



Joint Memorandum of Collaboration Between the U.S. Department of the Army (Civil Works) and U.S. Environmental Protection Agency

Subject: Collaboration between the U.S. Department of the Army (Civil Works) (Army, including the U.S. Army Corps of Engineers (USACE)) and U.S. Environmental Protection Agency (EPA) to reduce flood risk in the Yazoo Backwater Area (YBA).

I. Purpose. The Army and the EPA (the Agencies) are committed to a collaborative and expeditious path forward to establish flood risk reduction solution(s) in the YBA that are compliant with the Clean Water Act (CWA) and all other applicable laws and regulations. The five-month plan in Attachment 1 will guide the Agencies in a collaborative approach led by the Army, with active engagement by EPA, to identify appropriate flood risk reduction solution(s) in the YBA. Strategies to be considered include a backwater pump(s), non-structural approaches, and nature-based solutions.

Through this approach, the Agencies will expeditiously establish an essential foundation for identifying and evaluating long-term solutions. For example, the Agencies will listen to the needs identified by the affected communities, align on the project purpose, and come to agreement on wetlands science and compensatory mitigation. With this foundation, Army will strive to develop a Report in an expeditious manner on flood risk reduction solution(s).

II. Background. In 2008 EPA issued a final determination under CWA Section 404(c) for the Yazoo Pumps Project. In April 2020, Army announced its intention to supplement the existing Final Environmental Impact Statement for the Yazoo Pumps Project—leading to the 2020 Proposed Plan for the Yazoo Pumps Project. On November 17, 2021, EPA transmitted a letter to Army explaining that the 2020 Proposed Plan for the Yazoo Pumps Project is prohibited by the 2008 Final Determination.¹

III. Project Commitment. The Army, in collaboration with EPA, commits to:

1. Clearly establishing the goal for flood protection (e.g., human life, primary residences and other occupied structures, roads, aquatic life, etc.)
2. Listening to the needs identified by the affected communities and complying with regulatory requirements for protecting the environment.
3. Expeditiously pursuing development of a flood risk reduction solution(s), including consideration of a backwater pump(s), non-structural approaches, and nature-based solutions. The development of the

¹ On November 30, 2020, EPA sent a letter to USACE that concluded that EPA's 2008 Final Determination for the Yazoo Pumps Project does not apply to the 2020 Plan for the Yazoo Pumps Project. That letter was challenged in litigation and the court ultimately remanded the letter to EPA for reconsideration.

solution(s) will include consideration of the breadth of economic, environmental, and social benefits provided including those identified by the affected communities.

Close collaboration between the Agencies throughout the process will serve the federal government in meeting flood risk management objectives, fulfilling NEPA and CWA Section 404 requirements, addressing the needs of the affected communities, and reducing potential conflicts and delays with the implementation of the project. The EPA will participate as a cooperating agency in the NEPA process and consistent with the requirements of the CWA. The EPA interests include ensuring that the least environmentally damaging practicable alternative is selected.

IV. Areas for Collaboration and Joint Analysis. To the extent relevant, the Army² will primarily rely on the robust data and information already existing for the YBA in preparing environmental documents addressing potential solution(s) to flood risk reduction in the YBA. The Agencies have identified additional areas for collaboration throughout the process which will provide additional information for Army's consideration.

A. Wetlands Science and Impacts. The Army and EPA agree that for a site to be a wetland, it must have wetland hydrology, wetland plants, and wetland soils. The Army and EPA currently disagree on the wetland functional hydrology criteria for duration and frequency of inundation and therefore the extent of the area where wetlands are impacted in the YBA. To address this divergence, the Agencies will work together to resolve any differences regarding a wetland impact assessment in the YBA, including on the hydrology standard and the wetland area definition. This area's definition, or bounding, will be based on science, and accepted regulatory protocols. Any project with proposed environmental impacts must be identified and evaluated for a Section 404 of the Clean Water Act evaluation of impacts to wetlands and any potential compensatory mitigation needs.

If the Agencies cannot come to resolution on this matter within one month of the date of this memorandum, a dispute resolution process will be initiated comprised of at least one appointed individual from the Army and EPA, as well as the U.S. Departments of Interior and Agriculture. Such dispute resolution process will conclude, if triggered, within two months of the date of this memorandum.

B. Compensatory Mitigation. The Agencies agree to collaborate on the appropriate criteria for any needed compensatory mitigation for a future project, consistent with laws and regulations. In accordance with the sequencing requirements of the CWA Section 404(b)(1) Guidelines, final decisions regarding compensatory mitigation need to occur after the wetland impacts associated with the least environmentally damaging practicable alternative for the project are identified. Various compensatory mitigation opportunities will be explored, such as areas in need of groundwater recharge or surface flow improvements as well as potential wetland areas that could be restored.

C. Maps. To the extent it is practicably obtained, the Army will work to develop maps to facilitate productive discussions to address specific flood risks, as well as any potential environmental impacts. The maps, which provide geographical context to potential options for consideration, should include the following information:

1. Locations of primary residences, commercial properties, and public buildings and utilities that coincide with agreed-upon relevant flood-stage conditions.

² USACE has expertise regarding flood risk reduction. With appropriate congressional authorization and appropriations, the USACE would be the lead agency for developing a long-term flood risk reduction project alternative for the YBA compliant with the National Environmental Policy Act (NEPA), the CWA, and other environmental laws and regulations.

- a. This map layer should depict the locations of any known communities with Environmental Justice concerns (e.g., part of the minority or low-income population that also experience disproportionate environmental burdens).
2. Locations of prime farmland and critical farm infrastructure that coincide with agreed-upon relevant flood-stage conditions.
 - a. A layer of this map should also indicate the location of parcels owned by any known minority or low-income farmers.
3. Locations of riverine backwater wetlands and important migratory bird habitats (coordinated with the U.S. Fish and Wildlife Service) that coincide with agreed-upon relevant flood-stage conditions, with possible field verification.

V. Engagement of External Groups. EPA and Army senior career managers will conduct a focused engagement process with local YBA communities and other stakeholders in early 2023. This engagement will include roundtable discussions with community leaders, local residents, and other stakeholders to gather their individual input on flood risk reduction solution(s), including consideration of a backwater pump(s), non-structural approaches, and nature-based solutions.

VI. The Agencies commit to the five-month plan to accomplish the actions identified in this memorandum. The Army will strive for identification of a preferred approach on alternative solutions to the flood risk experienced by the vulnerable communities by June 2023. After such identification, hereinafter the Army will work expeditiously to develop the Report on YBA flood risk reduction solution(s), including completion of any necessary documentation for compliance with the CWA and all other applicable laws and regulations.

VII. This memorandum and its outlined expectations may only be modified or extended by written agreement of both signatory agencies.



Michael L. Connor
Assistant Secretary of the Army
(Civil Works)

January 9, 2023



Radhika Fox
Assistant Administrator,
U.S. Environmental Protection Agency

January 9, 2023

Attachment 1: Five-Month Plan Flood Risk in the Yazoo Backwater Area

Goal: This dynamic plan will guide Army, including the U.S. Army Corps of Engineers, and EPA (the Agencies), in a collaborative approach for pursuing the Army’s process to identify appropriate flood risk reduction solution(s) in the Yazoo Backwater Area (YBA). Over the next five months, the Agencies will execute the following key activities below to enable the Army to deliver a preferred approach on flood risk reduction solution(s) for the YBA by June 2023.

Month	Key Activities
January	<ul style="list-style-type: none"> • Joint Army-EPA collaboration memorandum in place • Establish external engagement strategy • Project delivery team identified
February	<ul style="list-style-type: none"> • Deliver agreed-upon process to establish scope of wetland impacts • Finalize criteria for any compensatory mitigation needed for a future project • Initiate external engagement
March	<ul style="list-style-type: none"> • Mapping products delivered • Deliver agreed upon wetland functional assessment criteria
April	<ul style="list-style-type: none"> • Stakeholder engagement on preliminary findings recommendation
May	<ul style="list-style-type: none"> • Synthesize analysis and stakeholder feedback into recommendation
June	<ul style="list-style-type: none"> • Army delivers preferred approach(es) for flood risk reduction solution(s) for YBA