



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.

Washington, D.C. 20240

IN REPLY REFER TO:

H32(2280)

Ms. Sandy Rosenthal
Mr. H.J. Bosworth, Jr.
Levees Org.
1421 Soniat Street
New Orleans, LA 70115

JUN 14 2012

Dear Ms. Rosenthal and Mr. Bosworth:

Thank you for your letter of April 27, 2012, appealing the United States Army Corps of Engineers' (Corps) failure or refusal to nominate the New Orleans Levee Breach Sites - 17th Street and Inner Harbor Navigation Canal in Orleans Parish, Louisiana, to the National Register of Historic Places (National Register). Your organization's nomination request is for two properties, one under Federal ownership and one under nonfederal ownership, and is therefore considered a concurrent nomination under 36 CFR § 60.10.

The State of Louisiana (State) reviewed and processed the nomination as required in accordance with 36 CFR §§ 60.6 and 60.10. Although the State review board declined to recommend the nomination, the Louisiana State Historic Preservation Officer (SHPO) signed the nomination, certifying that the nomination was procedurally and professionally correct and that in the opinion of the SHPO the two properties described in the nomination meet the National Register Criteria. The SHPO then forwarded the nomination to the Federal Preservation Officer (FPO) for the Corps, citing 36 CFR 60.11, "Requests for nominations." The Corps subsequently wrote the SHPO, requesting additional time to respond to the nomination request. After 60 days had elapsed, your organization then elected to appeal the Corps' failure or refusal to nominate to this office pursuant to 36 CFR § 60.12(a). The appeal arrived at the National Register on April 30, 2012. At our request, the Department of the Army sent the National Register a letter with its opinion on the nomination on May 31, 2012, a copy of which is enclosed. By letter dated June 8, 2012, the Department of the Army sent us another letter on this topic, a copy of which is also enclosed. In these letters, the Department of the Army states its opinion that the nomination is deficient and that the properties are not eligible for listing in the National Register.

Although the flooding of New Orleans that occurred on August 29, 2005, is of enormous importance both for its impact on New Orleans and its people and for what it says about flood control policies and practices, the nomination submitted as the basis of this appeal is being returned. This is because, as explained in greater detail below, the nomination as presented is technically and professionally inadequate under 36 C.F.R. Part 60. Because of these inadequacies, I must deny your appeal. In reaching this decision, I have carefully reviewed the

nomination and the other documentation submitted on appeal, including your appeal letter, the minutes of the State review board, and correspondence involving you, the State, the Corps, and various interested parties.

Properties that have achieved significance within the last 50 years are not typically eligible for listing in the National Register. An exception is made for those that demonstrate "exceptional importance" in accord with 36 CFR § 60.4, Criteria Consideration (g) and the National Register Bulletin *How to Apply the National Register Criteria for Evaluation*. The "50 year rule" is meant to allow for a reasoned, balanced, and dispassionate appraisal of the historic importance of a property. Nominations for properties claiming exceptional importance under Criteria Consideration (g) must make a persuasive, thoroughly documented case that what is being nominated is of exceptional significance and must be adequately documented and technically and professionally adequate before the nominated properties may be listed in the National Register. The nomination for the New Orleans Levee Breach Sites - 17th Street and Inner Harbor Navigation Canal does not meet these requirements.

The nomination acknowledges that levees and floodwalls failed in more than 50 locations, but it does not adequately explain why the two breach sites identified in the nomination merit listing on their own in comparison to or in addition to others or to the system as a whole. For example, the nomination notes that two of the breaches in the Inner Harbor Navigation Canal combined were responsible for the flooding of the Lower Ninth Ward, yet only one of these two breach sites is included in the nomination. The nomination also states that before Hurricane Katrina's landfall, breaches developed in four I-walls, that of the 17th Street Canal and the east side north breach of the Inner Harbor Navigation Canal (the subject of this nomination) and the two breaches of the London Avenue Canal. The nomination does not, however, include the London Avenue Canal breaches. In addition, the nomination does not adequately describe the effects of the flood on New Orleans beyond a description of the flooding and resultant deaths. For example, it does not adequately address the import of the events arising from the failure of the levees with respect to other impacts on the people affected, the built environment, the economy of the city, and the policies for planning and construction.

Some statements in the nomination make claims that are not supported by, or attributed to, any source, and many of the passages that provide opinions are from the same source. This nomination heavily relies on quoting reports and articles from a limited universe of studies, and the language used in these direct quotations reflects the opinions of the study authors without providing any of the opinions of those who contest their findings. Nearly every quotation used in the nomination that cites design failure as the root reason for the breaches is taken from a single author, Robert G. Bea, who appears alone or with co-authors in three reports. Each of these quotes presents Mr. Bea's opinion; no differing opinions are offered, weighed, or evaluated. I further note that the ongoing litigation in the United States Fifth Circuit Court of Appeals and the Federal district court in New Orleans demonstrates that there are disputed and unresolved matters of fact relating to the failure of the levees.

The nomination notes that "numerous studies" have been done and provides "descriptions of the three major studies" but does not define what a major study is or what differentiates these studies from others. It asserts that "at the time of the nomination, all studies agree..." whereas the Corps

has stated that there are other studies and expert opinions that provide differing opinions. In addition, although the nomination claims to use summarized comments from the Corps' own study, the Interagency Performance Evaluation Task Force report, it does not provide quotes from the report, only interpretation.

There is no citation or quotation for the section on lawsuits, wherein the nomination claims that the courts have "held the Corps responsible for design defects of the I-wall and for the flooding resulting from the two east side IHNC breaches." Thus I have been unable to verify those claims about the courts' holdings.

Finally, the nomination as submitted has numerous technical errors that are also substantive because the sources of the information provided in the nomination are not clear, thereby leaving the validity of the opinions and conclusions drawn in the nomination in question. Many of the citations are missing from the nomination. The following footnotes are missing: 4, 5, 6, 8, part of 9, 10, 11, 12, 13, part of 14, 15, 18, 19, 20, 22, 23, 28, 29, 30, 31, 33, 34, 35, 38, 39, 45, 46, 47, 48, 50, 51, 55, 56, 60, 61, 64, 65, 66, 73, 74, 75, part of 80, 81, 82, 87, and 88. The last line on the third page of Section 8 is also missing. The pages are not numbered, which also is a technical flaw. And although footnotes are not specifically required in National Register nominations, when they are not included, the precise sources need to be provided in the text of the nomination. This is of particular importance with respect to this nomination because certain facts and opinions included in the nomination are being disputed in ongoing Federal litigation.

For the foregoing reasons, I am denying your appeal of the New Orleans Levee Breach Sites - 17th Street and Inner Harbor Navigation Canal nomination. The properties described in the nomination will not be listed in the National Register on the basis of the nomination as presented. If any revised nomination is prepared, it should be submitted to the appropriate nominating authority for consideration.

Sincerely,



Carol D. Shull
Interim Keeper of the National Register
of Historic Places

Enclosures

cc: LA SHPO
Jo-Ellen Darcy, Assistant Secretary
of the Army (Civil Works)