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Hatchie-Loosahatchie Mississippi River Ecosystem Restoration Study (Bordering Arkansas/Tennessee): U.S. Corps of Engineers Notice of Intent to Prepare Draft NEPA Environmental Impact Statement

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The United States Corps of Engineers (“Corps”) published a November 4th Federal Register Notice stating it intends to prepare a Draft Integrated Feasibility Report and Environmental Impact Statement (“DIFR-EIS”) for the Hatchie-Loosahatchie Mississippi River Ecosystem Restoration Study (“Restoration Study”). See 87 Fed. Reg. 66681.

The Corps states that the Restoration Study will examine restoring ecological structure and function along an approximate 39-mile reach of the Mississippi River:

. . . bordering Arkansas and Tennessee between River Mile 775, above its confluence with the Hatchie River, and River Mile 736, below its confluence with the Loosahatchie River, including secondary channels and other floodplain aquatic habitats; floodplain forests; and several scarce vegetative communities such as, wetlands, rivercane, riverfront forests, and bottomland hardwood forests.

The Restoration Study is stated to be authorized by Section 1202(a) of the Water Resources Development Act of 2018. It is stated to be the first of eight reaches of the Lower Mississippi River identified as priorities in a report prepared by the Secretary of the Army pursuant to Section 402 of the Water Resources Development Act of 2000.

The National Environmental Policy Act (“NEPA”) requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions. The range of actions covered by NEPA has typically been broadly defined. Agencies are also required to provide opportunities for public review and a comment on those evaluations.

NEPA was arguably designed to force mission-oriented agencies to consider the environmental impacts of a particular decision or activity in addition to other objectives. This is accomplished by agency consideration of environmental impacts of proposed actions and reasonable alternatives to those actions. NEPA requires federal agencies in certain instances to prepare an Environmental Impact Statement (“EIS”). However, the requirement to produce this document is only triggered in the event of a “major federal action” that will “significantly affect the environment.”

Note that NEPA differs from action enforcing environmental statutory programs such as the Clean Air Act or Clean Water Act. It does not impose substantive mandates. Instead, it is limited to requiring federal agencies to meet procedural requirements such as preparation of an Environmental Assessment or an EIS in certain circumstances. As a result, NEPA does not require a certain alternative or meet a particular standard. Nevertheless, the failure to comply with the procedural mandates can result in an activity or project being enjoined.

The Corps describes itself as the lead agency in partnership with the Lower Mississippi River Conservation Committee (“LMRCC”), as the non-federal sponsor undertaking the Restoration Study. The LMRCC was formed in 1994 as a nonprofit coalition of six states along the Lower Mississippi River to promote its restoration through cooperative efforts. The states include:

- Arkansas
- Kentucky
- Louisiana
- Missouri
- Mississippi
- Tennessee

The Federal Register Notice addresses:

- Background and Authorization
- Purpose and Need for the Proposed Action
- Preliminary Proposed Action and Alternatives Considered
- Brief Summary of Expected Impacts
- Anticipated Permits, Consultations, or Coordination
- Public Participation
- Availability of the DIFR-EIS

A copy of the Federal Register Notice can be downloaded [here](#).