

February 1, 2008

March 21, 2008

would like to send us a letter to the editor, e-mail it to ddtletters@ddtonline.com

FOR THE PUMP PROJECT

We cannot begin to expose the irony of a federal agency called the "environmental protection agency" trying to kill a project that will only enhance the environment in every way if completed.

EPA trying to kill the Yazoo Backwater Project

DELTA DEMOCRAT TIMES
Tuesday, March 18, 2008

■ YAZOO BACKWATER PROJECT

EPA calls for comment on pump project

EPA: The construction and operation of the proposed pumps would degrade the critical functions of wetlands area

TERRI FERGUSON
terriferguson@ddtonline.com

ATLANTA, Ga. — The Environmental Protection Agency is calling for comment from the public about the long-debated Yazoo Backwater Project

Engineers Civil Works proposal designed to address flooding concerns affecting 630,000 acres of land between the Mississippi and Yazoo Rivers according to the EPA. "The primary concern is that the project will

EPA attempting to use their veto authority found in Section 404(c) of the CWA

6 Rolling Fork, Mississippi February 7, 2008 50 Cents

EPA poised to veto pumps

RAY MOSBY
Editor

ROLLING FORK—It took the Vicksburg District of the U.S. Army Corps of Engineers seven years and more than 10,000 pieces of paper to produce its reformulated Yazoo Backwater Project report. But now it is being given less than two weeks to show why the Environmental Protection Agency shouldn't veto it.

Perhaps the most controversial single flood control project in the country, the Yazoo Backwater Project, also known as the Yazoo Pumps, has for years drawn the staunch opposition of much of the environmental community. But among its opponents, only the EPA, which has virtually unchecked authority under the Clean Water Act, has the ability to administratively shut it down.

And that's exactly what it is now threatening.

In a letter dated Friday to the Corps and the Mississippi Levee Board, which

being dug at its site. An exercised Section 404 veto of the project by EPA would be only the 12th the agency has issued in its history.

The federal agency communicated the numerous wetlands-related misgivings it had about the project following the release of the Corps' preliminary project report in 2000. While project proponents had believed that many of those differences had been resolved through negotiations between the two agencies, EPA remains clearly unconvinced.

"EPA is initiating this 404(c) action based on the record to date and our assessment that the project may cause or contribute in significant degradation of the aquatic environment, including impacts to fish and wildlife," Starfield wrote. "We do not believe the potential impacts of the project, as currently proposed, can be adequately mitigated."

EPA continues to maintain that the proposed project would impact aquatic wetlands "on a massive scale," potential-



MISSISSIPPI LEVEE BOARD
P.O. BOX 637
GREENVILLE, MS
38901
est argu...

Delta Democrat Times

TUESDAY • ddtonline.com • FEBRUARY 5, 2008 50 CENTS

■ MID-DELTA

EPA may veto pump project

Levee Board says it does not understand why EPA would try to stop a project that will provide benefits in the project area

TERRI FERGUSON
terriferguson@ddtonline.com

GREENVILLE — The Environmental Protection Agency is taking steps that may stop the long-debated Yazoo Backwater pump project.

EPA sent a letter on Friday stating that the agency is initiating

ing a review that could veto the Yazoo Backwater Project, according to Peter Nimrod, chief engineer of the Mississippi Levee Board.

"The Mississippi Levee Board is extremely disappointed that the Environmental Protection Agency is considering initiation of a 404(c) veto of the Yazoo

Backwater Project," Nimrod said. "The board does not understand why EPA would try to stop a project that will provide benefits in every environmental resource in the project area. In fact, with the reforestation of up to 55,600 acres of existing agriculture land back into bottomland hardwood trees, this pro-

ject will increase wetland functions by 19.3 percent, terrestrial benefits by 11.2 percent, aquatic benefits by 34.5 percent, and waterfowl benefits by 52.8 percent."

EPA has indicated that it is



Nimrod

willing to discuss this matter further with the U.S. Army Corps of Engineers, Nimrod said.

"The board hopes that the Corps and EPA will reconvene and work these issues out and EPA will drop their pursuit of a 404(c) veto," Nimrod said. "The board is very concerned that while the project has been made more 'environmentally friendly,' leaving vast acreage and

See **PUMP** on A7

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terri.ferguson@ddtonline.com

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See **PUMP** on A7



EPA Public Hearing
April 17th, 2008
Vicksburg Convention Center
Vicksburg, MS
500 Attendees
63 Statements
33 for the Pumps &
30 against the Pumps

EPA Plans to Kill the
Yazoo Backwater Pump Project!

EPA Veto – Major Issue # 1 - Wetlands

Wetland Adverse Hydrologic Effects

Existing Wetland Functional Values ~ 900,000 FCU's

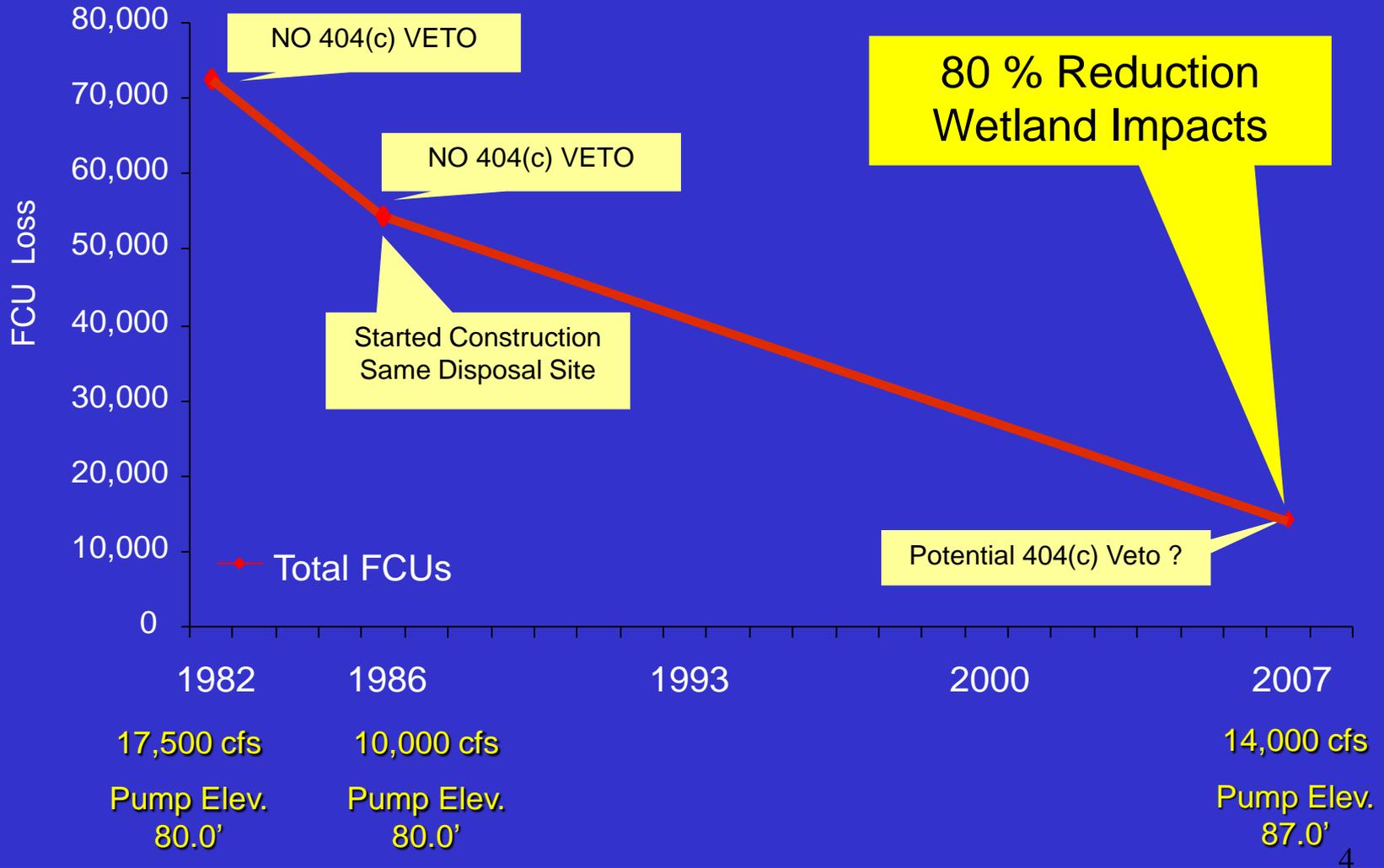
	Acres	Functional Value (FCU's)	Relative Reduction To Functional Value
Total Wetlands Pump Losses	66,945	- 14,188	-1.6%
Reforestation Gains	55,600	+ 186,953	+20.8%
Recommended Plan – Pump & Trees		+ 172,765	+19.2%



EPA & Corps Wetland Verification

EPA Veto – Major Issue # 1 - Wetlands

Wetland Functional Capacity Hydrologic Adverse Effects



EPA DID NOT SEEK A 404(C) VETO IN THE 1980's!! - Why Now??

United States Senate

WASHINGTON, DC 20510

July 17, 2008

July 17, 2008

Mr. Stephen Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Ariel Rios Building North (1101-A)
Washington, DC 20460



Dear Mr. Johnson:

We continue to be very concerned about the prospect of the Environmental Protection Agency (EPA) using Section 404(c) of the Clean Water Act (CWA) to "veto" the Yazoo Backwater Project in Mississippi. This important project has been structured, after many years of study, to offer flood damage protection and significant environmental enhancements to the Mississippi South Delta.

The prospect of administrative nullification of a congressionally authorized project raises serious legal and policy issues. Because of this, the Congressional Research Service (CRS) was consulted on the meaning of Section 404(r) of the CWA, 33 U.S.C. §1344(r), which exempts federally authorized projects from other provisions of Section 404 and the CWA. Enclosed please find a copy of the CRS Memorandum confirming our understanding that Section 404(c) cannot be applied to projects like the Yazoo Backwater Project, that conforms to Section 404(r).

We ask that you carefully consider the legal and policy consequences of improperly applying Section 404(c) according to diligent analysis of the facts. We expect that you will give this matter the serious consideration it deserves and takes any further action. Given the obvious urgency of this matter, we would appreciate if you would respond to our concerns by July 25, 2008.

Sincerely,

Thad Cochran
THAD COCHRAN
United States Senator

Roger Wicker
ROGER WICKER
United States Senator

Enclosure

cc: The Honorable Bennie Thompson
The Honorable John Paul Woodley
Mississippi Levee Board



Memorandum

July 16, 2008

TO: Hon. Thad Cochran
Attention: Hugh Gamble

FROM: Robert Meltz
Legislative Attorney
American Law Division

SUBJECT: The Meaning of Clean Water Act Section 404(r), Exempting Certain Federal Projects from the Act's Permitting Requirements

You have asked CRS to comment generally on the scope of Clean Water Act (CWA) section 404(r),¹ exempting certain discharges from federal projects from specified CWA permitting requirements. The relevant part of section 404(r) states –

[t]he discharge of dredged or fill material as part of the construction of a Federal project specifically authorized by Congress ... is not prohibited by or otherwise subject to regulation under this section or a State program approved under this section, or section 301(a) or 402 of this Act (except for effluent standards or prohibitions under section 307 of this Act).

“Section 404(c) cannot be applied to a federal project, like the Yazoo Backwater Project, that conforms to Section 404(r).”

...option should be briefly explained. Section 404(r) on discharges of dredged or fill material into navigable waters,² provision from which the federal project is exempted. Section 402 is the National Pollutant Discharge Elimination System (NPDES) program for the discharge of pollutants

¹ 33 U.S.C. § 1344(r).

² CWA § 404(a), 33 U.S.C. § 1344(a). The State of Mississippi does not have a delegated dredge-and-fill permit program.

³ CWA § 404(f), 33 U.S.C. § 1344(f).

⁴ 33 U.S.C. § 1311(a).

Senators: EPA has no power to veto Yazoo pumps

By Steve Sanoski
ssanoski@vicksburgpost.com

Mississippi Sens. Thad Cochran and Roger Wicker are saying the U.S. Environmental Protection Agency does not have the legal authority to veto the controversial, \$220 million Yazoo

Backwater Project pumping station, as the agency is threatening to do via the Clean Water Act.

The senators submitted a letter to EPA administrator Stephen Johnson Thursday. They said the possible veto — which EPA southeast region administrators recommended last



Sen. Thad Cochran



Sen. Roger Wicker

MID-DELTA

EPA REBUFFS COCHRAN ON PUMP PROJECT

EPA: Agency has the right to veto the \$220 million project under the Clean Water Act

ELEANOR BARKHORN
eleanorbarkhorn@delatime.com

GREENVILLE — The Environmental Protection Agency has rejected the latest attempt to keep the Yazoo Backwater Project alive.

In a letter to U.S. Sen. Thad Cochran earlier this month, EPA Assistant Administrator Benjamin Grumbles confirmed the agency's right to veto the \$220 million project under the Clean Water Act.

"We believe that the project remains subject to regulation," Grumbles wrote in a letter dated Aug. 6.

Grumbles' letter responded to a July letter from Cochran and fellow U.S. Sen. Roger Wicker, who stated that the pending EPA veto "raises serious legal and policy issues."

The southeast division of EPA recommended in June to "prohibit, restrict, or deny" the pumps



Grumbles



Cochran

See **PUMPS** on A6

www.deltafarmpress.com

FRIDAY, AUGUST 1, 2008

Cochran, Wicker urge EPA to end Yazoo pump opposition

By Forrest Laws
News Editorial Staff
laws@farmpress.com

The Environmental Protection Agency lacks the authority to veto the Yazoo Backwater Pumping Project, the long-awaited solution for relieving chronic flooding problems in the lower Mississippi Delta.

That's the finding of a legal opinion written by the Congressional Research Service that was requested by Mississippi Senators Thad Cochran and Roger Wicker and conveyed to EPA Administrator Stephen Johnson.

Earlier this year, EPA officials initiated a proceeding under Section 404(c) of the Clean Water Act, claiming the Yazoo project would have "unacceptable adverse impacts" on fish and wildlife habitat. The agency said the provision gave it authority to force the Corps of Engineers to discontinue the project.

But Robert Metz, an attorney with the Congressional Research Service, said the Section 404(c) process cited by EPA "cannot be applied to a federal project, like the Yazoo Backwater Project, that is authorized

to Section 404(r)." (Section 404(r) provides exemptions for projects approved by Congress.)

"We continue to be very concerned about the prospect of the EPA using Section 404(c) of the Clean Water Act to



"veto" the Yazoo Backwater Project in Mississippi," Cochran and Wicker said in a letter.

"This important project has been structured to offer flood damage protection and significant environment enhancements to the Mississippi South Delta."

sional Research Service and our senators agree with that legal position."

The Vicksburg District of the U.S. Army Corps of Engineers approved the latest recommended plan for the Yazoo Backwater Project in November 2007. The \$220 million Yazoo Backwater Project has been modified several times to try to satisfy the objections of environmental groups such as the Sierra Club.

The latest plan calls for a smaller pumping plant that would be turned on when water in the Yazoo backwater area of the south Delta reaches an elevation of 87 feet above sea level, rather than the 80-foot level in the original proposal. The new plan means 200,000 acres would be under water when the pumping station would be placed in operation.

South Delta residents don't like the new plan, but they've been willing to try to live with it to get the pumping station built and in operation. That's in contrast to the environmental groups whose proposals have included having the federal government purchase most of the land in south Delta and relocate the current residents.

"We are pleased that our two U.S. senators have stood up for the Delta and hopefully will cause this federal agency to sit down and discuss practical solutions as opposed to simply telling the Delta what they are against," said Al Rankins, chairman of the Delta Council's Flood Control Committee and a Washington Coun-

EPA claims that the 1982 EIS was never properly submitted to Congress!

EPA claims it could not find the transmittal letter to Congress.

Therefore, EPA claims that the Yazoo Backwater Project is not exempt from a EPA 404(c) veto because it did not conform to all the requirements for a 404(r)!

EPA vetoes controversial pumps

Agency says project would have threatened wetlands, animals

The Associated Press

The Environmental Protection Agency on Tuesday all but killed a federal plan nearly seven decades in the making to build the world's largest water pumps in the Mississippi Delta.

Ben Grumbles, EPA assistant administrator for water, followed through on the agency's threat to veto the \$220 million U.S. Army Corps of Engineers flood-control project.

He said officials can now work

on a more "sustainable path" to reduce flooding.

"We feel we are in a position now to reach closure on this controversial proposed dinosaur of a project authorized in 1941 that was designed to protect agriculture more than people and homes," Grumbles said.

U.S. Sen. Thad Cochran and Roger Wicker, R-Miss., made a last effort EPA's veto, arguing Grumbles in July had no right to veto the project.

"It is unfortunate we weighed the view



Cochran



Wicker

of wetlands, impair water quality and harm the habitat of threatened and endangered species — all violations of the federal Clean Water Act.

The pumps would have moved six million gallons of water a minute from 57,000 acres of wetlands along the Yazoo River, mostly for the benefit of flood-

saying they believe there's a better way to provide flood control that will be less environmentally damaging when they have no idea what it will be," Nimrod said.

Congress authorized the project but never fully funded it before the Clean Water Act became law in 1972.

The U.S. Fish & Wildlife Ser-

has been used to stop a shopping mall and a dam in other states.

The Yazoo project is 10 times larger than the other 11 vetoed proposals combined. The EPA said the project likely would degrade the 67,000 acres of wetlands that would be altered, and conservationists opposed the dam-

groups hailed the U.S. American Rivers society Wodder called EPA's a "bonafide" veto that was out of date.

"It is extremely important to be part of the EPA," See PUMPS, B5

Delta Democrat Times

WEDNESDAY • ddtonline.com • SEPTEMBER 3, 2008 75 CENTS

"The Yazoo pumps were a bad idea from the start — bad for long-term flood control efforts, bad for water quality, bad for wildlife..."

Brian Jackson
spokesperson for the non-profit organization the Environmental Defense Fund

EPA pumps South Delta dry

Agency vetoes \$220 million flood control project on basis of environmentalism

LEANOR BARKHORN
leannorbarkhorn@hickpost.com
GREENVILLE — The Environmental

After a seven-month-long decision-making process, EPA Assistant Administrator Ben Grumbles announced the agency has vetoed the \$220 million

endangering fish, wildlife and waterfowl species. Grumbles announced the vetoed project was "historic,"

in 1941 would have been 10 times more harmful to the environment than all the previously vetoed projects combined.

EPA kills Corps pumps

The Hicksbury Post

WEDNESDAY, SEPTEMBER 3, 2008 • 50¢

THE WALL STREET JOURNAL

DOUGHERTY

WEDNESDAY, SEPTEMBER 3, 2008 • VOL. CCLII NO. 54

Using a Rare Veto, EPA Rejects Controversial Mississippi Project

By STEPHEN POWELL

WASHINGTON—In an unusual move against a big federal flood-control project, the Environmental Protection Agency on Tuesday rejected a proposal to build a huge water pump intended to reduce flooding in the Mississippi Delta, saying it would have had an "unacceptable adverse impact on thousands of acres of wetlands."

The agency's decision to kill the \$220 million Yazoo Pumps

Project marks only the 12th time that the EPA has exercised its power under the 1972 Clean Water Act to veto projects that could harm water supplies, wildlife or recreational or fishing areas. The decision represents a setback for Mississippi politicians and farmers who have championed it for decades, and a victory for environmentalists who argued that it would damage wildlife refuges.

The U.S. Army Corps of Engineers program was first authorized in 1941 and designed to reduce flood-

ing between the Mississippi and Yazoo rivers.

EPA officials said the project would have benefited Mississippi farmers by allowing them to increase their crop yield on marginal land, but they said the benefits were outweighed by the environmental and financial costs. Ben Grumbles, the EPA's assistant administrator for water, described the undertaking as a "dinosaur of a project," designed more to protect agriculture than people and their homes.

The primary component of the project would have been a 14,000-cubic-foot-per-second pumping station that would pump water out of the South Delta during floods on the Mississippi River. Mr. Grumbles said the project would have caused "unacceptable" damage to the Yazoo Backwater Area, which contains some of the richest wetland and aquatic resources in the nation.

The EPA received more than 175,000 public comments about the proposal, with most in opposition.

The project has long had powerful champions in Congress, as well as among Mississippi officials, who say the EPA ignored the project's environmental benefits, including a planned reforestation of more than 58,000 acres of farmland. Most of that land is currently devoted to growing soybeans and corn. Some Mississippi politicians have also questioned the EPA's lead authority to veto the project.

"We're frustrated by this action, and we don't understand it," said Peter Nimrod, chief engineer

for the Mississippi Levee Board.

It was not clear Tuesday how the project's supporters would respond to the EPA's decision, which can be challenged in court. A spokesman for Mississippi Gov. Haley Barbour, a Republican, said the governor was preoccupied with the state's response to Hurricane Gustav and not prepared to comment. Mr. Nimrod said that while his agency was still reviewing the RPA's decision, "there could definitely be litigation over this."

Sunday, August 31, 2008
This was the day before Labor Day.

Beer Creek Project

Guiding the South Delta for 131 Years

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P. O. BOX 100
GREENVILLE, MISSISSIPPI

EPA kills Yazoo pumps

RAY MOSBY
Editor

WASHINGTON—Acting under its Clean Water Act (CWA) authority, the U.S. Environmental Protection Agency formally vetoed the Yazoo Backwater Pumps Project Tuesday morning.

The agency veto, its first since 1980 and only the 12th in its history, effectively kills the latest incarnation of a long envisioned Corps of Engineers project to evacuate backwater from the South Delta. Passionately favored locally, the project which became known simply as "the pumps," has for years been met with an equally passionate resistance from the country's environmental community.

In a statement issued Tuesday morning, Rebecca Wodder, president of American Rivers, said, "This is an historic victory for the environment and taxpayers and we applaud EPA for its decision. EPA was under a tremendous amount of pressure to greenlight this bonafide but it stood firm and did the right thing."

The Greenville-based Mississippi Levee Board has served as the local sponsor for the federal project. In a press release its chief engineer, Peter Nimrod, said: "The Mississippi Levee Board is appalled that the U.S. Environmental Protection Agency has vetoed the Yazoo Backwater Project. The Board is reviewing the Final Determination released today by EPA to determine its next step. Having recently been threatened by Hurricane Gustav, it is a sad day for our community to have the EPA condemn our people and economy to continued flooding without relief. The Mississippi Levee Board tried repeatedly to impress upon

EPA the economic and environmental benefits of the Yazoo Backwater Project. Despite many meetings, comment letters and other efforts, EPA was determined to prevent this important project from going forward."

Prominent project proponents such as U.S. Senators Thad Cochran and Roger Wicker and Gov. Haley Barbour had lobbied EPA extensively to move the plan forward since the agency indicated it might use its Clean Water Act power to kill the project in June.

But in July, EPA's Region IV Administrator Lawrence E. Starfield forwarded to Washington his official recommendation that the project be vetoed. Starfield concluded that activities related to what would have been one of the world's largest hydraulic pumping plants "would result in unacceptable adverse effects to at least 67,000 acres of wetlands and other waters and their associated wildlife and fisheries resources."

Tuesday morning's action represented EPA's ratifying of that recommendation at its highest level.

Originally authorized by Congress in 1941, the latest in what have been a number of Yazoo Backwater Project plans called for a 14,000 cubic feet per second pumping station, 10,662 acres of reforested mitigation lands and up to 40,671 more acres of reforested agricultural lands. It came with a price tag of \$220 million, a figure that its opponents consistently maintained would end up being much higher.

In its Final Determination document, EPA said that 461 Mississippians submitted written comments during its public comment period and that only 45 of those favored the project. However,



Back to the drawing board
A long envisioned plan to evacuate backwater from the South Delta sump came to an end Tuesday when the EPA administratively killed the Yazoo Backwater Pumps Project and indicated that any new plan along the same lines would meet a similar fate.

supporting the long locally voiced contention that the project was most opposed by those who don't live here, EPA said that of the 31 written comments it received from the greater South Delta project area, 26 were in favor of the pumps.

In its Final Determination, the agency not only cited what it concluded to be the "unacceptable adverse effects" to the environment result from the project, but also wrote: "EPA does not believe that these adverse impacts can be adequately compensated for by the proposed mitigation and are inconsistent with the requirements of the CWA."

And significantly, the EPA also sent a clear warning against trying to tweak the project as it is currently envisioned. "Derivatives of the prohibited projects that involve only small modifications to the operational features or location of these projects would also likely result in unacceptable adverse effects and would generate a similar level of concern and review by EPA," its document reads.

QUESTION:
Why would EPA, a Federal Government Agency, be working on a holiday week-end!
Why the big rush to veto the Project?

September 5, 2008 - Results of FOIA to Corps Reveal Evidence!

28 MAR 1983

DAEN-CWP-A

Honorable James J. Howard
Chairman, Committee on Public Works
and Transportation
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

A copy of the proposed report of the Chief of Engineers on Yazoo Backwater Project, Mississippi - Fish and Wildlife Mitigation Report, and other pertinent reports and a Final Environmental Impact Statement, with addendum, are enclosed for your information. Copies of the proposed report of the Chief of Engineers and the report of the Mississippi River Commission (MRC) have been provided Representatives Jamie L. Whitten, 1st District, Mississippi, Webb Franklin, 2nd District, Mississippi, G. V. Montgomery, 3rd District, Mississippi and Jerry Huckaby, 5th District, Louisiana.

Upon receipt of comments on the proposed report and environmental statement from the States of Mississippi and Louisiana and appropriate federal agencies, the Chief of Engineers will forward his final report to the Secretary of the Army.

Sincerely yours,

James W. Ray
Colonel, Corps of Engineers
Executive Director, Engineer Staff

Enclosures

CF:
Official File, DAEN-CWP-A
Mississippi River Commission
Dist Engr, Vicksburg
Reading File DAEN-CWP-A
DAEN-CWP

The "Smoking Gun"!

DAEN-CWP-A

28 MAR 1983

Honorable Robert F. Stafford
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

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Sincerely yours,

Enclosure

James W. Ray
Colonel, Corps of Engineers

ANSWER:

EPA rushed to veto the YBW Project because they knew we were about to get the missing documents that would have nullified their veto!

March 28, 1983

YBW Project EIS Transmittal Letter to
Cong. Howard (Chairman of House
Committee on Public Works & Transportation)

March 28, 1983

YBW Project EIS Transmittal Letter to
Senator Stafford (Chairman of Senate
Committee on Environment & Public Works)

November 19, 2008

November 19, 2008

The Honorable John Paul Woodley, Jr.
Assistant Secretary of the Army
for Civil Works
108 Army Pentagon
Room 3E446
Washington, D.C. 20310-0108



Dear Mr. Woodley:

We remain very concerned with the Administration's handling of the Yazoo Backwater Project, and stand by our view that the Environmental Protection Agency improperly weighed in on the project under Section 404(r) of the Clean Water Act. We were very disappointed by the Agency's Final Determination to "veto" the Project on August 31, 2008. We have been presented key information that seems to have been blatantly overlooked during the Administration's analysis of this project and response to our letter to the Environmental Protection Agency and copied to your attention, dated July 17, 2008.

In the Environmental Protection Agency's Final Determination, it stated that Section 404(r) did not apply because the Agency had found no evidence that the Yazoo Backwater Project environmental impact statement was submitted to Congress as required under Section 404(r). The Environmental Protection Agency stated that it considered our views and consulted with the U.S. Army Corps of Engineers to ascertain whether the Yazoo Backwater Project qualified under the provisions of Section 404(r) of the Clean Water Act, which exempts federal water projects from the Section 404 process.

Contrary to the Environmental Protection Agency's statement, the Corps of Engineers had copies of documents from the early 1980's which clarify that the environmental impact statement was submitted to Congress in advance of appropriations for the project construction, as required under Section 404(r). As reflected in the attached letter from the Mississippi Levee Board, the 1982 environmental impact statement was submitted to Congressional committees and members by letters March 28, 1983. Additional documents confirm that these transmittals, and others, were consistent with the Corps standard operating procedures for the time. These documents were made available to the Mississippi Levee Board in response to Freedom of Information Act requests to the Army.

“Based on these documents (March 28, 1983 letters) it appears that the Section 404(r) exemption applies to the Yazoo Backwater Project...”

November 20, 2008

Page 2

Based on these documents it appears that the Section 404(r) exemption applies to the Yazoo Backwater Project and the Environmental Protection Agency failed to consider the Army's information relative to the Project. Due to this significant oversight, we request the following information:

1. An explanation as to whether these important documents were provided to the Environmental Protection Agency;
2. Any response from the Environmental Protection Agency regarding these documents;
3. Any analysis performed by the Corps of Engineers regarding the applicability of Section 404(r) to this project; and
4. The Corps of Engineers' plan of action on the Yazoo Backwater Project given the Section 404(r) exemption.

We expect your response no later than December 3, 2008. Thank you in advance for your immediate attention to this matter.

Sincerely,

Thad Cochran
THAD COCHRAN
United States Senator

Roger Wicker
ROGER WICKER
United States Senator

TC/pw

Enclosure

cc: The Honorable Bennie Thompson
The Honorable Haley Barbour
Mississippi Levee Board

EPA Response:
“Sorry it’s too late!
We can’t do
anything about it!”

Delta Democrat Times
CHRONICLING STORIES OF THE MISSISSIPPI DELTA SINCE 1868
Greenville, Mississippi MONDAY • ddtonline.com • DECEMBER 1, 2008 75 CENTS

MISSISSIPPI

Yazoo pump supporters hope to revive project

Sens. Cochran and Wicker work to keep flooding plan alive

“We have been presented key information that seems to have been blatantly overlooked during the administration's analysis of this project,” U.S. Sens Thad Cochran and Roger Wicker wrote in a Nov. 19 letter to the Army Corps of Engineers. Environmental Protection Agency Assistant Administrator Benjamin Grumbles announced in August that the agency was blocking the \$220 million, six-decades-old flood control project under the Clean Water Act. Grumbles said the pumps would damage 67,000 acres of wetlands in the South Delta, endangering fish, wildlife and waterfowl species. EPA vetoed the pumps despite objections from Cochran and Wicker, who questioned the agency's authority to block a Congressionally approved project. The EPA veto “raises serious legal and policy issues,” Cochran and Wicker wrote in a July letter to EPA administrator Stephen Johnson. The senators attached a report from the Congressional Research Service saying EPA may not prohibit “a Federal project specifically authorized by Congress.” Congress approved the project, which would pump water out of South Delta counties during flooding, in 1941. But Grumbles responded with an August letter confirming EPA's right to veto the project, saying, “We believe the project remains subject to regulation.” Grumbles said the Army Corps of Engineers had not submitted the proper paperwork to Congress; therefore, the pumps project never received the necessary Congressional approval to exempt it from

ELEANOR BARKHORN
clearbarkhorn@ddtonline.com

GREENVILLE — Supporters of the Yazoo pumps have uncovered documents that they hope will revive the defunct project.

See **PUMPS** on A2



Al Rankins – Washington Co.



Damien Schiff - PLF



Bill Newsom – Sharkey Co.

MS Levee Board Press Conference announcing Lawsuit against EPA

August 11, 2009



Clay Adcock – Holly Bluff



Clifton Porter – Issaquena Co. **50**

EPA vetoes controversial pumps

■ Agency says project would have threatened wetlands, animals

on a more "viable path" to reduce flooding.

"We feel we are in a position now to reach closer on this controversial proposed flood-control project authorized in 1941 that was designed to protect agriculture rather than people and homes," Crumley said.

U.S. Sen. Trent Lott, R-Miss., said a last-minute EPA veto, approved by Crumley in July 2008, had an "right" message. Lott said it pointed in the right direction.

"It is a setback, but we will weigh the value of wetlands, insect water quality and harm the habitat of threatened and endangered species — all violations of the federal Clean Water Act."

The pumps would have moved the million gallons of water a minute from 57,000 acres of wetlands along the Yazoo River, mostly for the benefit of flood-

saying they believe there's a better way to provide flood control that will be less environmentally damaging, when they have no idea what it will be," Nimrod said.

Crumley authorized the project but never fully funded it before the Clean Water Act became law in 1972.

"The U.S. Fish & Wildlife Service has been used to stop a pumping station and a dam in other states."

The "Yazoo project is 10 times larger than the other 11 recent proposals considered. The EPA said the project would degrade the 57,000 acres of wetlands that would be altered, and conservationists argued the design would be three times that."



Left: groups over the needs of the Yazoo River.

EPA Officially Vetoes the YBW Project
Sunday, August 31, 2008

Delta Democrat Times
 CHRONICLING STORIES OF THE MISSISSIPPI DELTA SINCE 1868

Greenville, Mississippi WEDNESDAY • deltatimes.com • AUGUST 13, 2009 • 50 CENTS

Levee Board suit against EPA filed

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GREENVILLE — Claiming the veto of the Yazoo Backwater Project subjects lives, businesses and property to risk, the Board of Mississippi Levee Commissioners sued the Environmental Protection Agency Tuesday.

Affected by the veto are more than 63,000 acres of South Delta

gally in September 2008 when it vetoed a Congressionally approved plan to build a pumping station that would divert floodwater from the backwater area.

PLF attorney Damien M. Schiff said the plan will negatively impact thousands of people, business and farmlands in the backwater area, adding that the EPA stepped out of its authority when it vetoed the project.

board's costs and attorney fees.

Representatives of the Levee Board, PLF and the backwater area spoke at a Tuesday press conference in opposition to EPA's action.

Among them was Peter Nimrod, chief engineer of the Levee Board; Al Rankins, a Washington County supervisor and chairman of the Delta Council's Flood Control Committee; Bill Newsum



Peter Nimrod (right) chief engineer for the Mississippi Levee Board, and Damien M. Schiff, attorney with Pacific Legal Foundation of California answer question following the Tuesday morning press conference.

Levee Board announces Lawsuit against EPA
August 11, 2009

Suit over Yazoo pump project tossed

■ "They hurt the environment by not allowing us to build it"

The Associated Press

A Mississippi levee board that wants to move forward with a \$220 million flood control project has lost a bid in federal court to 4 Environmental Agency's 2008 project.

The Board of Levee Commissioners sued the EPA in August in U.S. District Court in Greenville, Ga. show U.S. District Judge Shariyon Aycock the lawsuit Monday.

The levee board, made up of representatives from several Mississippi counties, wanted to move forward with the Yazoo Backwater Project, a decades-old proposal to build a pump station to drain wetlands, farmland and forests north of Vicksburg when the Mississippi River is high.

Congress authorized the Mississippi Delta project in appeal Aycock's ruling.

"They hurt the environment by not allowing us to build it," Nimrod said of the EPA.

He said the proposed pump would lower a 100-year flood by 4 feet, and the project would remove about 60,000 acres from agricultural production.

The EPA first expressed reservations about the environmental damage associated with the proposed pump.

The EPA officials have said the pump project doesn't meet the requirements to proceed under the Clean Water Act, regardless of the timing.

The EPA first expressed reservations about the environmental damage associated with the proposed pump.

ported the Yazoo pump project over the years, including current Republican Gov. Haley Barbour, a potential 2012 presidential candidate.

Louie Miller, state director for the Sierra Club, applauded the dismissal.

"Today marks the final nail in the coffin of one of the most environmentally sound projects ever considered," he said in a news

Federal Judge Shariyon Aycock rules in favor of EPA
March 28, 2011

project was approved by Congress before the agency was given veto power under the Clean Water Act in 1972.

Several high-profile Mississippi politicians have supported the Yazoo pump project over the years, including current Republican Gov. Haley Barbour, a potential 2012 presidential candidate.

Louie Miller, state director for the Sierra Club, applauded the dismissal.

"Today marks the final nail in the coffin of one of the most environmentally sound projects ever considered," he said in a news

Panel rejects Yazoo pump

■ Federal judges back EPA veto of flood control project

over its 2008 veto of a \$220 million flood control project near the Yazoo River in the south Mississippi Delta.

The pumps would have moved the million gallons of water a minute from 57,000 acres of wetlands along the Yazoo River, mostly for the benefit of flood-

saying they believe there's a better way to provide flood control that will be less environmentally damaging, when they have no idea what it will be," Nimrod said.

Crumley authorized the project but never fully funded it before the Clean Water Act became law in 1972.

"The U.S. Fish & Wildlife Service has been used to stop a pumping station and a dam in other states."

The "Yazoo project is 10 times larger than the other 11 recent proposals considered. The EPA said the project would degrade the 57,000 acres of wetlands that would be altered, and conservationists argued the design would be three times that."

New Orleans upheld that decision Tuesday.

Damien M. Schiff, a Pacific Legal Foundation attorney, said the ruling stands, "it's unfortunate that the people of the south Mississippi Delta have to live with the consequences of the project."

The EPA vetoed the Yazoo pump aspect of the project in August 2008, saying it would destroy wetlands, water quality and threaten the Army Corps of Engineers' authority project.

See EPA, 2B

Fifth Circuit Court of Appeals rules in favor of EPA
March 6, 2012

Fifth Circuit Court of Appeal During the Oral Arguments on February 9, 2012:
 Judge Haynes, within a minute of our opening statement said *"why are you spending all this time in Court fighting over what Congress wants you to do – why haven't you just gone to Congress and said look somebody's questioning this why don't you just pass a specific law that says go for it?"*

Fifth Circuit Court of Appeal In the Written Decision issued on March 6, 2012:
 Footnote # 1 on page 2:
"Congress, not this court, is the best place to resolve these policy disputes."

Good Things Happening:



1. Improve the Environmental Protection Agency *Solution* – New EPA Leadership reforms the EPA

*Senate confirmed Pruitt on February 24, 2017
In 2018 Andrew Wheeler takes Scott Pruitt's place*



Andrew Wheeler



2. Reduce Regulations

Solution – Eliminate proposed WOTUS, FFRMS, revised P&G

President Trump signed Executive Orders on Feb. 28, 2017 for WOTUS & Mar. 28, 2017 for FFRMS



US Army Corps of Engineers®



3. New Assistant Secretary of the Army for Civil Works (ASACW)

Solution – Appoint R.D. James

Jan. 25, 2018 Senate confirms R.D. James as ASACW (89-1 vote)



R.D. James

