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Position Paper of the Caddo Lake Institute (CLI) On the Clean up and Transfer of the Longhorn Army Ammunitions Plant (LHAAP) For the Caddo Lake National Wildlife Refuge (CLNWR)

The Caddo Lake National Wildlife Refuge can play a very important role in the economic development of the area, as well as in protection of the area's ecological, historic and cultural assets. While the Refuge officially opened in 2009, public access and resource protection are limited by the failure of the Army to perform timely remediation and transfer of LHAAP property to the U.S. Fish & Wildlife Service (FWS).

As a result, Caddo Lake area communities have concerns about the actions of the Army and EPA. There are questions regarding the fact that the Army has not transferred control of all of its clean surface areas to FWS. There are questions about the adequacy of the Army's clean-up plans and EPA's decisions to approve some of these plans.

In fact, concerns have been expressed that the Army might seek to transfer some of the lands planned for the Refuge to another party, someone who would not object to the Army's current clean-up plans. Such an entity could use the land for industrial development or other incompatible use. Such action may not be imminent, but the Army clearly has required this option in its written agreements with FWS.

LHAAP Clean Up: The Army is legally responsible for the clean up of the contamination of the surface areas and groundwater that resulted from its operations at the LHAAP. In 1990, LHAAP was added to the list of "Superfund" sites because of contamination with toxic chemicals. Following the decision by the Army to close the plant in the mid 1990s, the Army agreed to transfer its LHAAP lands, water rights, etc. to the FWS for the Refuge with some conditions.

While the Army, FWS, EPA, and local communities worked well on clean-up issues in the past, FWS and community leaders have raised concerns about the recent proposals by the Army to clean-up polluted groundwater. After 20 years, the Army and EPA now appear to be in a rush to get clean-up plans approved. Yet, one plan, for example, proposes leaving the contamination in place to degrade over 200 years.

CLI has researched the groundwater pollution and FWS's assessments. A groundwater expert hired by CLI identified significant deficiencies in several of the Army's plans. For example, in some areas the Army did not obtain the data on the extent of pollution, the subsurface movement of the pollutants or the degradation rates of the pollutants to allow the Army, EPA or the public to determine what steps should be taken for clean up.

Transfer of LHAAP Lands, Water Rights and Minerals: About 7200 of the 8400 acres at the site have been transferred to FWS for management, but the remaining 1200 acres create many holes in the refuge. Yet control of the surface of most of those 1200 acres could now be transferred to FWS, since the surface areas of these lands are clean. Almost 8400 acres could now be managed by FWS now for wildlife, hunting, horse back riding and other public uses. Likewise, while some of the Army's water rights have been transferred, some have not.

Members of the nearby communities have expressed concern that the clean surface areas and the remaining water rights and mineral interests may be used by the Army as leverage to encourage FWS to accept the Army's

inadequate clean-up plans. It has appeared at times that the Army wants FWS to accept some of these plans before the Army will transfer any more control of the surface to FWS.

FWS has apparently advised the Army that it will not be able to accept some of the remaining Army lands with groundwater pollution because the Army's plans for the clean up are inadequate. If the Army offers the lands, surface and subsurface, and FWS rejected them, the Army could then offer them to others.

EPA's Role: Until very recently, it appeared that EPA would not only approve the Army's deficient plans but also open the door to the Army's transfer proposals. EPA's position is that it can approve the Army's plans and then require the Army to get the information needed to evaluate the plans.

While that is not a proper approach, EPA could limit the adverse impacts of such an approach by taking the position that, until the additional information needed for the evaluation is provided and the plans are proven to be adequate, the contaminated lands cannot be transferred to FWS or any other person or entity. EPA appears to be willing to take that approach.

While that approach may solve one problem, it creates another. EPA's approach significantly limits public participation in its decisions on the clean-up process. For example, CLI has hired an expert to review the Army's plans and provide comments in EPA's formal process. While EPA appears to agree with this expert that more data are needed, it proposes to approve the Army's plans and create a second decision once more data are provided by the Army. There is no formal comment process for such a second decision. And what if the Army fails to get the needed data again? Would EPA then create a third step? Even if CLI and the public followed the process closely, they could have to pay again for experts to review the data for each extra decision. EPA's approach will add costs and frustrate public participation.

Time for Action: With all the other contaminated sites the Army has to address around the country, if not the world, it is easy to see that the Army will focus more of its resources on sites where EPA takes a tough stand or members of the public and their elected officials are vocal in their demands. If EPA or the public does not force timely work, the clean up process and transfers could be delayed for years.

There are some clear solutions:

- 1) EPA should require the Army to obtain the data needed for a proper clean up decisions and before any more of the Army's plans are approved. The process has already taken 20 years. There is time.
- 2) The Army should agree that it will transfer administrative control over its clean surface lands, its remaining water right, and its mineral development role to FWS by the end of 2010. FWS should be allowed to open more of the Refuge for public use.
- 3) The Army should agree that it will only transfer its property interests at LHAAP to FWS. If there is a disagreement on when or how transfers should occur, the matter should be taken to a dispute resolution process. There should be no threat to FWS to "take it or lose it."
- 4) The FWS should agree to manage the surface lands, water rights, and mineral interests in a way that allows, if not assists, the Army to pursue the clean-up activities in a timely fashion, with the Army paying FWS for any related costs of maintenance.
- 5) The Army and EPA should ensure that the Restoration Advisory Board process encourages active community participation. Members from the community should be given assistance and support; not in any way viewed as opponents or persons whose input is not needed or respected.