

Correspondence History of Complaint to Corps of Engineers Engineer Inspector General.

Supplement to rejection of Inspector General's response. Sent July 26 2010.

<Robert.N.Jones@usace.army.mil >

Robert N. Jones
Chief, Assistance and Investigations Division
Office of Engineer Inspector General
HQ02

Dear Mr. Jones:

Further to my letter of rejection sent July 26, relating to your response to my complaint of April 19 regarding use of economic effects "captured" from other regions in the benefit/cost analysis used by the Wilmington District in its section 905(b) analysis for the North Carolina International Terminal, I offer the attached exhibits:

1. Wilmington District draft section 905(b) analysis dated February 2010.
2. Analysis of the foregoing showing violation of section 904 of the Water Resources Development Act of 1986 (and other shortcomings).
3. The Pro Forma Business Plan prepared by CH2M Hill, Inc., for the North Carolina State Ports Authority, which is relied upon by the Wilmington District for its forecasts of container traffic and benefits therefrom.

The last-named item depends wholly on "capture" of traffic from ports in other regions. I cite these pages in which the term "capture" appears (the first number is the actual page in the .pdf file; the number in parentheses is the page number of the report):

10(2), 13(5), 14(6), 20(12), 27(AppA3), 37(AppA13), 50(AppA 26), 93(AppA69).

Page 14 (page 6 of the report) is the most compelling. There is shown the 3,000,000 TEU annual throughput used by the Wilmington District.

I trust this will be helpful to your staff in your analysis.

Albert H Willis Col USAF Retired SSAN 523524446
Steering Committee
No Port Southport Inc.
6150 River Sound Circle
Southport, NC 28461
910-454-9454

Note: The documents referred to in the message are available at www.noportsouthport.org.

Rejection of Inspector General's response. Sent July 24, 2010.
< Robert.N.Jones@usace.army.mil >

Robert N. Jones
Chief, Assistance and Investigations Division
Office of Engineer Inspector General
HQ02

Dear Mr. Jones:

I reject your response, dated July 21, 2010, to my complaint dated April 19, 2010, regarding the violation of section 904 of the Water Resources Development Act of 1986 by the Wilmington District. The violation occurred (and appears to continue) in a draft section 905(b) analysis for the North Carolina International Terminal Project. I request that the complaint remain open as it is not responsive to the questions at hand.

Your failure to address the issue condones a deliberate violation of law in order to advance a project to the feasibility phase, which would result in public expense in excess of \$10 million for a project that cannot be justified using the analysis required by law.

I pointed out in the complaint that the Wilmington District is relying on a business plan report supplied by the project sponsor, the North Carolina State Ports Authority, which uses capture of substantial market share from ports in other regions for economic justification. I also pointed out that inclusion of economic effects transferred from other regions is prohibited by section 904 of the Water Resources Development Act of 1986.

You justify the inclusion of such transferred economic effects in the benefit/cost analysis on a passage of the Planning Guidance Manual urging the use of available data. It is patently absurd to read that to permit use of data that is prohibited by law simply because it is available. Yet that is what your response condones.

This calls into question the entire process of Inspector General oversight.

I demand that a full examination of this matter be made by headquarters staff, and that I be provided a response countersigned by the Chief Counsel of the Corps of Engineers.

Albert H Willis Col USAF Retired
Steering Committee
No Port Southport Inc.
6150 River Sound Circle
Southport, NC 28461
910-454-9454

Response to complaint received by e-mail on July 21, 2010.

From: Jones, Robert N HQ02 <Robert.N.Jones@usace.army.mil >
To: <alwillis1@earthlink.net >
Date: 7/21/2010 10:00:43 AM
Subject: FW: Wilmington

Mr. Willis,

We have coordinated with Wilmington District Commander and reviewed the issues you presented.

The reconnaissance phase is a preliminary analysis of the federal interest, costs, benefits, and environmental impacts of a project, and an estimate of the costs of preparing the feasibility report. Engineer Regulation (ER) 1105-2-100, The Planning Guidance Notebook (PGN) states that the 905(b) analysis is to be based on "existing, readily available data and professional and technical judgment." Additionally it states that "sponsor, other agency, State and local government sources of available data must be used to the maximum extent possible."

The reconnaissance report is currently in draft and is being reviewed and evaluated by the South Atlantic Division. The District and the Division are in discussions to resolve any issues that need resolved.

The District Commander cannot take final action until the Division concurs with the report. To date, the Wilmington Commander has not approved the 905(b) report nor has it been certified by the South Atlantic Division.

There have been numerous changes to the 905(b) analysis not reflected in the version on which you based your complaint. At this point in the process we are satisfied that the District has complied with regulatory guidance.

The feasibility phase provides a more rigorous level of evaluation of economics and any other factors for the project. As with the reconnaissance phase, the feasibility phase is also reviewed at the South Atlantic Division level for correctness and compliance.

As of this date the reconnaissance report is still under review by the Division. Support by the State Legislature and federal and state funding are required before we can move to the feasibility phase. Whether that funding will be made available is unknown at this time.

Thank you for your interest in maintaining integrity in the Corps.

Sincerely,
ROBERT N. JONES
Chief, Assistance and Investigations Division Engineer Inspector General
703-428-7575

Complaint to the Corps of Engineers Inspector General sent via e-mail April 19, 2010

Dear Mr Jones,

US Army Corps of Engineers IG

The Wilmington District has prepared a draft "section 905(b) analysis" Titled Wilmington Harbor Navigation Improvement Project, North Carolina International Terminal Dated, February 2010. This analysis is for a major project to dredge the Cape Fear River for the proposed North Carolina International Terminal (a very large container terminal) . The draft has gone to the South Atlantic Division for approval.

The draft recommends proceeding to a full feasibility study, at a cost of approximately \$10 million.

The draft has not been released to the public, but has been supplied to an agency of the State of North Carolina in connection with a letter of intent to participate in the feasibility study as non-Federal sponsor. We have discovered the draft under the North Carolina Public Records law.

In the calculation of benefits for the proposed container terminal, the Wilmington District has relied, without investigation or analysis, on a *Pro Forma Business Plan* prepared by consultants to the North Carolina State Ports Authority for forecasts of container movements. The consultants' forecast is based on "capture" of container traffic from other terminals in the Southeast. The forecast supposes increase of market share of Atlantic coast container traffic from the 1.1% now enjoyed by the existing container terminal on the Cape Fear River to 6.75%. The business plan and the benefits of the dredging depend on such capture.

Section 904 of the Water Resources Development Act of 1986 (33USC2281) limits consideration of benefits "to those benefits to particular regions of the Nation not involving the transfer of economic activity to such regions from other regions." Counting the benefits attributable to capture of container traffic from other regions clearly violates this provision.

This error affects the outcome of the analysis. Without consideration of captured benefits, the analysis would not find a surplus of benefits over costs.

We request the withdrawal of the Report from the State of North Carolina and a rework the analysis with out the "capture" of container traffic from other terminals.

The draft section 905(b) analysis, a review of that analysis, and other relevant documents are at

http://www.noportsouthport.org/mambo/index.php?option=com_content&task=view&id=145&Itemid=62

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