

Gary W. Moody
299 ½ W Madison St
Franklin, IN 46131

July 14, 2010

Ms. Margaret Gaffney-Smith
Chief, Regulatory Community of Practice
Headquarters, U.S. Army Corps of Engineers
441 G Street, N.W.
Washington, DC 20314-1000

RE: **LRL-2009-1174-sjm**

As with virtually every other index of environmental quality, Indiana ranks with the nation's worst in terms of E. coli bacteria contamination, no-fishing advisories and total "impaired" water as classified by the U.S. Environmental Protection Agency... The test of whether a regulator of water, air and soil has been doing things right is the quality of that water, air and soil. For the average Hoosier who breathes air, drinks water and eats crops, paper compliance with the law is an academic matter.

- Editorial, Indianapolis Star, Dec. 21, 2009

Dear Ms. Gaffney-Smith:

I am taking the extraordinary step of addressing this public comment and request for hearing on the above referenced project to you (although this document will also be mailed to Ms. McKeown) due to the extraordinary impact on the public interest of this project. That is because the public process which we now have available to address this matter needs to be utilized to shine a strong, clear light on what has been a long **history** of such projects in Johnson County and in other areas of Indiana, a history which is rife with waste, corruption, and environmental degradation and wanton destruction. A history which also has, unfortunately, been facilitated by state and federal officials who have not always displayed an adequate regard for the law, and the public, which they're supposed to serve.

I am attaching, in the package to be mailed to Ms. McKeown, my letter of Jan. 4 to IDEM regarding this project, as part of my comment in the current process. I've previously transmitted it to you, Ms. McKeown, and other officials via e-mail. And I should mention that I've posted that and various other documents regarding the Johnson County Surveyor online at: <http://www.ccjcin.org>

As my Jan. 4 document clearly establishes: The applicant's request can be denied simply based upon the fact that **the project is unnecessary**. This is a very small stream, it was functioning fairly well when the application was submitted (despite the Surveyor's previous tampering) and still is as of this date, and would only function better if it was **restored** to a more natural state. Which is exactly the opposite of the applicant's plan. What is in the application, in fact, is typical boilerplate which is pasted into every application from the Johnson County Surveyor, with minor variations. For example, there are no "sand bars" in that tiny stream, and the "profile grade" referred to is an artificial ideal more suitable to a farm field, which has nothing whatsoever to do with the situation at the site, or the function of a natural stream to begin with. Furthermore, the applicant is proposing NO mitigation, which he never does, as the purpose of these projects is simply to wreak destruction on the environment, either completely removing any trace of the natural state of streams, or maintaining the unnatural state of a previously destroyed stream, and thereby **burning money** which ceaselessly flows into the Surveyor's coffers via "ditch fee" property tax levies! Anyone with actual engineering/environmental/etc expertise will tell you that the fellow simply doesn't know what he's doing in his tinkering with the landscape. The flip side of that, however, is Johnson County Surveyor Douglas Lechner knows **exactly** what he's doing in order to keep the money rolling to himself and his cronies. Quite bluntly, he is running a **racket**.

For the reasons above we are asking USACE not to deny the application outright, but rather to **hold a public hearing in Franklin, Indiana**. To that end, I am including in my package a petition from myself and 28 other citizens, requesting a public hearing, which also states:

“We, the undersigned petitioners, by our signature do hereby request a public hearing in the above matter, under the provisions of 33 CFR 327. We also request that the hearing be held in the county seat of Johnson County, preferably in the auditorium of the Courthouse Annex Building, with use of the venue’s audio recording apparatus, and at a date and time most convenient for the petitioners and other members of the public. We furthermore request, per 327.8, that the USACE hold a joint public hearing and invite all interested parties, including representatives of Federal, State, and local governments and private individuals and organizations, to be present or to be represented. We particularly seek testimony, advice, and scientific expertise from Federal and State agencies such as USACE, USEPA, USDOJ, USFEMA, USNRCS, USFWS, and Indiana IDEM and DNR.

The specific public interests which may be damaged by the issuance of the DA permit include, but are not limited to:

1. The project is not necessary.
2. Violations of the Clean Water Act;
3. A federally-funded study by the Johnson County Soil and Water Conservation District has shown that these activities by the Johnson County Surveyor degrade water quality in streams (see also USDOJ-USDOA MOA 18/21 Dec. 1992).
4. Violations of Federal and State Flood Control acts;
5. Franklin experienced a federally-declared flood disaster in 2008. This stream was a major factor in that disaster. It has not been scientifically determined what effect these activities by the Johnson County Surveyor have on flooding.
6. The City of Franklin has made numerous requests to USACE for assistance and funding in studying drainage and mitigating flooding in and around the city, particularly with regard to this stream.
7. If this project is not necessary, and if it is in conflict with the other public interests mentioned above, then issuance of the DA permit would result in tremendous waste of public resources involving all of the Federal and State agencies listed above.
8. The project may be a threat to public health and safety for the above reasons.”

Unfortunately, Franklin, Johnson County, and Indiana are plagued by public corruption. My preliminary investigations, conversations with other citizens - and in particular, the County Surveyor’s violations of state and federal laws in his unauthorized work last year on Little Sugar Creek, his subsequent use of fraud, and attempts by state and federal officials (including USACE personnel) to cover up the matter – all constitute a system of corruption and illegality which must have a strong, clear light shined on it, as I stated previously, in an open public forum. It is only the public’s general ignorance of these matters, and of the facts of law and science, which have allowed this situation to fester in our community. Therefore, we absolutely must have the cooperation of yourself and the Army Corps of Engineers to bring the requested hearing to the most beneficial fruition.

However, the Indianapolis office has not been forthcoming in safeguarding the best interests of the public, and I assume that the root of the problem is the Louisville district office. As I believe I’ve informed you, I’ve had very disturbing conversations with Greg McKay, Col. Landry, and James Townsend. The latter told me that the plan (prior to the Notice being issued) was to have a private chat with the County Surveyor and provide “guidance” on the Canary Creek project, versus an open public process. And when I told Townsend about the scam and violations at Little Sugar Creek, he agreed with Lechner’s methods! Furthermore, you referred me for assistance to Suzanne Chubb in your division office. As I believe I stated in a voice message of June 4, while Ms. Chubb was willing to listen and receive documentation, she did absolutely nothing afterward, and when I finally pressed her on taking action, she refused to acknowledge the application of environmental law or the Corps’ own environmental policies!

Therefore, while it is of the utmost importance that the requests by myself and the community for a public

hearing be granted, I am concerned about obtaining the assistance of Corps personnel who would be unbiased, professional, and beholden to the letter and spirit of the law. As well as holding the public interest in the highest regard, versus the interests who have been placated by the Corps' tradition of rubber-stamping and lack of diligence. That is another reason why I am addressing this letter to you directly, so that you may perhaps consult with headquarters staff as to how to best deal with our dilemma.

I am also including in my package letters and a petition for hearing from Mr. & Mrs. Larry Nun, leading citizens in our community. While there is some overlap with the names I've gathered on my petition, I trust that the Corps will see the depth of concern about the Canary Creek project, at least, particularly from those residing near the project site. The activities and methods of the Johnson County Surveyor in his "legal drain maintenance" have severe impacts in terms of aesthetics, property value, aquatic life, and access to and use of the stream.

In the latter regard, all streams in Indiana are by law intended for full use, such as fishing and swimming. Yet the lack of regulation by federal officials of county surveyors in Indiana has resulted in **massive loss of waters of the United States!** The actual uses of these streams have been dramatically changed after their natural state has been destroyed, resulting in lower water quality, negative impacts on aquatic life, and the degradation and loss of recreational opportunities. Which serves the "interests" I mentioned above, chiefly county surveyors and drainage boards, the cronies and contractors that they funnel public funds to, and some farmers and various ag interests who think that this system is working well for them.

On that note, I must point out to you that the Canary Creek project is not really a "single" project – it is one of a **series of projects**, undertaken on each waterway which the County Surveyor has jurisdiction over. The ultimate goal is to destroy the natural aspects of the **entire stream** in a serial fashion, thereby changing it from its naturally-maintained state, which costs the public nothing, into what I call a state of "**perpetual maintenance**" - which burns tax dollars in an endless and profitable cycle of herbicide spraying, rip-rapping and re-rip-rapping, dredging, etc.

By doing so in steps he tries to keep off the "radar screen" of state and district regulators (who actually know the scam well) and the public. Each step is carefully calculated. For example, he conspired with others to "destabilize" a relatively small part of Little Sugar Creek through unauthorized work, and then applied for a permit to "fix" his own environmental sabotage. With a lot more unnecessary and impermanent work thrown in. Over the years he's taken chunks out of that stream's natural areas, with the goal of eventually denuding and channelizing as much of it as he can. Which is what happened with Hurricane Creek, which is now mostly destroyed from the far north end down into the city limits, particularly in a massive project in 2005 (our flood disaster was in 2008, don't forget). And he's tried to nibble off more recently. Same situation with Canary Creek, and the current application is to plow through the final stretch of wooded private home properties which he's not gotten to yet, and beyond, winding up just shy of the confluence with Youngs Creek.

I have been "swimming" for days in federal regulations and a wide variety of documents which I've been researching, and while I sorely need an attorney to help me sort it all out, it is obvious that the **Corps' current NWP and RGP structures** and other regulatory mechanisms, as applied to the practices of "Indiana Drainage Code" and "legal drain maintenance", and as overseen by IDEM, and USACE districts, are wildly out of synch with the realities on the ground.

The **Clean Water Act** is not being maintained as the rule of law in Indiana, **far** from it, nor is the **Fish & Wildlife Coordination Act, NEPA, the National Flood Insurance Act, Floodplain Management Executive Order 11988, Executive Order 12866, Executive Order 13045, Executive Order 12898**, and God knows what else. While I have perused all of these subjects to varying extents, and pinpointed specific conflicts between these laws/orders and the realities of Corps regulation, it is my hope and intention to have these listed and explained in more detail, with accompanying facts (beyond what I've provided already) to be presented either at or coinciding with the public hearing. Please keep in mind that our ultimate goal is to improve all factors in the public interest, from environment to safety to justice and the rule of law.

An added benefit of reforming and rationalizing the status quo will undoubtedly be a reduction in regulatory work load for USACE. We should all, both Corps staff and the public, be in agreement and alignment with the goal of **USACE 2012**: "Aligning USACE for Success in the 21st Century". A document which declares "The Change Imperative"! I find this statement particularly relevant:

"**Yesterday**, a problem would be fixed, but sometimes the unintended consequences of that solution would then require fixing. **Now**, with our models, science and lessons, we will address all of the consequential complexities early in the planning process."

We look forward to the Corps' good work with the citizens of Johnson County.

Sincerely,
Gary W. Moody
Concerned Citizens of Johnson County

A handwritten signature in black ink that reads "Gary W. Moody". The signature is written in a cursive, flowing style.

Attachments:

1. Petition for Public Hearing RE LRL-2009-1174-sjm [Please notify petitioners individually; thanks.]
2. Petition for Public Hearing RE LRL-2009-1174-sjm by Larry Nun et al.
3. Letter from Larry & Patricia Nun RE LRL-2009-1174-sjm, sent to IDEM, 1/1/10.
4. Comment and Request for Public Hearing RE LRL-2009-1174-sjm by G. Moody, sent to IDEM, 1/4/10.
5. Letter to Max Hagan, USACE Indianapolis, by G. Moody, 12/21/09.
6. Letter to Bharat Mathur, USEPA Region V, by G. Moody, 12/21/09.
7. Letter to Janet Odeshoo, USFEMA Region V, by G. Moody, 12/21/09.
8. Indianapolis Star editorial, 12/21/09.
9. Confirmation from IDEM of receipt of IDEM complaint form RE violations at Little Sugar Creek, 1/29/10.
10. Copy of USACE complaint form RE violations at Little Sugar Creek, faxed 2/11/10.
11. Comment to IDEM RE 2010 Draft 303(d) List of Impaired Waters, by G. Moody, 2/26/10.
12. Comment and complaint RE LRL-2009-1015-sam, sent to IDEM, 6/21/10.

TO: US Army Corps of Engineers, Louisville District
ATTN: Sarah McKeown, CELRL-OP-FN
9799 Billings Road
Indianapolis, Indiana 46216

SUBJECT: Request for Public Hearing
PROJECT: ID # LRL-2009-1174-sjm
Stream: Canary Ditch aka Canary Creek
Applicant: Johnson County Surveyor's Office

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