



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

SEP 11 2003

CECW-BC

MEMORANDUM FOR COMMANDER, MISSISSIPPI VALLEY DIVISION (CEMVD-MD-PP)

SUBJECT: Proper Application of Section 1135 Authority to Existing Flood Control Projects (Spunky Bottoms Area Restoration)

1. Reference is made to CEMVD-MD-PP memorandum dated 13 June 2003, subject as above.
2. We concur in the conclusion that Section 1135 of the Water Resources Development Act (WRDA) of 1986 (33 U.S.C. 2309a) does not authorize the replacement of a specifically authorized flood control project with an ecosystem restoration project.
3. With regard to administration of the Public Law (PL) 84-99 program, apart from the issue of using environmental benefits to justify PL 84-99 repairs, we question whether the levee would remain eligible for rehabilitation pursuant to PL 84-99 (33 U.S.C. 701n). Public Law 84-99 authorizes "the repair or restoration of any *flood control work* threatened or destroyed by flood...." (Emphasis added.) It does not appear that the modified levee would continue to function as a flood control work. Therefore, we believe that any legislative proposal to allow conversion of flood control projects to ecosystem restoration projects would need to explicitly provide for repair or restoration.
4. The appropriate course of action to implement such projects in the future would be to seek specific authorization of these projects. In the case of Spunky Bottoms and Hennepin the appropriate recommendation would be a modification of the Federal project to either add ecosystem restoration as a project purpose or replace the existing flood control purpose with ecosystem restoration. As noted, Section 216 of the Flood Control Act of 1970 would provide a study authority. The Emiquon project involves a non-Federal levee that is currently being studied under the Section 206 program. From the description of the project provided it appears it would potentially exceed the scope of Section 206 and may also need authorization. The normal course of action would be to seek a new reconnaissance start for these three projects but there are three ongoing General Investigation studies which would produce reports that could serve as a vehicle to get these projects authorized, namely the Upper Mississippi River and Illinois Waterway Restructured Navigation Study, the Illinois Basin Restoration Study, and the Upper Mississippi River Comprehensive Study.

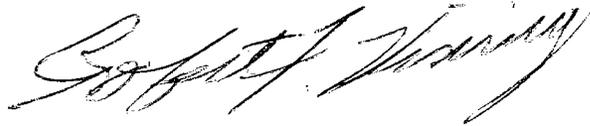
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5. Finally, MVD should formulate a legislative proposal for WRDA 2004 to address modification to the Section 1135 authority to allow participation in conversion of flood control projects to ecosystem restoration projects. The Headquarters Planning and Policy Division, Legislative Management Branch, can provide the appropriate format for such a proposal.

5. Any questions should be directed to Mr. John Lucyshyn at 202-761-4236.

FOR THE COMMANDER:



ROBERT F. VINING
Chief, Programs Management Division
Directorate of Civil Works