obama ordered five federal agencies to streamline regulations for offsetting environmental harm and to promote independent mitigation efforts. The memorandum – sent to the secretaries of Defense, Interior and Agriculture and the administrators of U.S. EPA and the National Oceanic and Atmospheric Administration – establishes for the first time a “net benefit goal” for natural resource use.

At minimum, the memo calls for no net loss of land, water, wildlife and other ecological resources from federal actions or permitting.

To reach that goal, Obama said the agencies should “adopt a clear and consistent approach for avoidance and minimization of, and compensatory mitigation for, the impacts of their activities and the projects they approve.”

The ALBL encourages our Federal Delegation to investigate this expansion in the requirements for offsetting unavoidable impact to wetlands as changes in this policy may have a huge impact to the cost of levee projects in Louisiana.

**Issues for Legislative Action**

The ALBL requests the Louisiana Legislature to appropriate annually to the Department of Transportation and Development, sufficient funds for the purpose of acquiring right-of-way for levee construction or enlargement in accordance with R.S. 38:301.

 The ALBL supports state funding to purchase rights-of-way for the Fifth Louisiana Levee District.

**Corps of Engineers Policy Issues**

The ALBL urges the Corps to increase participation and involvement for ~~the local~~ non- federal interest, the Coastal Protection and Restoration Authority, the Department of Transportation and Development, and levee boards, in changes during the study and design phases and also encourages local sponsor inclusion in management and technical teams.

At this time, the ALBL is unable to comment on the net result of the LRAM methodology in influencing the final cost of mitigation for levee projects as compared to previous assessment methods. We realize that the Corps is not involved in, cannot control, nor does it consider, the market price for mitigation acreage or in this case credits from mitigation banks established within its District. Also, it is understood that the MVN has not specifically applied the draft process to existing mitigation banks within this district to determine the amount of credits a bank may have to sell, largely because this process is still a draft. That said we would expect that in the end, existing mitigation banks would simply convert their current price per acre into an equivalent price per credit based on this evaluation method, once applied. As such, the ultimate cost, caused by the nexus between impact debits and mitigation credits using LRAM can’t be determined at this time. We reserve our comments on the same until more information is available. At this time, our comments are limited to the process itself as laid out in the Draft Manual and Workbook.

Overall, it would appear that the LRAM is an improvement over prior methods in providing a well guided and consistent method of making wetland assessments for mitigating unavoidable impact to wetlands and for assessing mitigation strategies. The following comments are provided for your consideration.

Specific Comments include:

 Concerning… II. Impact Factors, A. Wetland Status, 1) Rare, Imperiled or Difficult t o

Replace (RID)

1. Rare and Imperiled as used in this context are really two different measures of the same criteria, namely rarity. In this document, these items have been defined in the LRAM manual based on classification and rarity by considering the cataloging in The Natural Communities of Louisiana (LNHP, 2009). As this is an independent document, it would be best to clarify that the LRAM is to be used as depicted in the LRAM Manual and not subject to automatic reinterpretation due to any future edition of the LNHP.

2) The idea of determining the amount of debits a project will be assessed based on the “Difficulty to Replace” the impacted wetland is somewhat awkward and will not improve the issue. Once an impact has been determined to be unavoidable, there is little that an applicant can do because of its “difficulty to replace”. All wetlands are difficult to replace or we would not be having this discussion.

So, while the permit applicant can do little about this measure, there is a good bit a mitigation bank owner can or would do about it if he were incentivized to do so. Currently, the LRAM does not provide an incentive (additional credits) to design mitigation projects with the specific intent to include those wetlands described in LNHP, 2009 as difficult to replace. It would seem that the best way to offset the impacts for this criterion would be to move it to the Mitigation Bank or Self Mitigation side of the methodology.

 Concerning… II. Impact F actors, A. Wetland Status, 3) Degraded

1) It seems logical that some of the negating criteria used to determine the mitigation potential (m values) on a mitigation bank or project would also be applicable to classifying the wetland status of an impact (I value) as being degraded. Namely,

 (From section III. Mitigation Factors)

 Development impacts

 O&G impacts

 Size

 Corridor

 Buffer/upland

Unavoidable impacts to wetlands that have similar existing negating factors (prior to the proposed impacts) should be considered “degraded” regardless of being otherwise listed in the LRAM Manual as being “RI D” or “Secure”. The LRAM process should be modified to accommodate such circumstances or an applicant should be able to submit supporting data to the Corps for consideration of the same.

 Concerning… II. Impact Factors, B. Habitat Condition

1) Generally, this section is very well guided. Making it similar to, and based upon, the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (ERDC, 2010) removes almost all subjectivity. We would like to offer the following comments.

1. It appears that it is the intent of the LRAM for the applicant to determine the absolute coverage of specific exotic plant species and not simply other non- listed native species that may be present to some degree. As such, it would be beneficial to clarify this intent and to provide a list of exotic plant species.
2. b) Use of this method may make project impact evaluations rather difficult for those applicants not trained in the identification of obligate wetland vegetation species. Specifically listing the species of interest as done in the manual is very helpful. Adding an appendix to this LRAM Manual with photographs and illustrations on identifying these listed species would be most helpful. This information is generally available; but, compiling it as a reference to the LRAM Manual may help a potential applicant to re-consider a site for a project while promoting general awareness to wetland identification.

Concerning… II. Impact F actors, C. Hydrologic Condition

1) It is possible, and often specifically intended, for a proposed project through re- connection of prior anthropogenic alterations of natural hydrology, to Re-establish, Rehabilitate, Enhance and Preserve the natural hydrology of, in some cases, hundreds of acres of wetlands not specifically impacted by the footprint of a proposed project. The LRAM does not currently consider these huge positive indirect impacts to natural wetland hydrology restoration and

 preservation as a positive offset to the direct negative impact (debits) assessed to a project’s direct impacts.

 It is agreed by most that “Hydrology is the most important factor in the maintenance of wetland processes (Mitsch and Gosselink 2000) and natural inflows of water to a wetland affect the wet land’s ability to perform and maintain its typical functions (Collins et al. 2008)” as stated in the LRAM Manual. It could be further argued that the degradation of many wetland regimes now considered “Rare” or “Imperiled” have been, at least in part, classified as such in LNHP, 2009 due to prior anthropogenic alterations of the natural hydrology.

The LRAM should be modified to reduce the total amount of debits assessed to a project based on a designed restoration and preservation of natural hydrology when incorporated into a project.

The ALBL supports the Corps of Engineers initiative to design a robust levee protection system in Louisiana. However the design standards being utilized fail to recognize local conditions and proven methods of levee design and construction in Louisiana. The ALBL urges the Corps of Engineers to use sound engineering principles and cost effective design and construction methods to meet the local conditions without compromising the effectiveness of the system.

As a result of hurricane Katrina, the Corps of Engineers has unilaterally instituted a requirement that non-federal sponsors provide a root-free/obstruction free clear zone for a certain distance beyond the toe of all levees, no matter when they were constructed. The distance seems to vary from one project to another and from one Corps District to another. While we agree that a clear zone is a desirable feature, we believe the requirement should be uniform and realistic. We also believe that a Licensed Arborist should make the decision on whether or not an individual tree root mass penetrates the extended theoretical levee section. The required distance extends well beyond existing project right-of-way limits.

The ALBL urges the Corps of Engineers to provide greater clarity and enforcement of consistent and uniform practices for levee encroachment throughout the state, in both the New Orleans and Vicksburg districts.

The ALBL requests that Corps policy be revised to eliminate the requirement for levee districts to obtain permit to conduct routing channel maintenance required under the terms of the original project agreement and also to eliminate the mandated arbitrary policy of performing such maintenance at five year intervals.

The ALBL urges the Corps of Engineers to reexamine its policy of reacquiring right-of- way due to the necessity of raising an existing levee. The ALBL believes that right-of-way is acquired for a specific purpose, i.e. flood control, as opposed to a specific project and as such remains valid for future modifications as long as the original purpose remains unchanged.

The ALBL recommends that a program be implemented for the surfacing of all main line levees, to be implemented in accordance with local levee district policy. Surfacing should be included as part of all final levee contracts.

The ALBL requests that the Corps expedite the program to reshape all levees to provide levee cross sections, which will facilitate maintenance work and increase the safety of those levees.

The ALBL also recommends that the Corps include in levee and levee setback construction contracts the installation of levee markers at set or desirable intervals to facilitate levee inspections, maintenance and flood fighting activities.

The ALBL commends the Corps efforts in prevention of marine vessels from encroachment within 100 feet of a levee and recommends that the policy be extended to all navigable waters in the State and that an additional policy be established wherein all vessels would be prohibited from grounding upon or against batture while awaiting transit through navigation locks.

The ALBL requests that the Corps immediately revoke its construction contracting policy of not requiring construction liability insurance, and allow such insurance to be a cost-shared construction expense. In the event this cannot be granted, it is requested that cooperation and assistance be given by the Corps to seek Congressional approval to establish a requirement that the Corps of Engineers’ Contractors submit to each respective local assuring agency proof of adequate insurance coverage and present satisfactory evidence to that agency.

The ALBL requests that the Corps, when assigning design work to other districts, revise its policy to give total responsibility of the design to that district without the detailed supervision that is presently being required, thus reducing overall costs and design times.

The ALBL requests the USACE, New Orleans District assist local entities with flood fight assistance by staging suitable drainage and flood fight equipment, such as pumps, generators, etc. at strategic locations. The ALBL will assist the New Orleans District by working with and identifying local agencies/government bodies which will provide adequate staging facilities, maintenance and upkeep for flood fight equipment and make said equipment available to the New Orleans District during flood fights.

**Conclusion**

The member agencies of ALBL want to work with the Corps, our legislative and

congressional delegations on the common goal of protecting the lives and property of the citizens of the state of Louisiana; however, they want their commitment, their expertise and their unique abilities to be recognized by the U.S. Army Corps of Engineers and they want their work products to be more readily accepted.