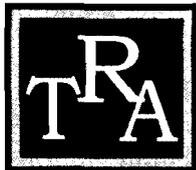


**ORIGINAL TRANSCRIPT**

Page 1

PUBLIC HEARING HELD IN THE MATTER OF GIWW  
WEST CLOSURE COMPLEX/BAYOU AUX CARPES 404 REQUEST  
FOR MODIFICATION TAKEN AT THE US ARMY CORPS OF  
ENGINEERS DISTRICT OFFICE, 7400 LEAKE AVENUE, NEW  
ORLEANS, LOUISIANA 70118 ON THE 11TH DAY OF  
FEBRUARY 2009 COMMENCING AT 7:00 P.M.

REPORTED BY:  
RACHEL TORRES-REGIS, CCR, RPR  
CERTIFIED COURT REPORTER



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1 MR. BARRA:

2 Okay. Let's go on record,  
3 please. Ladies and gentlemen, it  
4 is approximately 7 p.m. on  
5 February 11, 2009, and this joint  
6 public hearing concerning the  
7 Corps of Engineers Individual  
8 Environment Report No. 12, an  
9 environmental document that  
10 details potential impacts of  
11 actions proposed as part of the  
12 Gulf Intracoastal Waterway West  
13 Closure Complex Project and  
14 concerning the Corps request that  
15 EPA modify the Bayou aux Carpes  
16 Clean Water Act Section 404 (c)  
17 designation is now in session.  
18 Good evening and thank you for  
19 coming to this public hearing.

20 My name is Mike Barra. I am  
21 a Regional Judicial Officer with  
22 EPA Region 6 located in Dallas,  
23 Texas. I am the designated  
24 hearing officer for this public  
25 hearing. My responsibility



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1 includes fully developing the  
2 public hearing record by taking  
3 testimony in admitting data and  
4 information into the hearing  
5 record as evidence. EPA will  
6 consider the public hearing  
7 record in making its final  
8 decision concerning the Corps of  
9 Engineers request to modify the  
10 Bayou aux Carpes Clean Water Act  
11 Section 404 (c) designation. The  
12 Corps of Engineers will consider  
13 the public hearing record in the  
14 process of making a final  
15 decision on the actions proposed  
16 as part of the Gulf Intracoastal  
17 Waterway West Closure Complex  
18 Project described as individual  
19 Environmental Report No. 12.  
20 Please note that I do not  
21 participate in making EPA's final  
22 decision concerning the request  
23 to modify the 404 (c) designation  
24 nor in the Corps final decision  
25 on the proposed action described



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1 in Individual Environmental  
2 Report No. 12.

3 In addition to me there are  
4 other EPA representatives present  
5 this evening, including Brian  
6 Frazer, Chief of the Wetlands and  
7 Aquatic Resources Regulatory  
8 Branch in the EPA headquarters  
9 Office of Water, and two persons  
10 on his staff, Ann Campbell and  
11 Clay Miller. From EPA Region 6  
12 in Dallas, Jane Watson, Chief of  
13 the Ecosystems Protection Branch  
14 in the Water Quality Division,  
15 and Barbara Keeler, Coastal and  
16 Wetlands Planning Coordinator.

17 There are a number of  
18 representatives of Corps of  
19 Engineers present this evening  
20 including Lieutenant Colonel Mark  
21 Jernigan, Deputy District  
22 Commander, New Orleans District  
23 U.S. Army Corps of Engineers.  
24 And Gib Owen, the Chief of the  
25 Ecological Planning and



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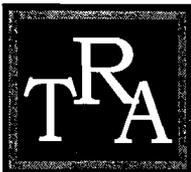
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1 Restoration Section in the New  
2 Orleans District of the Corps of  
3 Engineers.

4 EPA prepared a public -- a  
5 public notice of tonight's public  
6 hearing in the Federal Register  
7 on January 14, 2009. The Corps of  
8 Engineers published notice of  
9 this public hearing in the  
10 Plaquemines Gazette on January 20  
11 and 27. The Times Picayune on  
12 January 20, 28, February 7 and  
13 11, and in The Gambit, February  
14 8. The Corps also notified the  
15 public of tonight's public  
16 hearing with notices on its  
17 website, postcard mailings to  
18 members of the public who have  
19 requested to be on the Corps  
20 mailing list for this action, and  
21 by running flash ads during the  
22 period February 2 through  
23 February 11 on the nola.com  
24 website. The public notices  
25 informed the members of the



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1 public of their opportunity to  
2 obtain information and copies of  
3 Individual Environmental Report  
4 No. 12 and the request that EPA  
5 modify the Bayou aux Carpes Clean  
6 Water Act Section 404 (c)  
7 designation to submit comments to  
8 attend and participate in the  
9 public hearing being held this  
10 evening. I have entered the  
11 public note -- copies of the  
12 public notices for tonight's  
13 public hearing into the hearing  
14 record and have asked the court  
15 reporter to number them as  
16 Exhibits 1 and 2.

17 In addition, several people  
18 have submitted written comments  
19 prior to this public hearing. I  
20 am entering those comments into  
21 the record and I have asked the  
22 court reporter to number them as  
23 Exhibits 3 through 6.

24 Now I would like to outline  
25 the procedures for this public



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1 hearing. The procedures for this  
2 public hearing are rather simple  
3 and informal; however, this  
4 hearing must be conducted in an  
5 orderly manner that will allow  
6 EPA and the Corps to obtain and  
7 record all relevant and  
8 appropriate information related  
9 to the request to modify the  
10 Bayou aux Carpes Clean Water Act  
11 Section 404 (c) designation and  
12 Individual Environmental Report  
13 No. 12. Tonight's public hearing  
14 is not an evidentiary hearing or  
15 trial. There will be no direct  
16 or cross examination of  
17 witnesses. As hearing officer, I  
18 may ask questions but only for  
19 clarification of the hearing  
20 record. Otherwise, persons  
21 giving testimony will not be  
22 requested. This is not a forum  
23 for debate or argumentative  
24 exchanges but rather one for the  
25 gathering of facts, data and



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1 information and opinions  
2 regarding the request to modify  
3 the Bayou aux Carpes Clean Water  
4 Act Section 404 (c) Designation  
5 and Individual Environmental  
6 Report No. 12. EPA will respond  
7 to questions and issues  
8 concerning the Corps request to  
9 modify the Bayou aux Carpes Clean  
10 Water Act Section 404 (c)  
11 Designation raised in the record  
12 of this public hearing and the  
13 Corps of Engineers will respond  
14 to questions and issues  
15 concerning Individual  
16 Environmental Report No. 12  
17 raised in the record of this  
18 public hearing, but those answers  
19 will be in writing and prepared  
20 after this public hearing and  
21 after fully considering the  
22 questions and issues raised. EPA  
23 and Corps of Engineers personnel  
24 will not respond to questions  
25 during the public hearing this



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1 evening. They may respond to  
2 informal questions presented  
3 outside of the hearing record at  
4 the open house that will be  
5 conducted after this hearing  
6 concludes. I will call on  
7 everyone who desires to provide  
8 testimony in the order presented  
9 on the forms provided at the  
10 registration table. If you have  
11 not signed a speaker registration  
12 form and wish to testify, please  
13 take a minute to obtain and  
14 complete a form provided at the  
15 registration table. When I call  
16 upon you to give your testimony,  
17 please state your name, and if  
18 you are affiliated with or  
19 representing an organization,  
20 please identify your  
21 organization. I must obtain a  
22 clear uninterrupted record of the  
23 hearing, so please do not talk  
24 while others are giving  
25 testimony. We can only have one



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person talking at a time in order for the court reporter to be able to hear and accurately record the testimony provided.

As hearing officer for this public hearing, I may impose time limits on providing testimony if the circumstances warrant. If your plan testimony is rather lengthy, I recommend that you consider summarizing your testimony followed by a request to enter your complete written statement into the hearing record. At the present time eleven people have signed up to speak. In order to give everyone an opportunity to speak in a reasonable time, I'm imposing a time limit of six minutes per speaker until all have had the opportunity to give testimony. I will give you a warning when you have gone five so that you know that it will be time to be



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1 wrapping it up. If time permits  
 2 after all have had their  
 3 opportunity, I may give persons  
 4 wishing to add to their testimony  
 5 additional time. After the  
 6 public hearing closes this  
 7 evening, EPA will continue to  
 8 accept written comments on the  
 9 request to modify the Bayou aux  
 10 Carpes Clean Water Act Section  
 11 404 (c) Designation through  
 12 February 13, 2009. The Corps of  
 13 Engineers will continue to accept  
 14 written comments on Individual  
 15 Environmental Report No. 12 until  
 16 12 midnight tonight.

17 I will now take the testimony  
 18 of persons who have signed up to  
 19 speak beginning with Mayor Tim  
 20 Kerner of the town of Lafitte.

21 MR. KERNER:

22 Thank you. Good evening. I  
 23 want to thank y'all for having  
 24 me. I was going to ask a few  
 25 questions but I will just say



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1           that watching the presentation it  
2           said that, you know, they had a  
3           lot of input and you got with the  
4           local government and the Levee  
5           Board. Well, I am the mayor of  
6           the town of Lafitte and nobody  
7           got with me or anybody that  
8           belongs to my town, and also the  
9           -- I'm the President of the Levee  
10          Board and nobody ever addressed  
11          the Levee Board with any of these  
12          issues, so -- and I will tell you  
13          what, Lafitte and Barataria is  
14          going to be the ones that's  
15          devastated from this floodgate.  
16          I'm sure that the people from the  
17          Corps here has heard about  
18          Donaldsonville to the Gulf. That  
19          the levee system that is supposed  
20          to be going from Lafourche to  
21          Belle Chasse. Well, the  
22          delegation from Washington signed  
23          a letter in support that Lafitte,  
24          Barataria and Crown Point would  
25          be in that levee system. They



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1 are going to pick that alignment  
2 in the next couple of months.  
3 Why are we going through a \$50  
4 million floodgate that is right  
5 north of Lafitte that will flood  
6 us out even quicker when the  
7 tidal surge is coming up and  
8 putting a big pump station to  
9 throw more water on us -- sorry.  
10 Why is the Corps not sitting back  
11 saying, well, if we are going to  
12 protect the people of the  
13 westbank, why not see if  
14 Donaldsonville to the Gulf is --  
15 when it's run and finish the  
16 study, if GIWW -- the GIWW  
17 alignment is chosen. If that  
18 alignment is chosen, we are  
19 spending fifty -- I mean, five  
20 hundred million dollars for  
21 nothing because we are going to  
22 have a floodgate south of Lafitte  
23 that is going to be sixteen and a  
24 half feet high. It will be done  
25 for nothing. And I will tell



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1           you, what a slap in the face of  
2           the people of Lafitte that is  
3           trying to get back in their homes  
4           right now that 70 percent of them  
5           is gutted in a place that clean  
6           up and you wouldn't even know  
7           that a hurricane was there, but  
8           they trying to get back in their  
9           homes, they are doing it  
10          themselves. What a slap in the  
11          face to say \$500,000 for a  
12          floodgate right north of you and  
13          not discuss giving one dime for  
14          even tidal protection. The Corps  
15          of Engineers is not coming to  
16          Lafitte to the town hall to see  
17          the town council or anybody in  
18          the public hearing that -- the  
19          Lafitte Levee Board, not anybody.  
20          Look, the Corps of Engineers has  
21          been so good to me with Section  
22          205 in the continuing authority  
23          programs, Donaldsonville to the  
24          Gulf project, the guys have been  
25          great, but what you are doing



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1 here with the five hundred  
 2 million dollar floodgate without  
 3 coming to talk to the people of  
 4 Lafitte, without caring about the  
 5 people of Lafitte, Barataria and  
 6 Crown Point is a sin and you  
 7 ought to be ashamed of yourself.  
 8 That's all I got to say. Thank  
 9 you. And I oppose of it.

10 MR. BARRA:

11 Thank you for your comments.  
 12 Donald Vallee.

13 MR. VALLEE:

14 I'm Donald Vallee. We own  
 15 High Point Shooting Grounds,  
 16 which is directly along Bayou  
 17 Road, which is going to be  
 18 affected. After reading the  
 19 report on the website, 174 pages,  
 20 I wanted to comment on two  
 21 things. The little bit -- first  
 22 off, let me just say --  
 23 compliment the Corps on informing  
 24 all of us, this has been going on  
 25 for two years and there have been



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1 numerous meetings we have had as  
2 well as people from the Corps  
3 attending and coming out to our  
4 property and all of the adjacent  
5 property all around and keeping  
6 up informed what is going on;  
7 however, in reading the report,  
8 there really was not enough  
9 significance impact addressed in  
10 it to reflect how we are going to  
11 be addressed. If you look  
12 directly behind you on that map,  
13 those two squares of property at  
14 the end of Bayou Road is what we  
15 utilize as our safe fall in  
16 shooting areas. We have to have  
17 at least a thousand feet of  
18 protected area and shot fall to  
19 protect the general public from  
20 any shot that goes into those  
21 areas. All of that is going to  
22 get lost as well as the adjoining  
23 properties and there's a lot of  
24 facilities that we have back up  
25 in there. So I just want to make



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1                   those notes back into the public  
2                   comment at that point in time.  
3                   That's all I want to say.

4                   MR. BARRA:

5                   Thank you for your comments.

6                   Matt Rota.

7                   MR. ROTA:

8                   Hello. My name is Matt Rota.

9                   I am with Gulf Restoration  
10                  Network and I thank you for the  
11                  opportunity for the comments,  
12                  thank you for putting this  
13                  hearing together. I will also be  
14                  submitting written comments. I  
15                  have emailed them to Gib Owen and  
16                  Barbara Keeler already, but I  
17                  will also be submitting hard  
18                  copies into the record.

19                  There is a few aspects that I  
20                  would like to talk about today.  
21                  The first one is just the whole  
22                  idea that we are having this  
23                  meeting. This is probably the  
24                  first time a lot people are  
25                  learning about this project and



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1           our public forum, and for the  
2           Corps to have the public comment  
3           period to end midnight and this  
4           is probably going to go on until  
5           about 8 o'clock, giving everybody  
6           a full three or so hours to  
7           digest and figure out what they  
8           want to comment on is just not  
9           adequate. We don't think that  
10          the Corps comment period has been  
11          adequate for that. I mean, the  
12          EPA isn't that much longer, it's  
13          just 'til Friday, but there is at  
14          least some significant time to be  
15          able to digest what people are  
16          learning today. The second thing  
17          that I would like to mention and  
18          I think others will be talking  
19          about this further is that we  
20          don't feel that the full  
21          avoidance of the Bayou aux Carpes  
22          404 (c) area has been looked at.  
23          It is given a little time in  
24          IER-12 showing that they are  
25          avoiding and I would like to,



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1 first of all, thank the Corps and  
2 EPA for modifying the alignment  
3 so we aren't bisecting the Bayou  
4 aux Carpes like it was originally  
5 proposed, but, still, we don't  
6 think there's enough discussion  
7 and enough analysis to look at  
8 moving the floodwall further out  
9 into the waterway, the dredged --  
10 the dredged handle should only be  
11 125 feet wide so there is a lot  
12 of buffer there that we don't, at  
13 least in the IER has not been  
14 fully analyzed, and so we are  
15 requesting a better analysis see  
16 moving the floodwall further out  
17 into the water, not interfering  
18 with the channel, we would like  
19 to see that further looked at.  
20 Also, there hasn't been any  
21 analysis on secondary or  
22 secondary impacts and also  
23 cumulative impacts to wetlands  
24 was not addressed. It was said  
25 that that basically was going to

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1 be looked at in another one of  
2 the IER's, but in public meetings  
3 that we have had with the Corps  
4 in the past they developed a  
5 spreadsheet that is kind of a  
6 rolling cumulative impact  
7 analysis, and we feel that that  
8 should be included in each one of  
9 these IER's to give everybody the  
10 best idea that they can, what  
11 kind of cumulative impacts we are  
12 going to be looking at with the  
13 entire one hundred year  
14 protection system as a whole.

15 Finally, last thing that I  
16 would like to talk about today  
17 that I would like to highlight is  
18 the fact that non-structural  
19 alternatives really are just  
20 given lip service in this. It is  
21 basically assumed in here in the  
22 IER that -- in IER-12 that if we  
23 can't raise every single house in  
24 the entire area we aren't going  
25 to look at non-structural



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1 alternatives, raising houses,  
2 weather rising houses at all. In  
3 WRDA it is not an all or nothing,  
4 it says it can be --  
5 non-structural alternatives can  
6 be looked at in conjunction with  
7 structural alternatives such as  
8 levees and floodwalls and I am  
9 not saying that we don't need  
10 levees and floodwalls. I'm a  
11 resident of New Orleans as  
12 probably everybody here is or the  
13 greater metro area and all of us  
14 understand the importance of  
15 levees within a comprehensive  
16 hurricane system, but completely  
17 dismissing raising houses or some  
18 houses in some areas because we  
19 can't -- it would be economically  
20 infeasible to raise every single  
21 house in the metro area is just  
22 flood logic. So in conclusion I  
23 would just like to say that we  
24 feel that the -- and it's  
25 outlined more in my written



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1 comments that the IER-12 is not  
2 flushed out enough and that they  
3 have not -- the Corps has not  
4 presented what we feel a full  
5 analysis on all of the  
6 alternatives, and without that,  
7 we don't see how EPA can make a  
8 real informed decision without  
9 having some of that information  
10 basically, like I said, wrote off  
11 maybe moving the floodwall out a  
12 little bit more into the  
13 waterways still not impacting the  
14 channel, and we don't feel  
15 there's enough evidence to  
16 support that, and there might in  
17 the end, but we don't want EPA to  
18 make a hasty decision because  
19 they certainly didn't make a  
20 hasty decision when they first  
21 did this for the foresee action.  
22 Thank you for the opportunity to  
23 comment.

24 MR. BARRA:

25 Thank you for commenting.



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1 Gabriel Mondino.

2 MR. MONDINO:

3 Good evening. My name is  
4 Gabriel Mondino. I suppose that  
5 my affiliation would be as a  
6 citizen of New Orleans. I have  
7 no organization that I'm  
8 affiliated with.

9 I guess the relevant question  
10 that I have noticed looking at  
11 this presentation, reading  
12 materials about it is that with  
13 the 404 (c) Designation and all  
14 of the work that went into what  
15 was -- what is labeled the final  
16 determination, the question of --  
17 at hand really is not so much the  
18 entirety of the levee system, and  
19 this exactly is why EPA is here  
20 tonight, but the impact on this  
21 particular area, and so the  
22 question that -- the way that I  
23 would phrase it is whether it's  
24 reasonable for the Army Corps of  
25 Engineers to use a 404 (c)



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1 Designated area which has already  
2 been given extensive EPA  
3 authority with oversight in  
4 fashioning adequate hurricane  
5 protection for the New Orleans  
6 area, and I would have to  
7 unfortunately say that based on  
8 the presentation that we have  
9 here tonight I don't think that  
10 we can have an adequate answer to  
11 that question because I feel that  
12 the plan at this point, the IER  
13 doesn't really seem like it's  
14 half baked. We ought to be  
15 cooking, I might give it another  
16 20 minutes or so to see if it  
17 really hit the point at that  
18 point, but I don't feel as though  
19 the plan where it is now, there  
20 isn't enough information for the  
21 public. We do not know what the  
22 Environmental Impact of  
23 Alternative studies of placing  
24 the floodwall away from the 404  
25 (c) Designated area back into the



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1 shallow waters, what the  
2 hydrological effects of that or  
3 the engineering challenges in  
4 that and we haven't been able to  
5 witness that as the public to  
6 truly see whether we, as the  
7 public, who are the ones who  
8 benefit from this 404 (c)  
9 Designation are willing to allow  
10 some impact on something that is  
11 as noted by the EPA a national  
12 historic treasure.

13 The only other comment that I  
14 would make is that it seems to me  
15 that the appropriate action to  
16 take at this time is really to  
17 present the public with an  
18 amended IER as to this project as  
19 opposed to filling in these  
20 details in some sort of  
21 comprehensive environmental  
22 statement after the fact. I  
23 think that doing -- doing that  
24 course of action filling the  
25 necessary details of a project



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1 really runs in the face of a  
2 logic of having these public  
3 hearings in the first place of a  
4 logic that foster one of our  
5 first environmental legislation,  
6 NEPA, and the entire logic of the  
7 public impact and the public  
8 opportunity to engage its civil  
9 servants and its agencies in a  
10 way that is going to benefit not  
11 only the natural environment as  
12 is the case here but also protect  
13 all of the people like me and  
14 everyone else in this room who  
15 live in this metro area. That is  
16 my only comments.

17 MR. BARRA:

18 Thank you for your comment.

19 Jill Mastrototano.

20 MS. MASTROTOTANO:

21 Good evening. I'm Jill  
22 Mastrototano. I am the senior  
23 field organizing manager for the  
24 Sierra Club based here in New  
25 Orleans and I appreciate the



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1 opportunity that EPA and the  
2 Corps has afforded us all this  
3 evening in the community to  
4 review and comment on this  
5 project. I would echo the  
6 request of Matt Rota with the  
7 Gulf Restoration Network that the  
8 comment period be extended one  
9 additional week to allow those in  
10 the public that have just learned  
11 about this project to put written  
12 comments into the record beyond  
13 midnight tonight or Friday, that  
14 is EPA's deadline.

15 Certainly the Sierra Club  
16 supports effective comprehensive  
17 and meaningful hurricane  
18 protection for the Louisiana  
19 community, be it in the form of  
20 levees but also non-structural  
21 protection, and certainly since  
22 the 2005 hurricane season there's  
23 been significant scientific  
24 attention given to support the  
25 importance of protecting our



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1 wetlands and maintaining our  
2 coastal resources of which these  
3 404 (c) designated wetlands are,  
4 and we appreciate EPA's concern  
5 to uphold the importance of this  
6 404 (c) area. We would ask that  
7 given the almost 25 years of  
8 protection that this area has has  
9 enjoyed that that continue in  
10 whole. Importantly we recognize  
11 the importance of 404 (c) not  
12 just given the nice presentation  
13 that EPA provided but that our  
14 Sierra Club staff and volunteers  
15 have worked very hard on  
16 protecting 404 (c) area. Of  
17 course last year's recent Yazoo  
18 Pumps is a very good example of  
19 that. We would ask that EPA  
20 continue to explore the  
21 importance of including or the  
22 necessity of including this 404  
23 (c) area in Jean Lafitte Historic  
24 National Park, we would encourage  
25 that. We also recognize that the



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1 Corps has made significant  
2 strides in modifying the impacts  
3 of this project on the ground to  
4 404 (c) area, and we applaud them  
5 for that. However, we feel that  
6 there can be additional distance  
7 met, and we request that the  
8 Corps explore the nine acres of  
9 impacts that continue to exist on  
10 paper. One thing that we would  
11 want them to consider is, and we  
12 don't feel it was fully explored  
13 in the IER itself, was to move  
14 the T-wall, the innovative  
15 T-wall, berm and riprap farther  
16 into the channel center, toward  
17 the channel center. The channel  
18 center currently is 500 feet and  
19 was authorized to about 400 feet,  
20 and because of the shallowness  
21 along the western side of the  
22 channel there are opportunities  
23 to consider for engineering and  
24 structural; however, the IER did  
25 not fully explore that, it just

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1            basically had a statement in  
2            there saying that such a -- such  
3            a movement or location of the  
4            T-wall would not be appropriate,  
5            and so we would ask that that be  
6            revisited and the Corps actually  
7            provide adequate data to refute  
8            or support that proposal.

9            To that end, I would echo the  
10           sentiments forthcoming from our  
11           Louisiana Delta Chapter that  
12           represents three thousand members  
13           as well as the New Orleans group.  
14           Thank you.

15           MR. BARRA:

16           Thank you for your comments.  
17           Harvey Stern.

18           MR. STERN:

19           Good evening. My name is  
20           Harvey Stern and I am also the  
21           Delta Chapter of the Sierra Club,  
22           and I have here a comment of Mr.  
23           Haywood Martin, who is chair of  
24           the Delta Chapter of the Sierra  
25           Club, which do in fact reflect



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1 many of the comments that we just  
2 heard from Jill, the field  
3 coordinator of the Sierra Club.  
4 I will just add a few excerpts  
5 from this letter that I think  
6 will elaborate on her comments.

7 The Sierra Club of the Delta  
8 Chapter supports a safe hurricane  
9 protection levee for the entire  
10 New Orleans area including the  
11 westbank of Jefferson Parish. We  
12 also support the use of natural  
13 systems such as forested to the  
14 non-forested wetlands to add to  
15 the aggressive barriers to the  
16 storm surges. And we also, as  
17 Jill mentioned, we feel that the  
18 proposed alternative that would  
19 take 9.6 acres of the BAC as  
20 opposed to the 600 needs to be  
21 reevaluated. While this is a  
22 large decrease of the taking of  
23 the wetlands of national  
24 significance, we suggest that the  
25 Corps can do better. Additional



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1 structural changes to the eastern  
2 levee and closure compacts would  
3 avoid any wetland loss to the  
4 BAC. The Corps alternative 2  
5 should be modified to avoid any  
6 direct or indirect impacts to the  
7 Section 404 (c) wetlands. It  
8 appears that there is adequate  
9 space to move the structure  
10 further away into the waterway so  
11 as to avoid the 404(c) wetlands  
12 as we heard expressed earlier by  
13 several folks. And we are also  
14 concerned that any additional  
15 information gathered over the  
16 one-year baseline study will come  
17 after the project has been  
18 approved. This includes most of  
19 the impacts to the BAC area.  
20 Also the engineering design  
21 report for the gates and  
22 floodwalls has not been  
23 completed. The DIER states that  
24 a Draft Comprehensive  
25 Environmental Document will



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contain updated information for any IER that had incomplete or unavailable data at the time it was posted for public review. It appears that potentially critical information will not be available at the time the IER is approved and construction commences. Because there are still important data omitted from the draft document, we request that a revised/amended IER be prepared and circulated to the public and resource agencies for review. We are formally requesting that IER-12 be amended to include omitted information and full responses to the public/agency comments on the DIER-12.

In conclusion, we oppose Alternative 2, the preferred alignment as presented in the DIER-12. We request the Corps to do an amended IER containing new designs and supportive data, and



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1 we strongly recommend that EPA  
2 deny the request by the Corps to  
3 modify its final determination on  
4 the Bayou aux Carpes CWA 404 (c).  
5 Furthermore we request that the  
6 comment period be extended, as we  
7 heard from Jill, so that all  
8 interested parties have adequate  
9 time to prepare substantial  
10 comments. Those are the comments  
11 from the Chair of the Sierra  
12 Club. I have a couple of  
13 personal observations about why  
14 this project is being done in the  
15 first place, and as we heard  
16 referred to at least once in this  
17 presentation, that the intent of  
18 the project is to provide, quote,  
19 one hundred year level of  
20 protection to the residents of  
21 the westbank, and the, quote, one  
22 hundred year level of protection  
23 and five hundred year level of  
24 protection has been the mantra of  
25 the Corps, certainly before



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1 Katrina as to how to explain to  
2 the public the kind of protection  
3 against a level of risk of  
4 flooding from significant rain  
5 events. I was at at least one  
6 public Corps meeting at which a  
7 Corps official himself told me  
8 after I raised the issue about  
9 the credibility of the one  
10 hundred year concept that the  
11 idea of the one hundred year  
12 storm or even talking about a one  
13 percent chance in any given year  
14 is misleading, it's misguided,  
15 it's obsolete and it needs to be  
16 reassessed, and it's my  
17 understanding, I stand to be  
18 corrected, that the Corps intends  
19 to continue to use the, quote,  
20 one hundred year level of concept  
21 of the one hundred year level of  
22 flood protection in this proposed  
23 project to explain to the public  
24 why particular projects are  
25 needed. I would beg the Corps to



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1 get on the fast track and find a  
2 different way to assess risk.  
3 The one hundred year level of  
4 flood level of protection concept  
5 just does not work in many  
6 people's mind. We are talking  
7 about reducing flood risk. I  
8 think the credibility of the  
9 Corps is at risk as long as it  
10 continues to talk about the one  
11 hundred year level of flood risk  
12 or the five hundred year level.  
13 There has got to be a better way  
14 to explain risk to the public  
15 that is credible. People's lives  
16 are at risk. People are making  
17 life decisions on where to live  
18 and whether to move back based on  
19 the Corps decisions on this  
20 project.

21 MR. BARRA:

22 One more minute.

23 MR. STERN:

24 That's my comments. Thank  
25 you very much.



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1 MR. BARRA:

2 Okay. Thank you. Ray  
3 Champagne.

4 MR. CHAMPAGNE:

5 Yes. My name is Ray  
6 Champagne. Resident of Lafitte,  
7 member of the Sixth Ward  
8 Association for Progress. And  
9 realizing that this project is  
10 funded, I want to congratulate  
11 the people that was involved, but  
12 saying that, Crown Point,  
13 Barataria and Lafitte is going to  
14 be left out of this, and since we  
15 have been flooding for the last  
16 three storms, we were just  
17 wondering if the Corps would take  
18 into consideration this proposal  
19 that -- it's lower Jefferson  
20 Parish alternative. It's part of  
21 what the mayor was talking about,  
22 the Donaldsonville feasibility  
23 study. Well, Shaw and other  
24 people put this together, it's  
25 pretty impressing. I would like



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1 to leave it here for the record,  
2 and the people in Lafitte and  
3 Barataria they just tired doing  
4 with these graves every time high  
5 water come in. And they feel --  
6 like the mayor was saying, they  
7 feel a little left out because no  
8 money has been spent south of  
9 this project and everything south  
10 of this project, especially Crown  
11 Point where the water is going to  
12 get up against this structure,  
13 and it's pretty impressing. It's  
14 a real nice -- I mean, who  
15 wouldn't like this. You would  
16 have to be crazy not to like it.  
17 It's very impressive, cost a lot  
18 of money, but anything south of  
19 that the water is going to back  
20 up against it and the potential  
21 for flooding in that area where  
22 the structure is is going to be  
23 greater, maybe not just in a  
24 quarter of a mile, we are talking  
25 about three or four miles back,



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1                   that is Crown Point, and beyond  
2                   that is Lafitte, where the mayor  
3                   is, and beyond that is where I  
4                   live. I flood regardless, but I  
5                   have been lucky. I'm above the  
6                   ground and a lot of the other  
7                   people is putting their houses  
8                   up. But, like I said, I would  
9                   like to introduce this if it's  
10                  possible and we hope that the  
11                  Corps would consider it, and I  
12                  thank you for the time.

13                  MR. BARRA:

14                  Thank you for your comments.  
15                  Dr. Barry Kohl.

16                  DR. KOHL:

17                  My name is Barry Kohl. I'm  
18                  here representing the Louisiana  
19                  Audubon Council and we thank the  
20                  Corps and EPA for holding this  
21                  hearing tonight, especially on  
22                  the EPA side protecting and  
23                  trying to continue the protection  
24                  of the 404 (c) area. The John  
25                  Lafitte National Historical Park



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1 and Preserve and the Bayou aux  
2 Carpes wetlands will provide  
3 non-structural protection and  
4 reduce the hurricane tidal surges  
5 before they reach the westbank  
6 levee, and they have been  
7 documented -- the forested  
8 wetlands and non-forested  
9 wetlands have been documented as  
10 reducing the height of tidal  
11 surges during hurricanes Rita,  
12 Gustav and Ike, so the  
13 non-structural protection that  
14 the 404 (c) gives, the westbank  
15 levee and Lafitte National Park,  
16 which protects almost the entire  
17 portion of the westbank of  
18 Jefferson Parish from tidal  
19 storms is very important. We  
20 thank the Corps for reducing the  
21 impacts to the 404 (c). Wetlands  
22 from the 404 (c) wetlands from  
23 its original plans which would  
24 take -- which would have taken  
25 almost 600 acres of the 404 (c)



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1 area. One way to avoid impacts,  
2 further impacts is to modify  
3 Alternative A by moving the flood  
4 wall one hundred feet into the  
5 waterway along the eastern  
6 perimeter of the 404 (c) area.  
7 We don't suggest that the wall be  
8 moved into the navigation channel  
9 as was alluded in the IER, but to  
10 the edge of the waterway which is  
11 600 feet wide. The channel is --  
12 barge channel is only 125 feet in  
13 width authorized by congress. We  
14 don't need a wider channel or  
15 congress would have authorized  
16 it, a larger channel. We request  
17 the Corps staff to consider in  
18 its engineering analysis and  
19 include in the amended IER the  
20 engineering analysis since it has  
21 environmental significance. We  
22 have been interested in all of  
23 the data gaps listed in the IER  
24 of which we find many. In fact,  
25 the section on data gaps and



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1                   uncertainties list the data note  
2                   included in the draft IER as,  
3                   one, source of levee material  
4                   that has not been identified.  
5                   Environmental surveys are not  
6                   complete. Cumulative impact data  
7                   are not complete. Impacts on  
8                   transportation remain unknown,  
9                   and one of the more important  
10                  omissions is the engineering  
11                  analysis that's based on a  
12                  concept level design and is not  
13                  complete. The last one indicates  
14                  there is still time to consider  
15                  some other engineering  
16                  alternatives. There are many  
17                  other inadequacies in the  
18                  document. It appears the  
19                  document was prepared in haste  
20                  and that the Corps should have  
21                  waited before circulating the  
22                  Draft IER for public and agency  
23                  comments. There are many  
24                  questions to be answered and they  
25                  are raised in our more detailed



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1 comments. The record is also not  
2 complete. Letters from EPA, the  
3 Fish and Wildlife Service sent in  
4 January were not posted on the  
5 website. There should have been  
6 a complete record of documents  
7 somewhere so the public could  
8 review the agency documents  
9 before public comment period  
10 closes at midnight tonight.  
11 Technical reports were posted  
12 during the public review period  
13 and have not been summarized in  
14 the Draft IER nor was there extra  
15 time to review them. Because of  
16 this, we ask the Corps extend the  
17 comment period for another two  
18 weeks. That will give the NGO's  
19 the opportunity to communicate  
20 with the resource agencies and  
21 get a copy of their comments and  
22 to review any new technical  
23 reports posted on the web.

24 We also ask the amended  
25 IER-12 be prepared and that it be



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1           circulated for a 30 day public  
2           review period as per the  
3           alternative arrangements. This  
4           document should include critical  
5           data needed for both the Corps  
6           and EPA decision making.  
7           Regarding EPA's involvement, we  
8           want to thank EPA and other  
9           resource agencies for  
10          recommending to the Corps a  
11          change in the original preferred  
12          alternative which would have  
13          taken -- impacted over 600 acres  
14          of this nationally significant  
15          wetland. EPA has been a real  
16          leader over the last 35 years in  
17          protecting important wetland in  
18          Jefferson Parish.

19                   MR. BARRA:

20                   One more minute.

21                   DR. KOHL:

22                   Much of the land in the  
23                   Barataria Preserve of the Lafitte  
24                   National Park was protected  
25                   through NGO and EPA's vision that



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1           these wetlands were an important  
2           natural resource and shouldn't be  
3           destroyed. They are now  
4           protected in the National Park,  
5           and legislation will be  
6           transferring the 404 (c) Bayou  
7           aux Carpes area into the National  
8           Park later this year. We're  
9           asking EPA to require a fully  
10          funded multi-year baseline study  
11          to be undertaken to evaluate any  
12          modifications to the 404 (c) area  
13          to improve the water quality and  
14          hydrology. We're told that a one  
15          year baseline study is not enough  
16          to understand the complex  
17          hydrodynamics in a man-altered  
18          wetland system. Additional  
19          issues are addressed in our  
20          detail comments. We request that  
21          EPA require the Corps to do a  
22          thorough engineering analysis to  
23          avoid any of the 404 (c) wetland.  
24          A relocation of the T-wall one  
25          hundred feet would avoid all



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1 impacts to Bayou aux Carpes.  
2 This analysis must be completed  
3 before EPA makes a decision on  
4 whether to grant the Corps's  
5 request for modification of its  
6 404 (c) determination. In the  
7 absence of that study, we ask EPA  
8 to deny the Corps's request for  
9 modification of the 404 (c)  
10 determination. Thank you.

11 MR. BARRA:

12 Thank you. Felicia Kahn.

13 MS. KAHN:

14 Okay. Felicia Kahn, member  
15 of the League of Women Voters of  
16 New Orleans. The League of Women  
17 Voters will submit comments to  
18 the EPA regarding the protection  
19 of wetlands and the park. We  
20 have worked -- we have worked for  
21 many, many years in this area and  
22 have extensive knowledge about  
23 it, and our statement will be  
24 submitted before February 13. Is  
25 that the correct date?



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MR. BARRA:

Yes.

MS. KAHN:

So we thank you very much for allowing us to appear.

MR. BARRA:

Thank you for coming. Allen Hero.

MR. HERO:

I'm Allen Hero. I represent some landowners on the Mississippi River side of this complex, and I would like to commend the Corps, this idea was first presented about 15 years ago about putting the super -- at that time I don't know what they called it, the super pump, and was denied because of the cost benefit ratio I think was the criteria in that time. And so I think, you know, the Corps is trying to get -- solve this problem. There are a few issues that we are concerned about along



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1 the Harvey Canal that I brought  
2 up in another one of these  
3 hearings is -- that was talked  
4 about briefly in this  
5 presentation on the tension area  
6 on the protected side of this  
7 flood structure, there is still  
8 some issues along the eastbank of  
9 Harvey Canal that have not been  
10 resolved and that those  
11 businesses there, even though  
12 they may have some protection,  
13 that funding and that protection  
14 has not been -- has not been  
15 taken into by the local Levee  
16 District. There is some conflict  
17 as to how those businesses are  
18 going to have protection when  
19 this is completed. Right now  
20 there is a temporary protection  
21 on the east side of Harvey Canal  
22 and there is no plan that I have  
23 heard as to how that is going to  
24 be maintained in the sense that  
25 we are supposed to be having one



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1 hundred year protection. I don't  
2 think we are going to have that  
3 at that location, so I think that  
4 needs to be -- the Corps and the  
5 EPA or whoever altogether need to  
6 look at those issues ongoing  
7 because once this is built, I  
8 think everybody is going to think  
9 it's all taken care of but there  
10 is some issues there that have  
11 not been addressed in the view of  
12 myself and some other landowners  
13 along Harvey Canal.

14 The other issue that I don't  
15 know has been addressed, they  
16 talk about all of this dredging  
17 material coming out of the  
18 intracoastal waterway and moving  
19 that material some distance and  
20 redepositing it, I think it's  
21 most probably a more cost  
22 effective way of moving that  
23 material into some of the fast  
24 land adjoining intracoastal  
25 waterway rather than moving all



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1 of that material ten miles away  
2 or wherever they are going to  
3 take it. And those are my  
4 comments. Thank you.

5 MR. BARRA:

6 Thank you for your comments.  
7 Jerry Huffman.

8 MR. HUFFMAN:

9 Good evening. I'm Jerry  
10 Huffman, President of the Harvey  
11 Canal Industrial Association. We  
12 represent 200 businesses along  
13 the Harvey Canal which are  
14 greatly affected by the decisions  
15 the Corps and the EPA will make  
16 today. For many, many years we  
17 have been seeking meaningful  
18 flood protection along the  
19 westbank. We think this proposal  
20 will give us the best shot at  
21 that. We understand there are  
22 very difficult environmental  
23 concerns. We are very much  
24 impressed by the interagency  
25 collaboration that has taken



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1 place in order to address those  
2 concerns. We support the Corps  
3 request to the EPA to modify the  
4 1985 Bayou aux Carpes Clean Water  
5 Act Section 404 (c) Final  
6 Determination and we support the  
7 current plan for the West Closure  
8 Complex as outlined in the IER-12  
9 report. We feel that this  
10 alignment will provide a much  
11 needed and long waited storm  
12 protection for the westbank of  
13 Jefferson Parish. Now, the HCIA,  
14 in cooperation with the other  
15 business organizations,  
16 commissioned an economic impact  
17 study in late 2007. That study  
18 included all of the businesses  
19 from LaPalco Boulevard south of  
20 the Hero Pumping Station. The  
21 study revealed a total employment  
22 of 1619 employees with an  
23 aggregate payroll of more than  
24 \$67.5 million and showed a direct  
25 and indirect spending of over



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1                   \$1.1 billion. This study  
2                   excluded companies along the  
3                   upper portion of Peters Road, the  
4                   Destrehan corridor or Engineers  
5                   Road. The potential for economic  
6                   loss in this area, a direct hit  
7                   for a storm of Katrina like  
8                   proportions is catastrophic. We  
9                   applaud what you are doing, we  
10                  support your effort. We have  
11                  additional comments that we have  
12                  already submitted into the  
13                  record. Thank you for letting us  
14                  come and to speak.

15                         MR. BARRA:

16                         Thank you for coming. Tom  
17                         Halko.

18                         MR. HALKO:

19                         Good evening. My name is  
20                         Thomas Halko and I live in lower  
21                         Jefferson Parish, lower Lafitte,  
22                         which is beyond the cone of Jean  
23                         Lafitte, and, for the record, I  
24                         have experience in less than four  
25                         years -- four one hundred year



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1 storms. With that being said, I  
2 would like to concur with what  
3 Mayor Kerner has stated as well  
4 as Mr. Champagne, and I think,  
5 first of all and far most that I  
6 extend my appreciation to the  
7 Corps of Engineers for all of the  
8 hard work that they have done in  
9 this region, for the EPA and for  
10 federal involvement because I  
11 think that it has made a  
12 difference as it relates to our  
13 lives and livelihood.

14 I think it's important, with  
15 that being said, with all due  
16 respect, I think that this  
17 proposal is somewhat  
18 shortsighted. I do believe that  
19 there should be consideration  
20 given to the concept that is in  
21 and on the board as it relates to  
22 the Donaldsonville to the Gulf  
23 levee protection. I think it's  
24 important to think about coastal  
25 restoration going hand in hand



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1 with levee protection, and I  
2 think that this project does not  
3 perfectly address that. This is  
4 -- is advertised as the primary  
5 protection for the New Orleans  
6 westbank area. When I think that  
7 -- it is important to think of a  
8 line of defense that is further  
9 south that perhaps is less  
10 intrusive environmentally, I  
11 think it's important to think of  
12 all of the Barataria estuary, but  
13 it is also important to note that  
14 lower Lafitte is the staging area  
15 for an offshore oil industry and  
16 represents substantial jobs and  
17 is very, very important to the  
18 infrastructure of all of the  
19 south and all of the nation, and  
20 I am personally as a property  
21 owner of Lafitte and I own  
22 property in Algiers Point, that I  
23 feel as if I am going to be  
24 adversely affected by this  
25 proposal because it's the



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1 backwash that we will experience  
2 and for attempting to protect a  
3 few hundred or a few thousand  
4 acres of pristine wetland, it may  
5 compromise everything that is  
6 pristine and wonderful south of  
7 this area all of the way to Grand  
8 Isle, and I think it's important  
9 that -- to take note of that, and  
10 I think sort of in a rush to  
11 attempt to provide levee  
12 protection and answers to people  
13 that the totality of flood  
14 protection is being minimized,  
15 and I think that we need to turn  
16 to the Dutch and look to see what  
17 they have done and we -- they  
18 have been able to both protect  
19 their nation, not one hundred  
20 year storms or five hundred year  
21 storms, but a thousand year  
22 storms, and have done so in  
23 protecting the population as well  
24 as their environment. Thank you.

25 MR. BARRA:



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1                   Thank you for your comment.  
2                   Okay. I believe we have heard  
3                   from all of the people who signed  
4                   up to speak. Okay.

5                   Is there anyone who has not  
6                   signed up who want to sign up and  
7                   speak? Before we conclude, would  
8                   anyone who has spoken like to add  
9                   to their testimony? Yes, sir.

10                  DR. KOHL:

11                  I'm Barry Kohl with the  
12                  Louisiana Audubon Council. There  
13                  are a couple of items that I  
14                  skipped over before. One is the  
15                  dredging of the Algiers Canal.  
16                  We're very concerned about the  
17                  possibility of using dredge  
18                  material from the canal and  
19                  barging it to the Barataria  
20                  preserve. Their preliminary  
21                  information has shown that the  
22                  sediments in the bottom of the  
23                  canal are contaminated with  
24                  several toxics that could harm  
25                  the Lafitte National Park, the



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1 ecosystem. One of the problems  
2 with the Corps is they analyze  
3 toxic sediments and its effect on  
4 humans and they use screening  
5 standards that is protective of  
6 human life, not aquatic life, and  
7 they intend to use this dredge  
8 material and put it in the  
9 National Park for erosion  
10 control, which is good but it  
11 should be clean sediments, and we  
12 are just concerned about the  
13 degradation of water quality in  
14 the park and the fact that the  
15 Corps has habitually done a very  
16 poor job of analyzing  
17 contaminated sediments and  
18 placing them in areas that would  
19 protect them from getting into  
20 open water. Thank you.

21 MR. BARRA:

22 Thank you. Anyone else? Yes,  
23 sir.

24 MR. CHAMPAGNE:

25 Realizing that Lafitte and



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1 Barataria is the frontline, I  
2 would ask this audience and the  
3 Corps of Engineers to wish us  
4 well. Thank you.

5 MR. BARRA:

6 Thank you. Anyone else? Yes,  
7 sir.

8 MR. POURCIAU:

9 Lawrence Pourciau. I wanted  
10 to kind of expand on one of the  
11 comments that was made earlier  
12 about the hundred one year level  
13 of protection. It's my  
14 understanding, and please correct  
15 me if I am wrong, that that --  
16 this came about from a one  
17 percent chance in any given year  
18 that we could be flooded; is that  
19 correct?

20 MR. BARRA:

21 We'll have -- someone will  
22 have to talk to you about that  
23 during the open house after this  
24 hearing.

25 MR. POURCIAU:



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1                   Okay. Well, that is my  
2                   understanding of it, and if it is  
3                   in fact the case, it probably  
4                   does the Corps more of a  
5                   disservice to anyone, of course  
6                   the citizens of New Orleans, you  
7                   know, for not benefitting from  
8                   this because mathematically the  
9                   way that works out is, you know,  
10                  in 30 years there is a 30 percent  
11                  chance that in any given one of  
12                  those 30 years that you could  
13                  experience a flood. Now, that  
14                  means there is a 70 percent  
15                  chance that you would not, but  
16                  almost one in three chance that  
17                  you would in fact experience a  
18                  flooding situation is kind of  
19                  scary, I think, and what this  
20                  does is it makes the people feel  
21                  safe and when a storm that is too  
22                  big comes, it will flood and then  
23                  of course the Corps will be  
24                  blamed; when in fact congress  
25                  didn't authorize enough funding



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1 for the Corps to build a wall  
2 that was high enough, and it  
3 won't be the Corps fault but they  
4 will be the one that the finger  
5 was pointed at and by using this  
6 terminology it does kind of make  
7 most people feel safe, but, in  
8 fact, you know, at some point  
9 down the road, hopefully never,  
10 but at some point down the road  
11 guess who is going to get the  
12 blame, the Corps, and I would  
13 like to see the Corps adopt  
14 something that puts pressure on  
15 congress to maybe help authorize  
16 a little more funding because I  
17 see funding given out everywhere  
18 lately to all areas of the  
19 country yet I do still see, you  
20 know, why can't funding be  
21 approved for, you know, one of  
22 the oldest cities and most  
23 historic cities in America.  
24 Thank you for letting me speak.

25 MR. BARRA:



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Thank you. Yes, sir.

MR. MONDINO:

Gabriel Mondino. I would like to add to my comment one thing which I had recalled that I failed to mention.

The EPA mentioned in the presentation that the -- when the 404 (c) or 404 legislation was enacted and the regulations were enacted that they did not foresee the need to -- they did not include a mechanism for making modifications to 404 (c) wetland, and I think that that is very, very pertinent because in crafting legislation and crafting legislation about especially environmentally affected areas, we know avenues made to make those modifications, the regulations and the statutes that fail to include those are clear and that if those modifications aren't envisioned then those



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1 modifications should not be made,  
2 so my addition to my entire  
3 comment is that with respect to  
4 the floodwall affecting the 404  
5 (c) area, I think that that  
6 portion of the plan needs to be  
7 roundly denied because of the  
8 logic that went into creating the  
9 404 impact in and of itself.  
10 That's the only additional  
11 comment.

12 MR. BARRA:

13 Thank you. Anyone else?  
14 Okay. If there are no further  
15 comments or issues to be  
16 addressed, I will conclude this  
17 public hearing. Representatives  
18 of EPA and the Corps of Engineers  
19 will remain in this room to  
20 informally answer questions after  
21 the conclusion of this hearing.  
22 It is now approximately 7:57 p.m.  
23 on February 11, 2009 and this  
24 public hearing is hereby closed.  
25 Thank you for coming.



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(Whereupon the hearing was concluded at 7:57  
p.m.)



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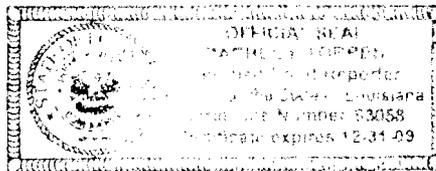
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REPORTER'S CERTIFICATE

I, RACHEL Y. TORRES, a Certified Court Reporter, do hereby certify that the within witness, after having been first duly sworn to testify to the truth, did testify as hereinabove set forth.

That the testimony was reported by me in shorthand and transcribed under my personal direction and supervision, and is a true and correct transcript, to the best of my ability and understanding; that I am not of counsel, not related to counsel or the parties hereto, and in no way interested in the outcome of this event.

-----  
RACHEL Y. TORRES, CCR, RPR  
CERTIFIED COURT REPORTER



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**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OPP-2008-0650; FRL-8398-6]

**Petition for Rulemaking Requesting EPA Regulate Nanoscale Silver Products as Pesticides; Extension of Comment Period****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice; extension of comment period.

**SUMMARY:** EPA issued a notice in the *Federal Register* of November 19, 2008, concerning a petition for rulemaking and collateral relief filed by the International Center for Technology Assessment (ICTA) and others. In general, the petition requests that the Agency classify nanoscale silver as a pesticide, require formal pesticide registration of all products containing nanoscale silver, analyze the potential human health and environmental risks of nanoscale silver, take regulatory actions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) against existing products that contain nanoscale silver, and take other regulatory actions under FIFRA as appropriate for nanoscale silver products. This document extends the comment period for 60 days from January 20, 2009 to March 20, 2009.

**DATES:** Comments, identified by docket identification (ID) number EPA-HQ-OPP-2008-0650, must be received on or before March 20, 2009.

**ADDRESSES:** Follow the detailed instructions as provided under **ADDRESSES** in the *Federal Register* document of November 19, 2008 (73 FR 69644).

**FOR FURTHER INFORMATION CONTACT:** Nathanael R. Martin, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703-305-6475; e-mail address: [martin.nathanael@epa.gov](mailto:martin.nathanael@epa.gov).

**SUPPLEMENTARY INFORMATION:** This document extends the public comment period established in a notice that was published in the *Federal Register* of November 19, 2008 (73 FR 69644) (FRL-8386-4). In that document, the Agency made the petition submitted by ICTA et al., available for review and asked for public comment on the same. On December 12, 2008, EPA received a request from ICTA to extend the comment period on the petition. EPA is hereby extending the comment period,

which was set to end on January 20, 2009, to March 20, 2009.

To submit comments, or access the public docket, please follow the detailed instructions as provided under **ADDRESSES** in the November 19, 2008 *Federal Register* document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

**List of Subjects**

Environmental protection, Nanotechnology, Pesticides and pests.

Dated: January 8, 2009.

**Martha Monell,***Acting Director, Office of Pesticide Programs.*

[FR Doc. E9-622 Filed 1-13-09; 8:45 am]

**BILLING CODE 6560-50-S****ENVIRONMENTAL PROTECTION AGENCY**

[FRL-8762-2]

**Request for Amendment of Designation Prohibiting Discharges of Dredged or Fill Material to the Bayou aux Carpes Clean Water Act Section 404(c) Site, Louisiana****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of Public Hearing and Request for Comments.

**SUMMARY:** In 1985, EPA prohibited the discharge of dredged or fill material to wetlands in the Bayou aux Carpes Swamp pursuant to Section 404(c) of the Clean Water Act (CWA). On November 4, 2008, the New Orleans District of the U.S. Army Corps of Engineers (Corps) requested that EPA modify that designation to accommodate discharges to the Bayou aux Carpes wetlands associated with post-Katrina upgrades to the West Bank and Vicinity Hurricane Protection Levee system in Jefferson Parish, Louisiana. EPA solicits written public comment on that request and will hold a public hearing for receipt of comments.

**Public Hearing:** The public hearing will be held in the District Assembly Room at the U.S. Army Corps of Engineers New Orleans District office, 7400 Leake Avenue, New Orleans, LA 70118. The public hearing will commence at 6 p.m. on February 11, 2009, and will end when all comments have been received. During the hearing, any member of the public may submit written comments or present comments verbally.

**Public Comments:** In addition to providing comments at the public hearing, written comments on the CWA

Section 404(c) modification request may be submitted to EPA for 30 days following the date of this notice. Comments should be addressed to Ms. Barbara Keeler (6WQ-EC), EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202-2733. All comments should directly address whether the 1985 Bayou aux Carpes CWA Section 404(c) EPA Final Determination should be modified as requested by the Corps.

**FOR FURTHER INFORMATION CONTACT:** For information regarding this matter, contact Ms. Barbara Keeler by phone at (214) 665-6698 or by e-mail at [keeler.barbara@epa.gov](mailto:keeler.barbara@epa.gov). Copies of the modification request and supporting documentation are available online at: [http://www.nolaenvironmental.gov/nola\\_public\\_data/projects/usace\\_levee\\_docs/original/ModificationLetterToEPA4Oct08.pdf](http://www.nolaenvironmental.gov/nola_public_data/projects/usace_levee_docs/original/ModificationLetterToEPA4Oct08.pdf). Additional project information may be found at: [http://www.nolaenvironmental.gov/projects/usace\\_levee/IER.aspx?IERID=12](http://www.nolaenvironmental.gov/projects/usace_levee/IER.aspx?IERID=12).

**SUPPLEMENTARY INFORMATION:** The Bayou aux Carpes CWA Section 404(c) site is located approximately ten miles south of New Orleans, Louisiana, on the West Bank of Jefferson Parish. The site covers approximately 3200 acres, including about 3000 acres of wetlands subject to federal jurisdiction under the CWA. The area is bounded on the north by the east-west Old Estelle Pumping Station Outfall Canal, on the east by Bayou Barataria (Gulf Intracoastal Waterway), on the south by Bayou Barataria and Bayou des Familles, and on the west by State Highway 3134 and the "V-Levee." Immediately across State Highway 3134 to the west of the site is the Barataria Unit of Jean Lafitte National Historical Park and Preserve.

Section 404(c) of the CWA authorizes EPA to restrict or prohibit the use of a wetland area as a disposal site for dredged or fill material if the discharge will have unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. EPA published a CWA Section 404(c) Final Determination prohibiting, with three exceptions, future discharges of dredged or fill material to wetlands in the Bayou aux Carpes site at 50 FR 47267 (November 15, 1985). Since then, the Agency has received two other requests for modification.

In connection with initial construction of the West Bank Hurricane Protection Levee, the Corps requested that EPA modify its CWA Section 404(c) designation to allow extension of the top of the "V-Levee"

EXHIBIT #

1

DEPONENT



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into the protected Bayou aux Carpes area. The Corps stated that such a modification would result in significant cost savings to the government and would affect only a relatively small part of the area protected by the Section 404(c) designation. EPA summarily denied that request and in 1988 the Corps modified the levee alignment to avoid discharges to the Bayou aux Carpes CWA Section 404(c) area.

In 1992, Shell Pipeline Corporation requested that EPA amend the designation to allow the discharge of dredged and fill material to wetlands in the Bayou aux Carpes CWA Section 404(c) area in connection with emergency reconstruction of a leaking pipeline. After notifying interested parties of the request via **Federal Register** publication and coordinating with the Corps and other agencies, EPA granted the request, publishing the decision at 57 FR 3757 (January 31, 1992). EPA concluded that relocating the pipeline to non-wetlands was infeasible from the perspectives of engineering and public safety, and that the work would have only minimal and temporary effects on the wetlands at issue.

The request noticed today was submitted by the Corps and is associated with proposed improvements to the West Bank and Vicinity Hurricane Protection Levee system. By way of a letter dated November 8, 2008, the Corps requested that the designation be modified to allow construction of an earthen berm and floodwall in an area disturbed by dredged material discharges predating the 1985 404(c) designation. The construction area is located along the west bank of the Gulf Intracoastal Waterway, or Bayou Barataria, from its junction with the Old Estelle Pumping Station Outfall Canal to a point at which the Corps proposes to construct a sector gate across the Waterway. As described in the modification request, the berm and floodwall would be 14 to 16 feet high and would occupy an area no greater than 4,200 linear feet by 100 linear feet. No more than ten acres of wetlands in the Bayou aux Carpes CWA Section 404(c) site would be affected and other design and construction features have been incorporated to minimize impacts to the wetlands.

The Corps is currently gathering baseline data to evaluate potential wetland mitigation options and other project features to improve the existing hydrology of the Bayou aux Carpes site. The Corps has committed to constructing those features if the analyses indicate that they would be ecologically beneficial. Discharges of

dredged or fill material associated with such construction would require no additional modification to the CWA Section 404(c) designation, which contains an exception for approved habitat enhancement projects.

Additional information on the Corps project and its relationship to the Bayou aux Carpes site may be found in the alternative National Environmental Policy Act document, known as Individual Environmental Report #12 (IER #12), which is posted online at: [http://www.nolaenvironmental.gov/projects/usace\\_levee/IER.aspx?IERID=12](http://www.nolaenvironmental.gov/projects/usace_levee/IER.aspx?IERID=12).

The public hearing referenced above will be jointly conducted by EPA Region 6 and the Corps. At the hearing, EPA will receive comments on the Corps request to EPA to modify the Bayou aux Carpes CWA Section 404(c) designation and the Corps will receive comments on IER #12.

After considering all comments submitted, EPA Region 6 will transmit to the EPA Office of Water in Washington, DC, a written recommendation on whether the CWA Section 404(c) modification request should be granted or denied. The Assistant Administrator for Water will make the final decision and publish a notice of its availability in the **Federal Register**.

Dated: January 6, 2009.

**Richard E. Greene,**

*Regional Administrator, EPA Region 6.*

[FR Doc. E9-690 Filed 1-13-09; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

January 8, 2009.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501-3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that

does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 16, 2009. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395-5887, or via fax at 202-395-5167 or via Internet at

*Nicholas\_A.Fraser@omb.eop.gov* and to *Judith-B.Hernan@fcc.gov*, Federal Communications Commission, or an e-mail to *PRA@fcc.gov*. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the Web page called "Currently Under Review", (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Judith B. Herman at 202-418-0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-0755.

*Title:* Sections 59.1 through 59.4, Infrastructure Sharing.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.



US Army Corps  
of Engineers  
New Orleans District

## Reducing Risk in Southeast Louisiana

The U.S. Army Corps of Engineers, New Orleans District, is hosting a **public meeting** to discuss environmental compliance efforts, per the National Environmental Policy Act.

**Jan. 28, 2009**    Plaquemines Parish Non-Federal Levees  
Woodland Plantation  
21997 Highway 23, Port Sulphur, LA 70083  
Open House: 6:00p.m. – 7:00 p.m.  
Presentation/Discussion: 7:00 – 9:00 p.m.

Meeting presentation will:

- Discuss the plans to upgrade the current Plaquemines Parish Non-Federal Levees as it will be discussed in the Supplemental Environmental Impact Statement.

The U.S. Army Corps of Engineers, New Orleans District is also hosting a joint **public hearing** with the Environmental Protection Agency.

**Feb. 11, 2009**    GIWW West Closure Complex/  
Bayou aux Carpes 404 request for modification  
US Army Corps of Engineers  
District Office  
7400 Leake Ave., New Orleans, LA 70118  
Open House: 5:00 – 6:00 p.m.  
Presentation/Comments: 6:00 – 9:00 p.m.

Meeting will:

- Provide a unique venue to take comments on the Corps' proposed action to reduce risk to communities surrounding the Harvey and Algiers canals as discussed in IER 12
- Provide a unique venue for the EPA to take comments on the Corps' proposed action which will require a modification to the Bayou aux Carpes 404(c) area, a wetland of national

Contact: Gib Owen    (504) 862-1337  
mvnenvironmental@usace.army.mil

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EXHIBIT#

2

DEPONENT



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US Army Corps  
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New Orleans District

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- Discuss alternatives under consideration to upgrade the current Plaquemines Parish Non-Federal Levees as they will be discussed in the Supplemental Environmental Impact Statement.

The U.S. Army Corps of Engineers, New Orleans District is also hosting a joint **public hearing** with the Environmental Protection Agency.

**Feb. 11, 2009**    GIWW West Closure Complex/Bayou aux Carpes 404 request for modification  
US Army Corps of Engineers  
District Office  
7400 Leake Ave., New Orleans, LA 70118  
Open House: 5:30 – 6:00 p.m.  
Presentation/Comment-only period: 6:00 p.m.

The Corps has extended the public comment period for IER 12 from Feb. 4 to Feb. 11, 2009. All comments given at the public hearing will be considered as official comments to IER 12.

Meeting will:

- Provide a venue to give comments on the Corps' proposed action to reduce risk to communities and businesses near the Harvey and Algiers canals as discussed in IER 12
- Provide a venue for the EPA to accept comments on the Corps' proposed action which will require a modification to the Bayou aux Carpes 404(c) area, a wetland of national significance under the jurisdiction of the EPA.

Contact: Gib Owen    (504) 862-1337    [mynenvironmental@usace.army.mil](mailto:mynenvironmental@usace.army.mil)

Learn more at [www.nolaenvironmental.gov](http://www.nolaenvironmental.gov)



# Building Strong <sup>SM</sup>

The U.S. Army Corps of Engineers, New Orleans District is hosting a joint **public hearing** with the Environmental Protection Agency.

**Feb. 11, 2009** GIWW West Closure Complex/Bayou aux Carpes 404 request for modification  
US Army Corps of Engineers District Office  
7400 Leake Ave., New Orleans, LA 70118  
Doors open at 5:30 p.m.  
Presentation begins promptly at 6:00 p.m. and is followed by a comment-only period

The Corps has extended the public comment period for Individual Environmental Report 12 from Feb. 4 to Feb. 11, 2009. All comments given at the public hearing will be considered as official comments to IER 12.

Meeting will:

- Provide a venue to give comments on the Corps' proposed action to reduce risk to communities and businesses near the Harvey and Algiers canals as discussed in IER 12
- Provide a venue for the EPA to accept comments on the Corps' proposed action which will require a modification to the Bayou aux Carpes 404(c) area, a wetland of national significance under the jurisdiction of the EPA

The U.S. Army Corps of Engineers, New Orleans District, is continuing its series of public meetings to discuss environmental compliance efforts, per the National Environmental Policy Act, and project updates on the planned and proposed Greater New Orleans Hurricane and Storm Damage Risk Reduction System.

**Mar. 3, 2009** New Orleans Lakefront Levees west of the Industrial Canal and Inner Harbor Navigation Canal Surge Barrier - Borgne and Pontchartrain  
Lindy Boggs International Conference Center  
2045 Lakeshore Dr., New Orleans LA 70122  
Open house 6 p.m. Presentation and discussion 7 p.m.

Meeting presentation will:

- Provide an overview of the proposed action to improve the New Orleans Lakefront Levee as discussed in IER 4
- Discuss the status of construction of the Inner Harbor Navigation Canal Surge Barrier - Lake Borgne as previously discussed in IER 11 Tier 2 Borgne
- Provide an overview of the alternatives under consideration for reducing risk to the residents and businesses near the Inner Harbor Navigation Canal Surge Barrier - Lake Pontchartrain as it will be discussed in IER 11 Tier 2 Pontchartrain

**Upcoming Public Meetings**

**Mar. 5, 2009**  
IER 11 Tier 2 Pontchartrain  
Port of New Orleans  
1350 Port of New Orleans Pl.  
New Orleans LA 70160  
Open house 8 a.m.  
Presentation and discussion 8:30 a.m.

**Mar. 11, 2009**  
IER 8, 9, 10 and borrow  
Lynn Oaks School  
#1 Lynn Oaks Dr.,  
Braithwaite, LA 70040  
Open house 6 p.m.  
Presentation and discussion 7 p.m.

Contact: Gib Owen (504) 862-1337 mvnenvironmental@usace.army.mil

**Learn more at [www.nolaenvironmental.gov](http://www.nolaenvironmental.gov)**



US Army Corps  
of Engineers  
New Orleans District

## Reducing Risk on the Westbank

The U.S. Army Corps of Engineers, New Orleans District is hosting a joint **public hearing** with the Environmental Protection Agency.

**Feb. 11, 2009** GIWW West Closure Complex/Bayou aux Carpes 404  
request for modification  
US Army Corps of Engineers  
District Office  
7400 Leake Ave., New Orleans, LA 70118  
Doors open at 5:30 p.m.  
Presentation begins promptly at 6:00 p.m. and is followed  
by a comment-only period

The Corps has extended the public comment period for IER 12 from Feb. 4 to Feb. 11, 2009. All comments given at the public hearing will be considered as official comments to IER 12.

Meeting will:

- Provide a venue to give comments on the Corps' proposed action to reduce risk to communities and businesses near the Harvey and Algiers canals as discussed in IER 12
- Provide a venue for the EPA to accept comments on the Corps' proposed action which will require a modification to the Bayou aux Carpes 404(c) area, a wetland of national significance under the jurisdiction of the EPA

Contact: Gib Owen (504) 862-1337 [mynenvironmental@usace.army.mil](mailto:mynenvironmental@usace.army.mil)  
Learn more at [www.nolaenvironmental.gov](http://www.nolaenvironmental.gov)



What:

A joint public hearing with the Environmental Protection Agency on the GIWW West Closure Complex and request for modification to the Bayou aux Carpes 404 c site

[www.nolaenvironmental.gov](http://www.nolaenvironmental.gov)

US Army Corps of Engineers

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Police identify mother who threw newborn into lake; say she will be charged with first-degree murder 8:48 AM

20-year-old told police she tried to abort, adoption counseling

- Qualifying opens in for state appeals court posts and for Jefferson, Gretna and Westwego offices 10:12 - 11
- Apartment complex approved at former site of St. Aloysius High

New Orleans Hornets chat live now

8:16 AM



Q&A with Times-Picayune beat reporter John Reid

- Trent Johnson's LSU Tigers have more



When:

Wed., Feb. 11, 2009

Doors open 5:30 p.m.  
Presentation begins promptly at 6:00 p.m.

[www.nolaenvironmental.gov](http://www.nolaenvironmental.gov)

US Army Corps of Engineers



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### Police identify mother who threw newborn into lake; say she will be charged with first-degree murder

20-year-old told police she had a night abortion, adoption counselor

- Qualifying opens in for state appeals court posts and for Jefferson, Gretna and Westwego offices 11:24 AM
- Apartment complex approved at former site of St. Aloysius High School 9:18 AM

### New Orleans Hornets chat live now

9:18 AM



Q&A with Times-Picayune beat reporter John Reid

- Trent Johnson's LSU Tigers have more important things to worry about than

Health plans



Where:

New Orleans District Assembly Room  
7400 Leake Ave. New Orleans LA 70118

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US Army Corps of Engineers

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- Trent Johnson's LSU Tigers have more important things to worry about than being ranked

Health plans



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
646 Cajundome Blvd.  
Suite 400  
Lafayette, Louisiana 70506



February 9, 2009

Ms. Barbara Keeler (6WQ-EC)  
Environmental Protection Agency  
Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

EXHIBIT # 3  
DEPONENT  
 TORRES REPORTING & ASSOCIATES  
COURT REPORTING & LITIGATION SERVICES  
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Dear Ms. Keeler:

Please reference the Environmental Protection Agency's (EPA) Notice of Public Hearing and Request for Comments published in the Federal Register (Volume 74, No. 9, pg. 2072) on January 14, 2009. The U.S. Army Corps of Engineers (Corps), New Orleans District, has requested an amendment to EPA's Clean Water Act (CWA) Section 404 (c) designation which prohibits discharges of dredged or fill material into the Bayou aux Carpes Site in Jefferson Parish, Louisiana. That amendment is requested to allow the Corps to construct the proposed Westbank and Vicinity of New Orleans (WBV), Harvey to Algiers, 100-year level hurricane protection project, Individual Environmental Report 12 (IER 12), which is authorized in accordance with Public Law 109-234, Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Supplemental 4). The EPA has requested comments as to whether the 1985 Bayou aux Carpes CWA Section 404 (c) EPA Final Determination should be modified as requested by the Corps. The Service submits the following comments in accordance with the National Environmental Policy Act of 1969 (83 Stat. 852, as amended; 42 U.S.C. 4321 et seq.), Migratory Bird Treaty Act (MBTA) (40 Stat. 755, as amended; 16 U.S.C. 703 et seq.), and the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.).

The Service recognizes the importance of the Bayou aux Carpes wetland complex to fish and wildlife resources and believes that the designation is warranted to protect these sensitive areas from development. In cooperation with Federal and State partners, the Corps has minimized potential direct and indirect impacts to significant flotant marsh and cypress swamp habitat by aligning the floodwall along the periphery of the Bayou aux Carpes CWA Section 404 (c) site. While the preferred alignment has resulted in greater direct impacts to forested wetlands, those forested wetlands at one time were previously altered by fill material. The preferred alignment would enclose fewer wetland acres, and avoid the damaging hydrologic consequences associated with bisecting the Bayou aux Carpes flotant marsh with a structural barrier. Moreover, unlike the Harvey Canal-Bayou Barataria Levee project which was the catalyst for EPA's determination, the preferred alternative alignment would avoid inclusion of the Bayou aux Carpes flotant and cypress swamp complex into the flood protection system and subsequently placing the area under

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pumped drainage.

During the alternatives analysis for IER 12, the Corps considered a series of alternative gate locations within the project area that would minimize the need for parallel protection. One of these alternatives included constructing a sector gate across the Bayou aux Carpes CWA Section 404 (c) site and was initially the Corps' preferred alternative. The proposed floodwall alignment within the Bayou aux Carpes CWA Section 404 (c) site would have, not only directly impacted high-quality floatant marsh and forested wetlands, but would have isolated approximately 500 acres of floatant marsh by placing them within the flood protection system. Constructing a floodwall across floatant marsh would disrupt the dynamic hydrologic conditions characteristic of a floatant marsh and would disrupt the natural hydrologic regimes within the entire Bayou aux Carpes wetland complex negatively impacting significant fish and wildlife resources. As proposed, the preferred alternative would minimize impacts by avoiding bisecting the Bayou aux Carpes CWA Section 404 (c) site and by implementing innovative design and construction techniques (e.g., floodwall design, construction sequencing).

At this time, the Service is unaware of any threatened or endangered species or their critical habitat within the proposed hurricane protection system project footprint for IER 12. However, the project-area forested wetlands provide nesting habitat for the bald eagle (*Haliaeetus leucocephalus*), and a bald eagle nest was documented within the Bayou aux Carpes drainage area in 2007. This should be considered when designing environmental augmentation features. The bald eagle was officially removed from the List of Endangered and Threatened Species on August 8, 2007. Bald eagles nest in Louisiana from October through mid-May. Eagles typically nest in mature trees (e.g., bald cypress, sycamore, willow, etc.) near fresh to intermediate marshes or open water in the southeastern Parishes. Major threats to this species include habitat alteration, human disturbance, and environmental contaminants (i.e., organochlorine pesticides and lead). Although the bald eagle has been removed from the List of Endangered and Threatened Species, it continues to be protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The Service developed the National Bald Eagle Management (NBEM) Guidelines to provide landowners, land managers, and others with information and recommendations to minimize potential project impacts to bald eagles, particularly where such impacts may constitute "disturbance," which is prohibited by the BGEPA. The Service's Division of Migratory Birds for the Southeast Region (phone: 404/679-7051, e-mail: SEMigratorybirds@fws.gov) has the lead role in conducting such consultations. Should you need further assistance interpreting the guidelines or performing an on-line project evaluation, please contact this office.

Direct impacts to bottomland hardwood and swamp habitat associated with the preferred alternative were quantified by acreage and habitat quality (i.e., average annual habitat units or AAHUs). The Service used the Louisiana Department of Natural Resources Habitat Assessment Methodology (HAM) to quantify the impacts of proposed project features on upland and wetland bottomland hardwood habitat and used the Wetland Value Assessment (WVA) methodology to quantify the impacts on swamp habitat. The Service determined that direct impacts to approximately 9.6 acres of forested habitat (i.e., 2.4 acres of bottomland hardwood habitat and 7.2 acres of swamp habitat) within the proposed 100-foot right-of-way of the Bayou aux Carpes CWA Section 404 (c) site would result in the loss of 6.1 AAHUs. Riparian habitat and

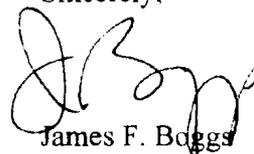
associated fish and wildlife resources would be minimally reduced within the Bayou aux Carpes CWA Section 404 (c) site. Mitigation for unavoidable losses of wet and non-wet bottomland hardwoods and swamp habitat, caused by project features of the entire hurricane protection system will be evaluated through a complementary comprehensive mitigation IER. However, should this designation be amended and the Corps' proposed alternative authorized, mitigation for unavoidable impacts to the Bayou aux Carpes 404 (c) area would be provided concurrently with flood protection features and within the Bayou aux Carpes 404 (c) area.

To ensure that potential impacts resulting from the construction of a flood protection structure do not compromise the value of this nationally-significant wetland ecosystem and to maintain the integrity of the Bayou aux Carpes CWA Section 404 (c) site, the Corps is proposing to incorporate environmental augmentation features into the proposed hurricane protection project. Stormwater from the Old Estelle Pump Station canal is currently being directed into the GIWW bypassing the Bayou aux Carpes wetland complex. Because of the invaluable water quality functions wetlands provide, stormwater will be redirected through the Bayou aux Carpes CWA Section 404 (c) site which would restore the natural process of nutrient cycling and reduce the risk of eutrophication in the lower basin waterbodies, provided modeling results support that action. Proposed augmentations could supplement hydrologic exchange within approximately 3,000 acres of floatant marsh, cypress swamp, and wetland scrub-shrub habitat.

Although complete avoidance of the Bayou aux Carpes CWA Section 404 (c) site would be preferred, it is the Service's opinion that amending the designation as proposed would not have an unacceptable adverse effect on fish and wildlife resources within the Bayou aux Carpes wetland complex. The Corps has incorporated proposed environmental augmentation features as a feature of the proposed project. Provided that hydrologic modeling supports implementation of those features, the Service believes that those augmentations coupled with long-term monitoring will ensure that unforeseen impacts to the Bayou aux Carpes CWA Section 404 (c) site are avoided. On the condition that the Corps moves forward with modeling and design of the environmental augmentation features concurrently with hurricane protection features, the Service would not be opposed to EPA modifying the 1985 Bayou aux Carpes CWA Section 404 (c) EPA Final Determination.

We appreciate the opportunity to comment on the proposed amendment and look forward to the continued coordination with the EPA, the Corps, and other State and Federal resource agencies with regards to the proposed hurricane protection system project. Should you have any questions regarding our comments, please give me a call (337/291-3115).

Sincerely,



James F. Boggs

Supervisor

Louisiana Field Office

---

cc: FWS, Atlanta, GA (ES/HC)  
Corps, New Orleans, LA  
Jean Lafitte National Historical Park and Preserve, New Orleans, LA  
NMFS, Baton Rouge, LA  
LDWF, Baton Rouge, LA  
LDNR, CMD, Baton Rouge, LA



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
646 Cajundome Blvd.  
Suite 400  
Lafayette, Louisiana 70506



February 9, 2009

Ms. Barbara Keeler (6WQ-EC)  
Environmental Protection Agency  
Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

Dear Ms. Keeler:

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pumped drainage.

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At this time, the Service is unaware of any threatened or endangered species or their critical habitat within the proposed hurricane protection system project footprint for IER 12. However, the project-area forested wetlands provide nesting habitat for the bald eagle (*Haliaeetus leucocephalus*), and a bald eagle nest was documented within the Bayou aux Carpes drainage area in 2007. This should be considered when designing environmental augmentation features. The bald eagle was officially removed from the List of Endangered and Threatened Species on August 8, 2007. Bald eagles nest in Louisiana from October through mid-May. Eagles typically nest in mature trees (e.g., bald cypress, sycamore, willow, etc.) near fresh to intermediate marshes or open water in the southeastern Parishes. Major threats to this species include habitat alteration, human disturbance, and environmental contaminants (i.e., organochlorine pesticides and lead). Although the bald eagle has been removed from the List of Endangered and Threatened Species, it continues to be protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The Service developed the National Bald Eagle Management (NBEM) Guidelines to provide landowners, land managers, and others with information and recommendations to minimize potential project impacts to bald eagles, particularly where such impacts may constitute "disturbance," which is prohibited by the BGEPA. The Service's Division of Migratory Birds for the Southeast Region (phone: 404/679-7051, e-mail: [SEmigratorybirds@fws.gov](mailto:SEmigratorybirds@fws.gov)) has the lead role in conducting such consultations. Should you need further assistance interpreting the guidelines or performing an on-line project evaluation, please contact this office.

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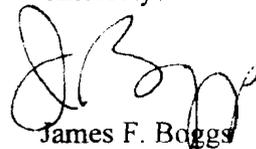
associated fish and wildlife resources would be minimally reduced within the Bayou aux Carpes CWA Section 404 (c) site. Mitigation for unavoidable losses of wet and non-wet bottomland hardwoods and swamp habitat, caused by project features of the entire hurricane protection system will be evaluated through a complementary comprehensive mitigation IER. However, should this designation be amended and the Corps' proposed alternative authorized, mitigation for unavoidable impacts to the Bayou aux Carpes 404 (c) area would be provided concurrently with flood protection features and within the Bayou aux Carpes 404 (c) area.

To ensure that potential impacts resulting from the construction of a flood protection structure do not compromise the value of this nationally-significant wetland ecosystem and to maintain the integrity of the Bayou aux Carpes CWA Section 404 (c) site, the Corps is proposing to incorporate environmental augmentation features into the proposed hurricane protection project. Stormwater from the Old Estelle Pump Station canal is currently being directed into the GIWW bypassing the Bayou aux Carpes wetland complex. Because of the invaluable water quality functions wetlands provide, stormwater will be redirected through the Bayou aux Carpes CWA Section 404 (c) site which would restore the natural process of nutrient cycling and reduce the risk of eutrophication in the lower basin waterbodies, provided modeling results support that action. Proposed augmentations could supplement hydrologic exchange within approximately 3,000 acres of floatant marsh, cypress swamp, and wetland scrub-shrub habitat.

Although complete avoidance of the Bayou aux Carpes CWA Section 404 (c) site would be preferred, it is the Service's opinion that amending the designation as proposed would not have an unacceptable adverse effect on fish and wildlife resources within the Bayou aux Carpes wetland complex. The Corps has incorporated proposed environmental augmentation features as a feature of the proposed project. Provided that hydrologic modeling supports implementation of those features, the Service believes that those augmentations coupled with long-term monitoring will ensure that unforeseen impacts to the Bayou aux Carpes CWA Section 404 (c) site are avoided. On the condition that the Corps moves forward with modeling and design of the environmental augmentation features concurrently with hurricane protection features, the Service would not be opposed to EPA modifying the 1985 Bayou aux Carpes CWA Section 404 (c) EPA Final Determination.

We appreciate the opportunity to comment on the proposed amendment and look forward to the continued coordination with the EPA, the Corps, and other State and Federal resource agencies with regards to the proposed hurricane protection system project. Should you have any questions regarding our comments, please give me a call (337/291-3115).

Sincerely,



James F. Boggs  
Supervisor  
Louisiana Field Office

cc: FWS, Atlanta, GA (ES/HC)  
Corps, New Orleans, LA  
Jean Lafitte National Historical Park and Preserve, New Orleans, LA  
NMFS, Baton Rouge, LA  
LDWF, Baton Rouge, LA  
LDNR, CMD, Baton Rouge, LA

*Feb. 9, 2009  
509 Third Ave.  
Harvey, La. 70058*

*Gib Owen, PM-RS  
U. S. Army Corps of Engineers  
P. O. Box 60267  
NOLA 70160-0267  
[mynenvironmental@usace.army.mil](mailto:mynenvironmental@usace.army.mil)*

*Barbara Keeler (6WQ-EC)  
EPA Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733  
[keeler.barbara@epa.gov](mailto:keeler.barbara@epa.gov)*

*Dear Sir and Madam:*

*I am writing today in regard to the GIWW West Closure Complex, the Corps' Individual Environmental Report 12, and the Corps' request to impact the Bayou aux Carpes 404© area here in Jefferson Parish, Louisiana. Common sense dictates that the 404© area continue to receive full protection, and that the Corps request be denied.*

*For my entire adult life, the Corps of Engineers has served as a combination lap dog/lap dancer/towel girl for the Louisiana Congressional delegation, which has always ranked at or near the top in terms of corruption and its penchant for acting in direct contrast to the welfare of its constituents. Admittedly, Alaska probably kept Louisiana out of the top spot the last few years, but not for lack of trying. Some of what can only be considered to rank amongst the nation's greatest eco-terrorists have been members of the Louisiana delegation: Billy Tauzin, J. Bennett Johnston, John Breaux, and Bob Livingston, to name a few. And today's delegation has been guilty of tremendous neglect. Over 20 years after the creation (against terrific political opposition) of the only National Park in the State, the park's boundaries have yet to be normalized.*

*For close to 40 years, I have been active in attempts to stop the Corps from either destroying or allowing the destruction of Louisiana's wetlands. But the Corps has routinely either encouraged or allowed the continued destruction of our wetlands. Thousands upon thousands of needless projects were approved by or thought up by the Corps with the primary intent of destroying wetlands that could protect and nurture us all for the sake of some individual's or corporation's short-term gain. Wherever and whenever possible, the Corps ignored the law and*

*shirked its duties, dreaming up garbage like Nationwide Permits and delegating its authority to local programs like that of Jefferson Parish, which has always tried to destroy as many acres of wetlands as is humanly possible.*

*Jefferson Parish politicians wanted desperately to destroy the Bayou aux Carpes area. The Corps desperately wanted to help them do so. Only the miraculous intervention of EPA stopped that destruction from occurring. The same people who threw their weight around in those days are still around today. There may be new people in the Corps with whom I am not acquainted, who may actually want to obey the law and do what's morally right. I hope so, although I would note that the Corps has yet to correct the situation in Crown Point, where Jefferson Parish has been illegally draining wetlands for over 30 years.*

*If our observations are correct, the talweg of the GIWW is now a few hundred feet from shore. The project was approved as a 125' by 12' channel, so there appears to be a tremendous amount of room for constructing a "T-wall" between the boundary of the Bayou aux Carpes 404© area and the boundary of the 125' authorized channel. We find no reason to encroach upon the 404© area to accomplish the Corps' stated purpose.*

*I myself live on the West Bank of Jefferson Parish. I need hurricane protection as much as anyone else. But there never was, and there is no reason to destroy wetlands to accomplish the completion of a hurricane protection levee system. Certainly, an area like the 404© area at Bayou aux Carpes is ever more rare, and as such ever more valuable as both habitat and a natural storm buffer. We cannot allow any of it to be lost. We cannot allow contaminated sediment to be placed in it. We cannot allow contaminated water to be pumped into it. We cannot bear to hear the word "mitigation", which has historically been as pathetic a failure as the Jefferson Parish motto "Jefferson's got to grow."*

*I hereby ask the Corps to modify its design to move the "T-wall" further in the direction of the GIWW talweg to spare any and all parts of the 404© area, and I hereby ask EPA to not allow the destruction of any part of the Bayou aux Carpes 404© area.*

*Thank you.*

*Yours truly,  
Joseph I. "Jay" Vincent*



**HARVEY CANAL  
INDUSTRIAL  
ASSOCIATION**

January 19, 2009

Mr. Gib Owen  
U. S. Army Corps of Engineers  
Planning, Programs, and Project Management Division  
Environmental Planning and Compliance Branch  
CEMVN-PM-RS  
P. O. Box 60267  
New Orleans, LA 70160-0267

RE: Draft Individual Environmental Report #12 (IER #12)

Dear Mr. Owen:

The Harvey Canal Industrial Association (HCIA) is a business organization that represents the interests of businesses in the Harvey Canal area. We have been a driving force for area improvements for more than sixty years. We represent the vast majority of companies that will be impacted by Corps of Engineers flood control efforts on the West Bank of Jefferson Parish.

The HCIA has been working with local, state and federal officials on the levee alignment for the East of the Harvey Canal Project since 1987. Shortly before Hurricane Katrina, we felt assured that a final authorized alignment would provide the west bank with the desperately needed hurricane protection. However, with the levee failure during Katrina, the West Bank and Vicinity Project had to be redesigned and the project again went to the drawing board. What resulted was the first phase of the new 100 year protection project, i.e. the flood walls along Peters Road. Businesses between Lapalco Boulevard and the Hero Pumping Stations are now sandwiched in between the newly constructed flood wall with no permanent protection.

Since 2005, numerous alternative flood protection options and cost/benefit ratios have been studied to determine the best option for full risk reduction East of the Harvey Canal. The HCIA supports the Corps of Engineers proposed West Closure Complex (WCC) as identified in the IER 12 proposal. We will, however, continue to work to provide those affected businesses with a supplemental protection levee for the smaller storms, tidal surges or rain events that may enter the canal when the WCC is not needed.

We certainly understand and appreciate the concerns that have been expressed for environmental impacts to the Bayou aux Carpes Section 404(c) area. It is our understanding that there has been a tremendous interagency collaboration, especially with EPA, to help identify and adopt a comprehensive plan to minimize adverse impacts within the 404(c) area during construction and for

a long term affect once the project is completed. But we feel strongly that much has been sacrificed by the business community – even to one large employer moving to another part of the State.

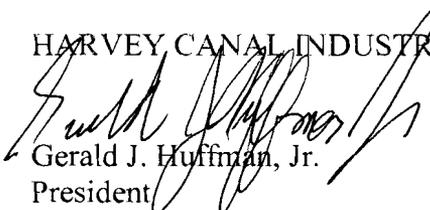
The HCIA supports the Corps' request to the EPA to modify the 1985 Bayou aux Carpes Clean Water Act Section 404 (c) Final Determination and we support the current plan for the WCC as outlined in the EIR 12 report. We feel the WCC alignment will provide the much needed and long awaited 100 year storm protection for the West Bank of Jefferson Parish.

The businesses along Peters Road have suffered long enough. Numerous rain events, hurricanes and tropical storms have flooded our businesses and threatened residential neighborhoods. The HCIA, in cooperation with other business organizations, commissioned an Economic Impact Study in late 2007. The study area included all the businesses from Lapalco Boulevard south to the Hero Pumping Station. The study revealed a total employment of 1,619 employees with an aggregate payroll of more than \$67.5 million and showed a direct and indirect spending of over \$1.1 billion.

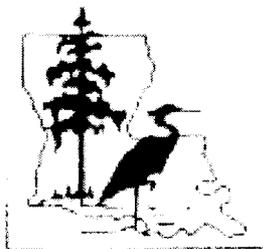
This study did not include any companies along the upper portion of Peters Road, the Destrehan corridor or Engineers Road. The potential for economic loss to this area is astronomical and the HCIA urges the U. S. Army Corps of Engineers to approve the final draft of the IER 12 and to move the West Closure Complex project to completion.

Sincerely,

HARVEY CANAL INDUSTRIAL ASSOCIATION



Gerald J. Huffman, Jr.  
President



# Louisiana Audubon Council

1522 Lowerline St., New Orleans, LA 70118

February 11, 2009

EXHIBIT #

6

DEPONENT



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COURT REPORTING & LITIGATION SERVICES  
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Gib Owen, PM-RS  
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Barbara Keeler (6WQ-EC)  
EPA Region 6  
1445 Ross Avenue,  
Dallas, TX 75202-2733

**Re: Combined public hearing on the Draft IER-12, on the modification of CWA Sec. 404(c) determination for Bayou aux Carpes; and hearing on GIWW West Closure Complex.**

Dear Ms. Keeler and Mr. Owen,

First, the Louisiana Audubon Council wants to be on record as supporting a safe hurricane protection levee for the entire New Orleans area including the Westbank of Jefferson Parish. The Jean Lafitte National Historical Park and Preserve (JLNHPP) and Bayou aux Carpes (BAC) wetlands will provide non-structural protection and reduce the hurricane tidal surges before they reach the westbank levee system. Non-structural protection is provided by forested and non-forested wetlands and have been documented as reducing the height of tidal surges during Hurricanes Rita, Gustav and Ike.

We thank EPA and the other resource agencies for recommending to the Corps a change in their original preferred alternative, which was the Southern Closure option, GIWW-A. This alignment would have segregated the BAC, Sec. 404(c) area and adversely impacted 600 acres of floatant marsh.

The Corps' new preferred alignment (Alternative 2, GIWW-WWC) would directly take 9.6 acres of the BAC. While this is a large decrease in the taking of wetlands of national significance, the Corps should not stop there. Additional structural changes to the eastern levee and closure complex would avoid any wetland loss to the BAC. The Corps Alternative 2, should be modified to avoid any direct or indirect impacts to the Sec 404(c) wetlands. (see below).

**Alternative 2, GIWW-WWC: (a suggested modification)**

It is our opinion that the encroachment into the BAC wetlands can be avoided entirely by moving the "innovative T-wall", berm and riprap further into the waterway by 100 ft., thereby avoiding the 404(c) wetlands. Bayou Baratavia includes the GIWW barge channel which has a congressionally authorized width of 125 ft and a depth of 12 ft (USACE, 1998). The GIWW barge channel is a minor constituent of the waterway which is now 500-650 ft wide along the eastern side of the BAC project area. Moving the T-wall 100 ft into an area which, based on Corps maps was land prior to 1971, would be a slight alteration of the preferred alternative.

A waterway with a width of 400 ft was sufficient in 1971 and provided adequate space for a 125 ft barge channel (which then was 31 % of the waterway width). The present width of the waterway, due to erosion by barge traffic, is now 100- 200 feet wider than in 1971 (USACE, 1971). This increased width reduces the portion of the waterway needed for the barge channel to 21 % of the total width. There are additional opportunities to improve the structural design of the T-wall and gate complex to avoid the BAC all together. The Corps stated that it intends to reduce the structural impacts on the BAC.

**Alternative G-GIWW C:** Sec. 2.5.3.4 (p. 49)

This section is a misrepresentation of the facts. It states that this alternative, of moving the "innovative T-wall" to avoid impacts to the 404(c) wetlands, would be to "construct the eastern innovative floodwall completely within the GIWW . . ." and that "construction of a floodwall within the heavily used navigation channel . . . would create engineering and construction challenges . . . "

The Corps suggests that building the floodwall in the navigation channel is the only other option to its preferred alternative. The navigation channel is only 125 ft wide in a waterway which is 600 feet in width. It appears that this misrepresentation is deliberately being used to discredit the practicability of this alternative.

What should be considered is moving the T-wall into the shallow water area which would still leave 500 ft to accommodate a 125 ft wide navigation channel. Congress authorized a 125 ft channel for most of the GIWW. If a wider channel was needed, Congress would have authorized it. Barges moored along the Harvey and Algiers Canals significantly reduce the waterway width available for barge navigation. This is evidently not a hazard to navigation. The alternative G-GIWW C was never presented in stakeholder meetings attended by our organization. Why weren't alternative designs presented in the DIER-12? Based on the various engineering designs of the sector gates and pumping station configurations (posted on the Corps' website), surely one could be modified to avoid the 404(c) wetlands all together. This deficiency should be corrected in the amended IER.

- Appendix K (Figure entitled, "Current Proposed Site Plan"): The description states that the "orientation of the pump station, gates, bypass channel and levee on east side of GIWW are not final and could change as design progresses." This means that there is still some flexibility and the final engineered design could avoid the 404(c) wetlands.

- Diagram I on p. 27 should be drawn to scale. It should also include the present width of the waterway and the position (centerline) of the 125 ft navigation channel. A scale showing the water depth should also be added. These figures should not be conceptual in this document.

**Contaminated sediments:** Appendices L, L(b) and M

The chemical analyses of the Algiers Canal sediments are not included in the Appendix of DIER-12. Only two contaminants are discussed but there is not a complete listing of COCs in which the bottom sediments were tested. Additional testing has been recommended but there is very little discussed in the DIER. A new document, dated Jan. 5, 2009, was posted on the website but not included in the DIER.

Of major concern to our organization is that the Corps intends to use the dredged material from the bottom of the Algiers Canal and barge it to the JLNHPP. The plan is to use the spoil to plug an erosional area along Lake Salvador and the Park boundary by placing the dredged material into a Geocrib. We support the use of clean spoil for beneficial use but oppose the introduction of contaminated material into the Park's ecosystem.

We request that this section of the IER be rewritten to fully identify the procedures undertaken by the Corps to determine whether the sediments are safe for open water disposal. The detection limit chosen does not take into consideration the affects of contaminants on benthic organisms - only the affect on human health. That update should include the location of sediment cores, chemical analyses of the sediments and a presentation of all the results in an appendix as part of an amended IER.

It is important that the screening procedure identify the levels of concentration of toxic sediments that cause chronic affects to benthic organisms as outlined in the NOAA's ER-M, ER-L sediment criteria for COC. In Appendix M the executive summary was omitted from the report as well.

Appendix L(b) recommends, "more sediment sampling . . . to further delineate the contaminated area." This canal could be contaminated with PAHs and other hydrocarbon derived toxics. The executive summary dated 1/5/09 for Final Phase II ESAR (and posted on the website) must be included in the amended IER-12 as well as the sediment data. The detection limit for PAHs was set at 330 ppb which is too high to detect many PAHs that have a consensus based TEL below this detection limit (Macdonald et al., 2000). Many states are using the consensus based TEL as a screening level for cleanup of contaminated sediments to protect aquatic organisms.

The ESAR stated that the toxic review was based on human impacts not impacts to the biota and used the LDEQ RECAP screening standards which do not consider the broader environmental impacts. Since these sediments will be deposited in the National Park, they should be tested for impacts to the biota as the highest priority. Unless this is done we oppose any of the Algiers Canal sediments being used as fill in the Barataria Preserve.

#### **Enterprise Pipeline Relocation:**

We did not find one map that identified the location of the existing Enterprise pipeline nor a discussion of the impacts of relocation of the pipeline on the BAC wetlands. In Appendix K figure 1 is a dashed line labeled pipeline relocation. Does this pipeline belong to Shell? It is identified on earlier corps maps as a Shell pipeline (USACE, 1971). There should be a full discussion describing how the relocation will prevent any direct or indirect impacts to the BAC. Will the old pipeline be removed? How old is it? How much will be relocated? Between what reference points will the work be done? (point A to point B). Will the pipeline segment reconnect to the old pipeline. We request the amended IER include an expansion of the discussion section fully explaining the pipeline relocation procedure and impacts to the BAC.

#### **Data Gaps and Uncertainties: (p. 16)**

Of concern to us, is that any additional information gathered over the one-year baseline study will come after the project has been approved. This includes most of the impacts to the BAC area.

Also, the engineering design report for the gates and floodwalls has not been completed. On page 16 it states, "At the time of the submission of this report, engineering evaluations have not been completed for all of the proposed actions and alternatives."

In fact, this section lists the data not included in this DIER-12 as; 1) sources of levee material have not been identified, 2) environmental surveys are not complete, 3) cumulative impact data are not complete, 4) impacts on transportation remain unknown, 5) the engineering analysis is based on a concept level design and is not complete.

The DIER states that a Draft Comprehensive Environmental Document (CED), "will contain updated information for any IER that had incomplete or unavailable data at the time it was posted for public review." (DIER, p. 14). This means that potentially critical information will not be available at the time the IER is approved and construction commences. The long list of inadequacies admitted by the Corps shows that this document should have been withheld until the Corps had time to finish its work and prepare a complete IER prepared for public and agency review.

#### **"Augmentation" issues:**

##### Length of study:

We find the one year baseline study for the BAC too short. For a proper study, several annual cycles are needed especially for hydrologic information due to changes in rainfall patterns from year to year.

##### Monitoring:

The water monitoring should include the measurement of water flow under Highway 3134. The swamp on the west side of the highway is presently in the JLNHPP. This highway bisected the BAC in 1977. There should be water flow monitoring at the culverts which allow water to pass under the highway. The conditional permit given to the DOTD and the congressional authorization for the highway requires that normal water circulation be maintained. It has now been over 30 years since the highway embankment was completed. How much subsidence has there been? Are all the culverts open to normal water exchange under the highway? What is the effective culvert cross sectional area available for water flow? Is there tidal exchange at the culvert locations? If so, can it be measured on both sides of the highway?

Degrading levees:

We agree that oil and gas drill hole canals should have the spoil banks degraded and in some instances the canals should be plugged. This should be done carefully since the canals and spoil banks have been there for over 40 years. A hydrologic study should consider that the swamp may be in equilibrium with the man-made ponding and drainage. Changes to the system must not harm the ecosystem of the BAC.

Opening Bayou aux Carpes shell dam:

As with degrading the levees, the opening of the dam to water flow from Bayou Barataria, during hurricane surges, may harm the swamp. Salinity ranges need to be measured in Bayou Barataria to assure that flow into the swamp will not harm or raise salinities within the leveed system.

Estelle stormwater diversion:

There is insufficient information on how contaminants in the effluent discharge from the Estelle Pumping Station will be measured. A complete list of the analytes should be included in the amended IER. We are concerned that diverting the urban effluent into BAC may not be beneficial for the wetlands. The effluent of many of the pumping stations, monitored by Jefferson Parish, have been documented to contain lead, arsenic, chromium and mercury.

How much monitoring will take place to properly document the water quality of the effluent over decades if the water will be used in the BAC? As urbanization increases in the basin, water quality will decline as more polluted urban runoff is pumped into the Estelle Canal.

We suggest that the effluent be monitored for chemicals which have shown up in Jefferson Parish analysis of effluent discharge into the Barataria Preserve (such as the Ames and Crown Point pumping stations). Water effluent monitoring must be continued over the life of the project.

The Audubon Council requests a meeting with the federal and state resource agencies to review the results of the "augmentation studies". There must be public input and review before the final decision is made to modify the BAC 404(c) ecosystem.

**Inclusion in the Barataria Preserve:**

The Bayou aux Carpes 404(c) area will be included within the Jean Lafitte National Historical Park and Preserve this year. Senate bill S. 22 has passed the US Senate and it is expected to pass the House soon. There are now two reasons to protect the BAC well into the future as, 1) a 404(c) area and, 2) part of the Barataria Preserve of the National Park.

**Revision of the DIER necessary (IER addendum):**

Because there are still important data omitted from the draft document, we request that a revised/amended IER be prepared and circulated to the public and resource agencies for review. According to the federal register, "an IER addendum responding to comments received will be completed and published for a 30-day public review period." (USACE, 2007). We are formally requesting that IER-12 be amended to include omitted information, and full responses to the public/agency comments on the DIER-12. The document should include:

- 1). Design of the sector gate complex with alternative designs presented- not "conceptual diagrams".
- 2). Alternative designs for the innovative floodwall to avoid the 404(c) area
- 3). Review of all dredged sediment data and chemical analyses. Decision whether dredged sediments can be utilized for beneficial purposes in the JLNHPP, based on acute and chronic impacts of toxic sediments to benthic organisms.
- 4). More specifics on the length of time and parameters measured for all studies discussed in the "augmentation" section of the DIER - including beneficial or adverse impacts to the 404(c) wetlands.

- 5). Monitoring plan details - include detailed section on rationale for placement of water flow instruments and hydrologic modeling
- 6). More details on the relocation of the Enterprise pipeline and its impacts to the 404(c) area.
- 7). A thorough analysis of the proposed diversion of urban discharges from the Estelle pumping station into the 404(c) wetlands. Also, include the impacts of pollutants on the 404(c) area.

All these issues and other data gaps must be thoroughly discussed and presented in the amended IER.

**Summary:**

1) In conclusion, we oppose Alternative 2, the preferred alignment, as presented in the DIER-12. The Corps admits that the engineering designs for the floodwall and gate complex are not complete and therefore we believe the design can be modified to avoid the 404(c) wetlands entirely. The new designs and supportive data should be presented in a IER addendum for public review and comment. We will reconsider our position based on the new document.

2) We also recommend that EPA deny the request by the Corps to modify its final determination on the Bayou aux Carpes CWA 404(c) since the Corps hasn't finished its alternative engineering designs for the floodwall and gate complex. It would be premature for any action to be taken by EPA at this time.

3) We oppose a process whereby any deficiencies in this IER will be answered sometime in the future - as part of a catchall document. The public must be engaged in one single process which comes to a single conclusion - not a decision process which is segmented and strung out for several years on a specific IER. It is supposed to be an individual environmental report.

4) It appears that this DIER was rushed through without the adequate internal review. This is precisely what we were concerned about with the Alternative Arrangements (USACE, 2007). It appears that expediency was the prime factor - not a thorough evaluation of the environmental impacts and avoidance. It would be a better process if the Corps allowed time for its engineers to carefully design and check its own proposals and then the public could review and comment on a document that was ready rather than one which is incomplete.

Sincerely,



Dr. Barry Kohl  
President, LAC

cc:

Delta Chapter Sierra Club  
Gulf Restoration Network  
National Audubon Society  
National Wildlife Federation  
Tulane Environmental Law Clinic  
Horst Greczmiel, CEQ  
National Wildlife Federation  
National Park Service  
US Fish and Wildlife Service  
National Marine Fisheries Service  
La DNR

**References:**

MacDonald, D.D., C.G. Ingersoll, T.A. Berger, 2000. Development and Evaluation of consensus -based sediment quality guidelines for freshwater ecosystems. Arch. Environmental Contamination and Toxicology, v. 39, p.20-21.

USACE, 1963. Review of reports: Harvey Canal-Bayou Barataria Levee, Louisiana. NO District of USACE , Sept. 20, 1963. Appendix A

USACE, 1971. Harvey Canal-Bayou Barataria Levee, New Levee Phase I. As Built Plans. Gulf Intracoastal Waterway, Jefferson Parish, LA. (provided by Fred Chatry, Chief Engineering Div., to B. Kohl, 2/15/77).

USACE 1977. (Jeff Parish Wetlands) 26, Conditional permit for Lafitte-Larose Highway segment from Estelle to Wagner Ferry Bridge.

USACE 1998. Water Resources Development in Louisiana, 1998. USACE, New Orleans District. 177 pp.

USACE 2007. Adoption of Alternative arrangements under the National Environmental Policy act for New Orleans Hurricane and Storm Damage Reduction System. Federal Register, March 13, v. 72, p. 11337-11340.

LOWR JEFFERSON  
FIGURE 2  
CONNECTION TO THE GULF  
ALTERNATIVE

MAIN OFFICE LOCATION:  
197 ELYSIAN DRIVE  
HOUMA, LA 70363  
PHONE: (985) 868-3434 AN ADDITIONAL OFFICE IN  
WESTMOO, LA  
FAX: (985) 868-8513  
DATE SUBMITTED: 9/15/80  
SCALE: 1"=1 MI.  
PROJECT NO.: 8000  
DESIGN FILE NAME: Figure 2 and 3.dwg  
SHEET NUMBER: X

Shaw. Shaw Coastal, Inc.

DATE	DESCRIPTION	BY

Ray C HAMPTON  
504 214 1689



NAVIGATION STRUCTURE  
(APPROX. 8' OR 12' X 56')

NAVIGATION  
STRUCTURE  
(APPROX. 16' X 125')

ENVIRONMENTAL  
STRUCTURES  
(SIZE & NUMBER  
TO BE DETERMINED)

ENVIRONMENTAL  
STRUCTURES  
(SIZE & NUMBER  
TO BE DETERMINED)

NAVIGATION  
STRUCTURE  
(APPROX. 10' X 125')

DE-IN TO  
MISSISSIPPI RIVER DIVIDE

2.5 MILE

BAYOU BARATARIA

BAYOU PEROT

WADOR



## UNITED FOR A HEALTHY GULF

---

338 Baronne St., Suite 200, New Orleans, LA 70112  
Phone: (504) 525-1528 Fax: (504) 525-0833  
[www.healthygulf.org](http://www.healthygulf.org)

February 11, 2009

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**RE: DRAFT INDIVIDUAL ENVIRONMENTAL REPORT 12 AND PROPOSED MODIFICATION TO 404(C) ACTION**

Dear Mr. Owen and Ms. Keeler:

I am writing on behalf of the Gulf Restoration Network (GRN), a diverse coalition of individual citizens and local, regional, and national organizations committed to uniting and empowering people to protect and restore the resources of the Gulf of Mexico. Please accept the following comments regarding the Army Corps of Engineers' *Draft Individual Environmental Report: GIWW, Harvey, and Algiers Levees and Floodwalls, Jefferson, Orleans, and Plaquemines Parishes, Louisiana (IER #12)*, and the *Proposed Modification to the Bayou aux Carpes 404(c) Action*.

While we recognize that the protection of our coastal resources is urgent, we have some comments and concerns about several aspects of IER #12 as it is currently written. These concerns are outlined below:

**1. Public Participation is Not Adequate**

While the public comment period was extended to at least coincide with the public hearing, this is still not adequate. If the public hearing lasts until 9:00 pm, this only allows the public three hours to process and comment upon any information presented by the Corps or other commenters. *Because of this, we request the public comment period be extended to allow for the public to comment upon new information gained at the hearing.*

## **Comments RE: IER #12 and Bayou aux Carpes 404(c) modification**

February 11, 2009

Gulf Restoration Network

Page 2 of 6

### ***2. Full Avoidance of Bayou aux Carpes 404(c) Must Be Further Analyzed***

We would first like to applaud the Corps for working with us and EPA to develop the proposed alignment, instead of selecting an alignment that would have bisected the Bayou aux Carpes area. It is important that the Corps continue to recognize the importance of this ecologically sensitive area.

However, we feel that the 9.6 acres in the Bayou aux Carpes could be further avoided. On page 49, it is stated that “alternatives that would avoid impacts to that area were considered...this alternative was eliminated from further consideration due to constructability and navigation concerns” because it would “create engineering and construction challenges...” This statement is not supported. The navigation channel is authorized to be 125 feet wide, while the waterway is 400-500 feet wide. The Corps does not demonstrate in this IER why it is not feasible to place the T-wall further out into the waterway. Assuming the channel is in the approximate center of the canal, this would still allow a large buffer between navigation and hurricane protection. Because of this lack of justification and failure to demonstrate the necessity of impacting the 9.6 acres of the Bayou aux Carpes, we request that the moving of the t-wall further out be analyzed in order to further reduce, or even eliminate the wetland impacts. We request that an analysis be done examining moving the flood wall different distances out into the water. Since this would constitute a significant change, the IER should also be re-noticed. Additionally, EPA should not grant a 404(c) modification until it is shown that the Corps thoroughly explored all options for the reduction or elimination of impacts to the 404(c) area.

### ***3. Wetland Impacts Must be Considered Fully***

While Table 6 on page 63 presents the total direct wetland impacts anticipated, secondary and indirect impacts are not addressed. With increased storm protection comes increased development pressure. In fact the Bayou aux Carpes area was originally going to be drained and developed several years ago. On page 47, the Corps even admits that rezoning “could minimize future damages from new development in flood-prone areas,” thus implying that the surrounding areas very well could be developed given current zoning. This secondary effect must be taken into account. Further, taller and more expansive levees and flood walls have the potential to disrupt the flow of water through wetlands, potentially impacting these wetlands.

In order for this IER to fully address its environmental impacts, secondary and indirect impacts must be accounted for within the report, and slated to be mitigated for, just as direct impacts are.

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Additionally, cumulative impacts are not thoroughly addressed. Acknowledging that cumulative impacts will be discussed fully in the CED, more on cumulative impacts should be included in this IER. In past meetings with the Corps, they have presented a spreadsheet that had current impacts and anticipated impacts. This analysis, or best estimate of cumulative impacts should be included in this and all subsequent IERs

### **4. *Augmentation Features Must Be Thoroughly Researched and Planned***

In order for EPA to make a truly informed decision the “augmentation features” must be further designed and studies. The impact to the 404(c) area is partially justified because some augmentation features are being examined, the largest of which would be the gapping of the canal to the north of the area to allow storm runoff to flow through the wetland. A baseline study of at least two years should be done to see if this would indeed augment the area. Given that this water would be urban runoff, which could potentially be carrying high levels of nitrogen and phosphorus, metals, and petroleum products, care must be taken to ensure that this “fresh” water is truly fresh and not too contaminated to cause damage to the wetland over the short and long term.

The operating plan and funds for the augmentation features are also not discussed in this IER. On page 39, it is stated that “modifications to the banks and shell plug in the Bayou aux Carpes CWA Section 404(c) area would not be expected to require [operation and maintenance].” However the monitoring and control of flood structures in the canal would require monitoring, operation, and maintenance for at least several years after they are put into operation. The operation and management of the augmentation features must be addressed and guaranteed for years to come.

We also request if this action proceeds, a contingency plan is written into the project. Specifically if some or all of the augmentation features are not beneficial to the area, more mitigation should be required within or adjacent to the 404(c) area, since part of EPA’s decision depends on the success of these augmentation features.

### **5. *Beneficial Use***

It is stated that dredge material will be used beneficially in the “crib” area to build wetlands. This must be detailed more in the IER. Specifically, contaminants and wetland building plans must be further addressed. The dredge materials must be tested for contaminants to ensure that humans *and* wildlife will not be acutely or chronically harmed by any contaminants from industrialized navigation channels. Additionally if contaminated sediment is identified, and it is landfilled, this sediment would probably first be de-watered, which could cause large water quality issues.

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Since this would be an obvious environmental impact, the effects of this dewatering of contaminated sediment must be addressed fully in the IER.

Further, a specific plan for wetland creation utilizing dredge material should be detailed in this report. It is not acceptable to defer this to the mitigation IER, as dredge disposal is an integral part of this project. This plan is vital in order to ensure that dredge material is not simply dumped in the crib area, but a plan is followed that will give wetlands the best opportunity for sustainable production.

Also regarding beneficial use, it is stated on page 29 that "overburden material...would be mulched and used on site or hauled away to a landfill." At a recent meeting we asked why this overburden cannot be used beneficially in wetland creation instead of being hauled to a landfill, and our question was not adequately answered, so we ask again if the Corps looked into this beneficial use of overburden. If so, this information should be in the IER, if not, we formally request that this be explored within this IER.

### 6. *Non-Structural*

This IER, as well as other IERS that we have reviewed do not adequately address non-structural options to potential projects for the 100 year protection for metro New Orleans. On page 47, it stated that "no combination of non-structural tools could independently achieve the required 100-year level of risk reduction needed to provide hurricane surge protection on the [West Bank and Vicinity] as intended by federal statutes." However, the question is not "can non-structural tools *eliminate* the need for structural storm protection," but can it be used in *combination* with structural components to achieve protection that is sustainable and reduces the impact on the natural environment. We feel that the Corps is misinterpreting WRDA. While WRDA states that nonstructural measures can be considered independently or in combination with structural measures (p. 45 of IER #12), the combination of structural and nonstructural is completely ignored.

Additionally, when discussing the "raise in place" option, the IER assumes that all structures would have to be raised, and that each residential structure averages 1,800 square feet. Given that nonstructural and structural can be used together, the assumption that all buildings would have to be raised is a false assumption. Additionally, we request evidence to support the assertion that the average home in this area is 1,800 square feet.

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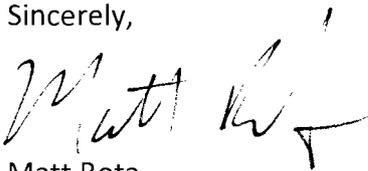
**7. Preliminary Alternatives Screening Table is Not Complete**

Table 3 on page 50 has errors in the key, and thus is not correct. In the table there are checks, dots, and x's, however nowhere in the table is it stated what a check is. This is a very important table, as it is supposed to summarize how each alternative was screened. Without knowing what the symbols are, it is impossible to interpret this table. Given the importance of this table, we request a re-notice of this IER, so we and EPA can be positive that the best option was truly chosen.

Thank you for the opportunity to comment on IER #12 and the 404(c) modification. While we are pleased that the Corps has worked towards avoiding impacts to the 404(c) area, we feel that more could potentially be done to protect the area. Given this, we request that EPA not modify the 404(c) action until IER #12 is truly completed, including the additions that are suggested above.

We trust that the Corps and EPA will take all of the above comments seriously, as they would enhance the project. We look forward to a timely written response. Further, we would welcome the opportunity to meet with the agencies to discuss our concerns.

Sincerely,



Matt Rota

Water Resources Program Director

CC:

John Ettinger, US EPA

Horst Greczmiel, US CEQ

Jill Mastrototaro, Sierra Club

Melissa Samet, American Rivers

Barry Kohl, LA Audubon Council

Jill Witkowski, Tulane Environmental Law Clinic

Mike Murphy, Tulane Environmental Law Clinic

John Lopez, Lake Pontchartrain Basin Foundation

Carlton Dufrechou, Lake Pontchartrain Basin Foundation

Mark Davis, Tulane University

Maura Wood, National Wildlife Federation

Juanita Constable, National Wildlife Federation

Natalie Snider, Coalition to Restore Coastal Louisiana

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Steven Peyronnin, Coalition to Restore Coastal Louisiana

Paul Kemp, National Audubon Society

Haywood Martin, Delta Chapter Sierra Club.



Haywood R. Martin, Chair  
Sierra Club, Delta Chapter  
400 Glynnedale Ave.  
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February 11, 2009

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Barbara Keeler (6WQ-EC)  
EPA Region 6  
1445 Ross Avenue,  
Dallas, TX 75202-2733

**Re: Combined public hearing on the Draft IER-12, on the modification of CWA Sec. 404(c) determination for Bayou aux Carpes; and hearing on GIWW West Closure Complex.**

The Sierra Club Delta Chapter supports a safe hurricane protection levee for the entire New Orleans area including the west bank of Jefferson Parish. We also support the use of natural systems such as forested and non-forested wetlands to add progressive barriers to storm surges.

We thank EPA and the other resource agencies for recommending to the Corps a change in their original preferred alternative, which was the Southern Closure option. It appears that the proposed alternative would take 9.6 acres of the BAC as opposed the 600 acres of marsh that would have been impacted by the earlier proposal. While this is a large decrease in the taking of wetlands of national significance, we suggest that the Corps can do better. Additional structural changes to the eastern levee and closure complex would avoid any wetland loss to the BAC. The Corps Alternative 2, should be modified to avoid any direct or indirect impacts to the Sec 404(c) wetlands. It appears that there is adequate space to move the structure further into the waterway so as to avoid the 404(c) wetlands.

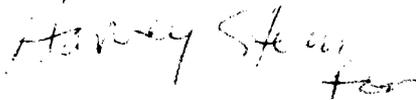
We are also concerned that any additional information gathered over the one-year baseline study will come after the project has been approved. This includes most of the impacts to the BAC area. Also, the engineering design report for the gates and floodwalls has not been completed. The DIER states that a Draft Comprehensive Environmental Document (CED) "will contain updated information for any IER that had incomplete or unavailable data at the time it was posted for public review." It appears that potentially critical information will not be available at the time the IER is approved and construction commences. The list of inadequacies admitted by the Corps shows that this document should not have been released until the Corps had time to finish its work and a complete IER prepared for public and agency review.

We are informed that the Bayou aux Carpes 404(c) area will be included within the Jean Lafitte National Historical Park and Preserve this year. Senate bill S. 22 has passed the US Senate and it is expected to pass the House soon. This provides significant additional importance to the protection of the BAC as, a 404(c) area and as part of the Barataria Preserve of the National Park.

Because there are still important data omitted from the draft document, we request that a revised/amended IER be prepared and circulated to the public and resource agencies for review. We are formally requesting that IER-12 be amended to include omitted information, and full responses to the public/agency comments on the DIER-12

In conclusion, we oppose Alternative 2, the preferred alignment, as presented in the DIER-12. We request the Corps do an amended IER containing new designs and supportive data, and we strongly recommend that EPA deny the request by the Corps to modify its final determination on the Bayou aux Carpes CWA 404(c). Furthermore we request that the comment period be extended so that all interested parties have adequate time to prepare substantive comments.

Thank you,

A handwritten signature in black ink, appearing to read "Haywood Martin". The signature is written in a cursive style with some loops and flourishes.

Haywood Martin, Chair  
Sierra Club Delta Chapter

cc: Louisiana Audubon Council