

Appendix B

THE DEPARTMENT OF DEFENSE AND COMMITTEE MANAGEMENT: THE CASE OF THE ENVIRONMENTAL ADVISORY BOARD

Much of the controversy which surrounded the creation of the EAB was predictable. Environmentalists approached the Board with skepticism, while water resource developers feared the spread of a no-growth philosophy within the Corps. However, a lesser-known source of controversy laid in the manner in which the Board itself was created. Problems in coordinating the Corps' plans for the Board began at the EAB's conception and continued periodically thereafter. An overview of these problems forms a peripheral, but revealing, part of the history of the EAB.

Complications arose initially because the Civil Works Directorate (Colonel Werner) and R. V. Prangley, the Executive Administrative Assistant to the Chief of Engineers, did the paperwork on the EAB without informing others within OCE. The major omission was the Engineer Comptroller, Colonel B. B. Geery. The comptroller's office heard about the Board only after it was informed by the Department of the Army (DA) Committee Management Office in the Pentagon.¹ Once Colonel Geery heard about it, he recommended that the Board be established in accordance with Army Regulation (AR) 15-1, "Boards, Commissions, and Committees: Committee Management." This recommendation was contrary to that of Civil Works personnel, who thought the Board was exempt from the requirements of AR 15-1; but once Geery had read the minutes of the first EAB meeting, he became convinced that the AR requirements applied. The Corps, urged the comptroller, should obtain "at least tacit DA approval of the Board."²

After further consideration, OCE proceeded to establish the Board by issuing, on 14 October 1970, Office Memorandum (OM) 15-2-1, "Boards, Commissions and Committees, Chief of Engineers Environmental Advisory Board." Also, a letter was prepared to be sent through the Secretary of the Army's office to the Secretary of Defense. Apparently, however, Robert E. Jordan III, Special Assistant to the Secretary of the Army (Civil Functions), chose not to send the letter to the Secretary of Defense's office.³ Neither the Secretary of the Army nor the Secretary of Defense formally approved the Board at this time.

In early 1971, changes in Army regulations required the rechartering of the Board on a two-year cycle and the submission of an annual report. The changes required a reevaluation by the Department of the Army of the various Army advisory boards. In the case of the EAB, the analysis turned up some

embarrassing facts. For one thing, it was discovered that no one in the Pentagon had ever formally approved any of the EAB members.⁴ Then in May it was brought to the attention of the Secretary of Defense's office that Senator Charles H. Percy, of Illinois, had made a proposal on the Senate floor the previous August dealing with an environmental advisory board. Percy had called for such a board to be established by statute and selected by the Secretary of the Army. This board would be empowered to submit recommendations on Corps projects before construction had begun. If the Secretary of the Army chose to act contrary to the recommendations, the matter would be forwarded to the Secretary of Defense, who, after reviewing all relevant arguments, would make a final decision. This board, in addition, would have the right to be represented at all Corps hearings and to hold hearings of its own.⁵ Although the Senate bill (No. 4307) which incorporated Percy's views was not passed, the fact that such an item could be discussed on the Senate floor while the Secretary of the Army's office was almost completely ignorant of it was a cause of real consternation. Consequently, the Corps was formally requested to have the EAB approved in accordance with AR 15-1.⁶

The Corps worked with the DA Committee Management Office to insure proper compliance with the regulations; and on 17 September 1971 Robert F. Froehlke, the Secretary of the Army, formally approved the Environmental Advisory Board.⁷ Concurrently, a letter was sent to the Secretary of Defense informing him of the establishment of the EAB.⁸ The episode was finally over, but it had cost the Corps some goodwill at the Pentagon. John G. Connell, Jr., Administrative Assistant to the Secretary of the Army, wrote to the Chief of Engineers, "It is essential that the Army avoid any further embarrassment on the Board from a committee management program standpoint." He specifically requested that from then on the Corps adhere to the requirements of AR 15-1.⁹

General Clarke was eager to avoid further problems. Therefore, he carefully followed procedures and requested that Froehlke approve the extension of the EAB beyond the automatic termination date of 30 June 1972. At the same time, he submitted the names of three nominees to the Board for formal approval: Sharpe, Backus, and McGrath. Clarke indicated that, once all three nominees were approved by the Secretary of the Army, he would pick two for Board membership.¹⁰ Eventually all three were selected. On 24 April 1972 the Secretary of the Army approved both the extension and the nominees.¹¹ Shortly thereafter Backus and Sharpe were appointed to the EAB. Henceforth, the Corps would conscientiously seek the approval of the Secretary of the Army before selecting Board members.

Another committee management problem soon faced the Corps. On 5 June 1972 President Nixon signed Executive Order 11671, which specified open meetings except when boards were discussing items covered by Section 552(b) of Title 5 of the United States Code. Briefly, this section stipulated that internal agency documents could be withheld from the public in cases where

such communications would not routinely be made available to parties in litigation against the agency. The executive order, with various modifications, became Public Law 92-463, signed by Nixon on 6 October 1972.¹²

Clarke decided that Section 552(b) applied to both the EAB and the Corps' Winter Navigation Board. Therefore, he announced that meetings of these two boards would be closed to the public and their records would be exempt from disclosure.¹³ He told EAB members at the October 1972 meeting in Williamsburg, Virginia, that, if they felt that a particular session should be opened to the public, he would consider it.¹⁴ Evidently Board members had no argument with Clarke, for both the Williamsburg and New Orleans meetings were completely closed.¹⁵ Still, questions did come from Congressman William S. Moorhead, Chairman of the Foreign Operations and Government Information Subcommittee of the House Committee on Government Operations. Specifically he wondered about the closing of the New Orleans meeting. The Secretary of the Army's office stood firmly behind Clarke in this matter, however, and rejected any suggestion that Clarke's decision was improper.¹⁶

Nevertheless, General Gribble decided to close only some parts of the EAB meetings. It was clear to the new Chief that the burden of justifying closed meetings would fall on his shoulders. Not only statutory law and executive orders indicated as much, but so did OMB Circular A-63, "Committee Management," issued in early 1973, which interpreted the law in a way favorable to the public.¹⁷

Still, the Corps had not gone far enough to satisfy some congressmen. Congressman David R. Obey was especially upset that the Corps had closed EAB sessions, and he thought it important enough to express his view in the *Congressional Record*. He also complained that the Corps did not give "timely notice" of Board meetings as required by law.¹⁸ In fact the Corps had published notice of the February 1974 meeting belatedly in the *Federal Register*: according to Colonel Wall, this delay was caused by poor postal service.¹⁹

Obey's message was undoubtedly viewed as an unfair attack by the Corps. Only a few weeks before the congressman's remarks, OCE and the Department of the Army had reached an agreement on what sessions should or should not be closed, and General Gribble was sure he was acting in accordance with all existing laws and regulations.²⁰ In August, therefore, he announced that certain parts of the upcoming Board meeting would be closed. Obey saw the notice in the *Federal Register* and once again criticized the Corps' decision. At this point OCE gave up. A new notice was put in the *Federal Register* which stated that due to "an administrative error" the next EAB meeting had been listed as being closed, when in fact it was to be an open meeting.²¹ The Corps never again attempted to close EAB meetings.

The reasons are opaque, but the regulations on committee management rarely work as well in practice as on paper. Approval of candidates by the Secretary of the Army's office was delayed for months. In October 1973, for instance, General Gribble advanced the names of five candidates for the

Board: McGrath, Tabb, Evans, Cottam, and Frank Morrison, a former Nebraska governor. Months passed, but the only word from the Pentagon was that the Office of the Secretary of the Army (OSA) wished to consider just four names. Therefore, Morrison's name was switched to a list of alternates. Meanwhile, Clarence Cottam, who had been attending Board meetings, died in March 1974. Technically then he was never a Board member. In May OCE pressed the Department of the Army for a response. At this time Gribble came forward with a definite recommendation that McGrath and Tabb be approved as the principal candidates. Along with Morrison, Evans was recommended as an alternate.²²

Finally, on 30 July 1974, Secretary of the Army Howard H. Callaway approved Gribble's choices, but not exactly in the way they were presented. McGrath and Evans were confirmed as EAB members, while Tabb was named as the first alternate. Former astronaut Walter M. Schirra, Jr., and Donald Zinn, a former Executive Director of the National Wildlife Federation, were added to the list as the second and third alternates, respectively. It is not clear who suggested Zinn and Schirra as candidates, but available file material indicates that the two men were not recommended by OCE. The fact that Wall thought it important enough to mention Zinn's party affiliation (Republican) on a note to Morris also offers circumstantial evidence of high-level interest.²³ Neither Schirra nor Zinn were appointed in the end, however. Tabb's contract was approved in the fall of 1974.²⁴

Perhaps the biggest scare the Corps had over the continuation of the Environmental Advisory Board came in February 1977, when President Jimmy Carter ordered "a government-wide, zero-base review of all advisory committees." Carter wanted to keep only those committees "for which there is a compelling need," which had a "truly balanced membership," and "which conduct their business as openly as possible consistent with the law and their mandate."²⁵ Even before Carter's directive, Deputy Secretary of Defense Charles W. Duncan, Jr., requested a review of Department of Defense advisory committees. Clifford Alexander, the Secretary of the Army, appeared determined to consolidate some Army advisory committees and to terminate others.²⁶

The Department of the Army Committee Management officer directed a review of all four Corps advisory committees: the EAB, the Shoreline Erosion Advisory Panel (SEAP), the Winter Navigation Board, and the U.S. Army Coastal Engineering Research Board (CERB). The Corps was specifically requested to consider the consolidation of the EAB and CERB or CERB and SEAP.²⁷

Not surprisingly, the Corps defended the retention of all four committees. The EAB, it was emphasized, "compliments, rather than duplicates, functions served by other agencies, private organizations, and the Corps staff." Also it was pointed out that the cost of the Board averaged less than \$15,000 annually, "a miniscule fraction of the \$2.58 billion Civil Works budget for 1978." Though noting that the Board's advice was particularly

useful in the years following the passage of NEPA, the Corps also anticipated that the EAB's work would probably be even more useful in the future, "in light of the President's demonstrated concern for the environmental impacts of water resources projects."²⁸

In response to the President's directive, the Office of Management and Budget (OMB) reviewed all federal advisory committees. Among those which it proposed to terminate was the EAB: "The Board's original objective was to help sensitize the Corps to environmental issues. . . . The Board has now accomplished its objective, and is no longer necessary."²⁹ The Army vigorously rejected OMB's position. "The problem of environmental preservation and protection will never be completed," went the official rejoinder, ". . . we consider the committee's efforts to be of continuing value to the Corps of Engineers."³⁰ In this case the Army won, and on 5 October 1977 the Chief of Engineers was notified that all four Corps advisory committees would be allowed to continue.³¹

Two new committee management problems faced OCE in 1978-1979. First of all, the Department of the Army directed the Corps to use "personal services" rather than "nonpersonal services" contracts with its EAB members. The Corps' position was that a personal services contract was used only where an employer-employee relationship existed or where the employer supervised the contractor's activities. A nonpersonal services contract was used where there was no employer-employee relationship and where the consultants had completely independent judgment, as was true of EAB members. Nevertheless, this interpretation did not accurately reflect Department of Defense policy, which required personal services contracts. The difference was tangibly felt by EAB members. Under the former system, a rate of compensation of \$182 per day was allowed. However, personal services contracts allowed reimbursement only at a rate on the General Schedule which approximated the member's nongovernment salary. For EAB members this figure varied between approximately \$110 and \$150 per day.³²

The second problem arose in late 1979 when Laurence Jahn was named to the Board and McLindon's contract, which had lapsed the previous March, was belatedly extended.³³ At this time the Department of the Army began to press General Morris to appoint a minority member to the Board. Indeed, both appointments were approved "with the condition that the Army actively seek a minority nominee to the EAB. Without such a provision OSD concurrence would have been doubtful." General Morris was advised, "In order to insure OSD concurrence of your next nominee, it is strongly recommended that the nominee be a minority."³⁴ This goal was accomplished with the appointment of Lydia Thomas to the board in the autumn of 1980.