

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-1806**

September 15, 2023

The Honorable Michael Connor  
Assistant Secretary of the Army for Civil Works  
108 Army Pentagon  
Washington, D.C. 20310-0108

Dear Secretary Connor:

I am writing as a follow up to our August 31 call and my August 18 phone call with Colonel Cullen Jones. Thank you for taking the time to discuss an issue that is very important to Louisiana.

Over the past few years, Congress has modified deferred-payment conditions for the State of Louisiana (the State) related to post-Hurricane Katrina projects known as the Hurricane Protection System (HPS), including the Lake Pontchartrain and Vicinity (LPV), West Bank and Vicinity (WBV), and Southeast Louisiana Urban Flood Control (SELA) projects. Some of these projects date back to the 1960s, but their delayed and flawed implementation exacerbated the devastating loss of life and resulted in billions of dollars in damage from Hurricane Katrina. The then-head of the Corps of Engineers, Lt. General Carl Strock, admitted to a “design failure” on the part of the federal government saying, “This is the first time that the Corps has had to stand up and say, ‘We’ve had a catastrophic failure’.”

Despite the tremendous urgency to repair, revise, and complete the HPS in the aftermath of Hurricane Katrina, this effort had significant flaws. For example, the construction schedules for both LPV and WBV extended more than a decade beyond the original completion schedule. The projects’ non-Federal sponsor, the Coastal Protection and Restoration Authority (CPRA), was required to spend hundreds of millions of additional dollars to ensure the Corps’ work was sufficient and added capability within the Corps’ New Orleans District. Further, during this delay interest costs accrued, and the Corps often thrust Operations, Maintenance, Repair, Rehabilitation and Replacement responsibilities on the non-federal sponsor despite project components being incomplete or lacking independent utility.

As a result, Congress has on numerous occasions made clear that the state deserves additional options to fulfill their non-Federal cost share for these projects. Section 351 of the Water Resources Development Act of 2020 (P.L. 116-260) provided a pathway for the State to repay its deferred non-Federal cost share for HPS without interest if the state repaid \$200 million each for LPV and WBV by September 30, 2021, and paid the remaining principal for the projects by

September 30, 2023. During consideration of the Water Resources Development Act of 2022, the House of Representatives advocated to give the State an additional 10 years to repay the full principal of its HPS cost shares. However, in House-Senate negotiations, it was the Senate's language which became law in Section 8386 of P.L. 117-263, instituting an additional repayment requirement in the amount of two-thirds of the remaining cost share to be made by September 30, 2023. The law also follows the House's lead to extend the final payment date for the remaining third of the total cost share to 2032.

Since the passage of WRDA 2020, the State has paid a sizeable \$800,000,000 of the total \$1.1 billion non-Federal share, repaying \$200,000,000 each for LPV and WBV in 2021 and \$200,000,000 for each project again in 2022. In total, these payments account for repayment percentage of 68.7% for WBV and 73.71% for LPV, satisfying the 2023 payment benchmark required by Sec. 8386. However, recent comments made by Corps officials raise strong concern. Some Corps officials have apparently interpreted the 2022 language in a way that suggests the State has not satisfied its current obligations. I strongly disagree.

It is our understanding that the Corps is now interpreting the 2023 payment required by Sec. 8386 as equal to two-thirds of the principal remaining *after* the 2021 payment is taken into account. Meaning that the state would need to pay an additional \$28,423,108.42 for LPV and \$54,808,559.25 for WBV by September 30 of this year – a total of \$83,000,000. This would bring the total share of repayment to 78.95% for LPV and 78.12% for WBV, respectively. Why would Congress require a repayment benchmark of such an obscure threshold? We wouldn't. This interpretation is complete nonsense, defies commonsense, is clearly contrary to documented congressional intent, and calls into question if the Corps is taking the transparency and accountability required of a functional legislative process seriously.

During consideration of WRDA 2022, the Corps provided Technical Assistance (TA) on an identical section of legislative text (attached) as part of the Senate's WRDA, S. 4136. While the TA was descriptive of how the Corps would implement the section with regard to additional crediting authorities, it said nothing alerting the Senate of its arcane interpretation of how it would implement an additional benchmark payment requirement in 2023. Additionally, information the Corps provided to the Congressional Budget Office (CBO) resulted in CBO's cost estimate for S. 4136 (attached) stating that: "S. 4136 would delay from 2023 until 2032 repayment of one-third of the funds that the state of Louisiana owes the federal government under deferred-payment agreements." We confirmed that the CBO consulted with the Corps of Engineers in developing their cost estimate. If the Corps' current interpretation had been shared with CBO at the time, the cost estimate would have stated that eleven-fiftieths (22%) of the funds owed would be delayed until 2032.

Had the Corps intended this arcane interpretation of the language, there was no effort to make the Louisiana Delegation, the House Transportation and Infrastructure Committee, the Senate Environment and Public Works, or the Congressional Budget Office aware of its intention.

As a member serving on the House Transportation Committee, I want to stress how important it is that the Corps take the legislative process seriously: we cannot make laws that execute properly without honest and transparent consultation from the Corps. And in this instance, not only did the Corps leave Congress in the dark, CPRA only became aware that the Corps was requiring an \$83.32 million by September 30 a few weeks ago. However, WRDA 2022 was signed into law in December of last year. This new and shocking interpretation would require the governor of Louisiana calling the Louisiana Legislature into special session for the appropriation of \$83,000,000 before September 30, 2023.

It is clear that the Corps is just plain wrong on this interpretation, and we request that you leverage your authority to confirm that no further payments are required for 2023, and that the next payment benchmark for the outstanding balance will be September 30, 2032.

As you know, in both WRDA 2020 and 2022, Congress provided clear direction to the Corps on how additional activities undertaken by the state could be applied to the HPS repayment. In addition to cash payments, the law now includes a solution approved by the House dating back years that allows for non-federal credit to be used to satisfy deferred payments related to the HPS. The State has submitted a request for credit for the costs it incurred to ensure that the HPS system was delivered to the standard of quality promised to the people of Louisiana. Though originally submitted to the Corps for consideration in 2021, they have not received a response. It is the state's estimation that they are owed up to the \$282.5 million for this work, some of which could be applied to satisfy its next HPS deferred-payment obligation. It is my request that you either eliminate this flawed interpretation of federal law or expedite full or partial consideration of the State's application to recognize this credit.

As you contemplate this decision, I want to remind you of our conversation: After Hurricane Harvey, Corps of Engineers projects in that disaster region were funded at 100 percent federal cost. Despite General Strock admitting that HPS failures during Hurricane Katrina were the fault of the U.S. Army Corps of Engineers – causing billions in additional damages – the State had insult added to injury when we were also required to pay a cost share on the HPS projects. When put in that perspective and acknowledging the clear intent of the U.S. Congress as memorialized in the CBO cost estimate, there is only one right thing to do.

Additionally, when we spoke in April, we discussed that CPRA had submitted a request to renegotiate the interest for the non-Federal share of the SELA project in September of last year. To date, they have not received a response. Your office has since made us aware that a “review” process has begun to evaluate this request. However, despite numerous attempts, my staff has been unable to confirm what constitutes the review process or when the state can expect to receive a response. I also submitted questions regarding this issue to you during your recent testimony before the House Transportation and Infrastructure Committee. These questions are reasonable and made in good faith, however once again, I have strong concerns with the sufficiency of the Corps' response. The Corps can take all the time in the world to “review” this process, but the non-Federal

sponsor continues to pay its SELA obligations despite the clear request to revisit its 15-year-old deferred payment agreement.

As you know, Louisiana has significantly and strategically invested in efforts to sustain the coast, safeguard coastal populations, and protect vital economic and cultural resources. Ensuring that the State can continue to repay its obligations without punitive interest is crucial for its ability to protect and safeguard our coastal communities. I look forward to your timely response to this matter as September 30 is fast approaching.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Garret Graves', with a stylized flourish at the end.

Garret Graves  
Member of Congress

cc: Lieutenant General Scott A. Spellmon, Chief of Engineers