



IN REPLY REFER TO:

# United States Department of the Interior

NATIONAL PARK SERVICE  
Jean Lafitte National Historical Park and Preserve  
419 Decatur Street  
New Orleans, Louisiana 70130-1035



N-16

February 11, 2009

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

Dear Ms. Keeler:

On November 4, 2008, the U.S. Army Corps of Engineers (Corps) sent a request to the Environmental Protection Agency (EPA) asking for a modification of EPA's Bayou aux Carpes 404 (c) Final Determination. The purpose of the modification would be to allow the construction of the so-called West Closure Complex (WCC) as outlined in draft Individual Environmental (IER) 12, titled "West Bank and Vicinity, Gulf Intracoastal Waterway (GIWW), Harvey and Algiers Levees and Floodwalls, Jefferson, Orleans and Plaquemines Parishes," Jean Lafitte National Historical Park and Preserve offers the following comments.

The National Park Service maintains a strong interest in the integrity of the Bayou aux Carpes 404 (c) area (BAC) since it is linked both hydrologically and ecologically to areas within the boundary of the Barataria Preserve. A bill that has passed the Senate and is being considered in the House would change the boundary of the Preserve to include the federally owned land within the area. The proposed change requested by the Corps would affect a portion of that federal land.

NPS is fully cognizant of the Congressional directive under which the Corps is working to provide enhanced 100-year hurricane protection to the approximately 250,000 people living on the West Bank of the New Orleans metropolitan area. The Corps presented arguments for their conclusion that they could achieve the highest level of risk reduction by building a floodwall, navigation gate, and pumping station complex in the Gulf Intracoastal Waterway adjacent to the BAC 404 (c) area.

In that light we worked with the EPA, the Corps, the U. S. Fish and Wildlife Service and other federal, state, and local partners to devise a plan that would provide full protection while minimizing environmental impacts. Specifically, we jointly convinced the Corps to abandon its plans for a cross-basin floodwall (the so-called Southern Closure Complex) across the BAC. We jointly helped them devise a new plan that reduced to what they contend is the absolute minimum the footprint within the BAC. The compromise plan is the WCC. It would destroy a narrow strip of early successional mixed bottomland forest growing on an artificial spoil-bank created by deposition of dredged material from the GIWW.

The decision by EPA will be based upon a wide range of considerations, which cannot be addressed by NPS. We address instead specific questions about the impact of the Corps proposal on the ecological and hydrological integrity of the BAC and on whether or not the WCC would irreparably impair current or potential park resources.

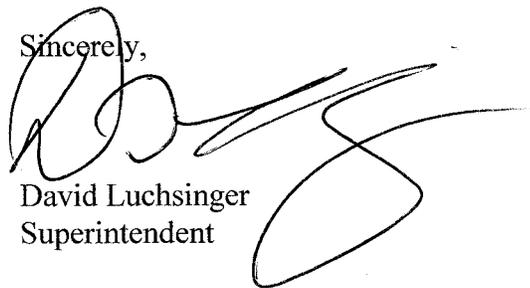
Congress created Jean Lafitte National Historical Park and Preserve to, in part, “preserve significant examples of the natural and historical resources of the Mississippi delta region.” The Barataria Preserve was located adjacent to the New Orleans metropolitan region, with its boundaries made up, in part, of existing hurricane protection levees. NPS manages the resources entrusted to its care adaptively in response to that and other anthropogenic constraints on the restoration of a fully functioning natural ecosystem.

Our preferred alternative would be that the 404 c site be avoided altogether. That being said, we have determined based on preliminary review that the direct impact proposed by the Corps request is confined to an already altered and disturbed strip of artificial levee. While that levee mimics a natural levee, its most important contemporary hydrological function, which is to isolate the interior wetlands of the BAC from rapid tidal movement and long-term erosional pressures, will not be compromised by the project. Disturbed bottomland habitat directly destroyed by the floodwall complex will be mitigated for by the Corps.

In addition, the Corps has agreed to incorporate project features that will improve hydrological function within the BAC. If Corps sponsored scientific analysis indicates that such measures are advisable and said analysis can be substantiated by NPS, these features may help restore more natural historic water flows by removing man-made impediments. On balance, therefore, NPS concludes that the project has the potential to provide a net benefit to the resource.

Should EPA grant the Corps request, we look forward to reviewing future design specifications as they are refined. It is our hope that as the technical analysis proceeds, the impact on the BAC can be further reduced. Please do not hesitate to contact me on (504) 589-3882 extension 111 or Chief of Resource Management David Muth on (504) 589-3882 extension 128.

Sincerely,

A handwritten signature in black ink, appearing to read 'DLuchsinger', written over a large, stylized, looped flourish.

David Luchsinger  
Superintendent

cc: Gib Owen, USACOE  
Angela Trahan, USFWS

## Lyncker, Lissa A MVN-Contractor

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**From:** Keeler.Barbara@epamail.epa.gov  
**Sent:** Wednesday, February 25, 2009 3:58 PM  
**To:** Owen, Gib A MVN; Coulson, Getrisc MVN; Lyncker, Lissa A MVN-Contractor  
**Subject:** Paul Orr comment

----- Forwarded by Barbara Keeler/R6/USEPA/US on 02/25/2009 03:57 PM  
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Corps request for EPA to modify the CWA Sec 404(c) determination for  
Bayou Aux Carpes

Paul Orr

to:  
Barbara Keeler

02/12/2009 04:57 PM

Please deny the Corps Of Engineers request for EPA to modify the CWA Sec 404(c) determination for Bayou Aux Carpes. We believe that the 404(c) wetlands can be avoided while still accomplishing the goals of the project. We support Louisiana Audubon Council's recommendations on this project submitted in the letter: "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."

Sincerely,  
Paul Orr  
Lower Mississippi Riverkeeper



## 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:

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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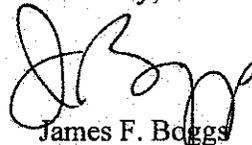
associated fish and wildlife resources would be minimally reduced within the Bayou aux Carpes CWA Section 404 (c) site. Mitigation for unavoidable losses of wet and non-wet bottomland hardwoods and swamp habitat, caused by project features of the entire hurricane protection system will be evaluated through 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

LEAGUE OF WOMEN VOTERS OF NEW ORLEANS  
1215 Prytania St., New Orleans, La. 70130

February 12, 2009

To: Barbara Keeler (6WQ-EC)  
EPA Region 6  
Dallas, TX  
From: Wendy King, President  
E-mail: wking@tulane.edu  
League of Women Voters New Orleans

Re: Denial of Army Corps of Engineers request for modified CWA  
Section 404 (c) determination.

Dear Ms. Keeler,

The LWNVO strongly supports flood protection for the West Bank of Jefferson Parish. However, in accordance with long standing positions protecting wetlands, held by local, state and national Leagues, we respectfully request that applications made by the USACE to have the 404 designation modified be denied.

- It is apparent that alternative solutions to flood protection for this area have not been fully considered.
- Tampering with 404 National Significant Wetlands could establish a precedence which may well have unintended consequences.
- Using contaminated sediments as fill in the Jean Lafitte National Historical Park & Preserve should not be an option.
- A complete and thorough environmental impact study should be undertaken by COE & EPA before any actions in wetlands occur, and before review of such plans are presented to the public for input.

The LWNVO appreciates the opportunity to submit comments concerning this matter.

Sincerely,

Wendy King, President, LWNVO



From: Keeler.Barbara@epamail.epa.gov  
Sent: Thursday, February 12, 2009 1:28 PM  
To: Barra.Michael@epamail.epa.gov; Rankin.Patrick@epamail.epa.gov;  
Brown.Sam@epamail.epa.gov; Frazer.Brian@epamail.epa.gov;  
Campbell.Ann@epamail.epa.gov; Miller.Clay@epamail.epa.gov; Owen, Gib A  
MVN; Coulson, Getrisc MVN; Parrish.Sharon@epamail.epa.gov;  
Landers.Timothy@epamail.epa.gov; Watson.Jane@epamail.epa.gov  
Subject: Fw: In re modification of EPA 404 (c) determination, Bayou Aux  
Carpes

----- Forwarded by Barbara Keeler/R6/USEPA/US on 02/12/2009 01:24 PM  
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"Houck, Oliver A  
"  
<ohouck@tulane.edu> To  
Barbara Keeler/R6/USEPA/US@EPA  
cc  
02/12/2009 12:05  
PM Subject  
In re modification of EPA 404 (c)  
determination, Bayou Aux Carpes

Dear Ms Keeler,

I am writing to request that EPS deny this modification, for two reasons.

The first is a matter of law. Any modification must meet the stringent alternatives test of the 404(b)(1) guidelines, and the burden is on the applicant to show that less wetland-taking alternatives are not available. To my knowledge, no such showing has been made. The modification would also violate the EPA-Corps Memorandum of Understanding establishing avoidance as the first principle of federal policy for all such decisions.

The second is an equally important matter of policy. A 404 c area, once designated and in this case, as I recall, paid for by the public, is held in trust for the public and should not be alienated even for public purposes, again, without a showing of need. Were a lesser standard to obtain, then all such areas would be subject to destruction whenever the government wanted, and left with no protections greater than Section 404 in the first place. American taxpayers paid for more than that, and their investment should be honored.

Thank you for your attention to these views.

Oliver A Houck  
Professor of Law  
Tulane Law School

*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*

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

*[mvnenvironmental@usace.army.mil](mailto:mvnenvironmental@usace.army.mil) [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*



## UNITED FOR A HEALTHY GULF

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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

Mr. Gib Owen, PM-RS  
U.S. Army Corps of Engineers  
CEMVN-PM-RS  
PO Box 60267  
New Orleans, LA 70160-0267  
[mvnenvironmental@usace.army.mil](mailto:mvnenvironmental@usace.army.mil)

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

**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.*

## **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.

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.

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.

February 11, 2009  
Gulf Restoration Network  
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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

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

February 11, 2009

Gulf Restoration Network

Page 6 of 6

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Steven Peyronnin, Coalition to Restore Coastal Louisiana

Paul Kemp, National Audubon Society

Haywood Martin, Delta Chapter Sierra Club.



# Louisiana Audubon Council

1522 Lowerline St., New Orleans, LA 70118

February 11, 2009

Gib Owen, PM-RS  
U.S. Army Corps of Engineers  
P.O. Box 60267  
New Orleans, LA 70160-0267

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 flotant 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 Barataria 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 1 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.



Haywood R. Martin, Chair  
Sierra Club, Delta Chapter  
400 Glynnedale Ave.  
Lafayette, LA 70506

February 11, 2009

Gib Owen, PM-RS  
U.S. Army Corps of Engineers  
P.O. Box 60267  
New Orleans, LA 70160-0267

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

**Re: Public hearing on the Draft IER-12, on the modification of CWA Sec. 404(c) determination for Bayou aux Carpes; and on 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 strongly 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,

Haywood Martin, Chair  
Sierra Club Delta Chapter

cc: Louisiana Audubon Council

FW GIWW WEST CLOSURE COMMENTS

-----Original Message-----

From: Connell, Timothy J MVN  
Sent: Wednesday, February 18, 2009 10:35 AM  
To: Owen, Gib A MVN; Wagner, Kevin G MVN  
Subject: FW: GIWW WEST CLOSURE COMMENTS

FYI

-----Original Message-----

From: Gerald A. Spohrer [mailto:Gerald.Spohrer@wjld.com]  
Sent: Monday, February 16, 2009 11:26 AM  
To: keeler.barbara@epa.gov  
Subject: GIWW WEST CLOSURE COMMENTS

Ms. Keeler: The following comment is from Southeast Louisiana Flood Protection Authority - West regarding the GIWW West Closure Project as proposed by the U. S. Army Corps of Engineers.

Southeast Louisiana Flood Protection Authority - West

7001 River Road

Marrero, Louisiana 70072

The Southeast Louisiana Flood Protection Authority - West and its member levee districts, the West Jefferson Levee District and the Algiers Levee District support and endorse the alignment proposed by the U. S. Army Corps of Engineers plan, entitled GIWW West Closure, WBV-90, that would allow construction of a navigable flood gate and pumping station south of the Algiers and Harvey Canal.

As currently proposed the project would require construction of a floodwall in the EPA 404 c, Bayou aux Carpes area. We understand EPA may propose the floodwall to be constructed in the waterway away from, but adjacent to the Bayou aux Carpes area.

The Southeast Louisiana Flood Protection Authority - West objects to the possible EPA position to have the floodwall to be constructed in the waterway and has serious concern that this plan would cause an unnecessary project construction expense and would definitely expose the floodwall to damage from marine traffic and significantly increase the cost of maintenance.

There would be NO long term damage to the Bayou aux Carpes area from construction of the U. S. Army Corps of Engineers plan. Any momentary impact to the area would be minimal and of a short duration.

The Southeast Louisiana Flood Protection Authority - West and its member levee districts, the West Jefferson Levee District and the Algiers Levee District believe the benefits of the U. S. Army Corps of Engineers plan for the GIWW West Closure, WBV-90, far outweigh the possible EPA proposal and therefore urge construction of the project as currently proposed by the U. S. Army Corps of Engineers.

FW GIWW WEST CLOSURE COMMENTS

Sincerely,

Gerald A. Spohrer

Chief of Operations

Southeast Louisiana Flood Protection Authority - West

Office - (504) 340-0318

Direct - (504) 347 6847

Fax - (504) 340-7801

## Lyncker, Lissa A MVN-Contractor

---

**From:** Keeler.Barbara@epamail.epa.gov  
**Sent:** Thursday, February 19, 2009 8:31 AM  
**To:** Barra.Michael@epamail.epa.gov; Rankin.Patrick@epamail.epa.gov;  
Frazer.Brian@epamail.epa.gov; Campbell.Ann@epamail.epa.gov;  
Miller.Clay@epamail.epa.gov; Owen, Gib A MVN; Coulson, Getrisc MVN; Lyncker, Lissa A  
MVN-Contractor; Parrish.Sharon@epamail.epa.gov; Landers.Timothy@epamail.epa.gov;  
Watson.Jane@epamail.epa.gov  
**Subject:** Fw: Bayou Aux Carpes Clean Water Act, Section 404C Modiification Request, EPA, IER 12

----- Forwarded by Barbara Keeler/R6/USEPA/US on 02/19/2009 08:30 AM  
-----

"Raymond Butler"  
<info@gicaonline.com>

02/18/2009 09:17  
PM

To  
Barbara Keeler/R6/USEPA/US@EPA  
cc  
"Lynn Muench"  
<lmuench@vesselalliance.com>,  
<Lincoln.D.Stroh@uscg.mil>,  
"Capt. Pauline Cook"  
<Pauline.F.Cook@uscg.mil>,  
<cdfelder@channelship.com>, "Karl  
Gonzales"  
<karl@gulfsouthmarine.com>, "'Ray  
Sick'" <ray@cenac.com>, "'Matt  
Woodruff'"  
<Matt.Woodruff@kirbycorp.com>  
Subject  
Bayou Aux Carpes Clean Water Act,  
Section 404C Modiification  
Request, EPA, IER 12

Dear Ms. Keeler,

Please accept the following comments offered on behalf of the Gulf Intracoastal Canal Association (GICA) regarding the EPA's request to move certain floodwalls associated with the Westbank Closure Complex Flood Protection Project off of the Section 404C parcel and into the navigable waters of the Gulf Intracoastal Waterway near the confluence of the Harvey and Algiers Canals. We reference the below website:  
[www.nolaenvironmental.gov](http://www.nolaenvironmental.gov) .

The GICA strongly objects to any modifications of the project design, such as those suggested by the EPA, that will further restrict the navigable waters of the United States on the Intracoastal Waterway in this reach. This portion of the GIWW is one of the highest traveled reaches of the waterway, moving over half the total tonnage of the entire 1300 mile long waterway. Near 70 million tons per year of petroleum, petrochemicals, chemical products and other bulk freight are moved on the waterway here. Most of this cargo is hazardous in nature and would pose significant environmental risk to this area should a barge incident be incited by the presence of this floodwall and its associated restrictive structures. Risks to navigation safety, the environment, and the public would be unnecessarily increased due to the presence of the supporting structures required by

the propose design change. An major accident with environmental repercussions happening right before a hurricane could bring about catastrophic results for the city of New Orleans as well as the pristine environmental area adjacent.

By copy of this objection to the United States Coast Guard Sector Commander, New Orleans AOR, we are requesting the Coast Guard review this proposed design change and submit their comments as well.

Sincerely,

Raymond Butler

Gulf Intracoastal Canal Association

2010 Butler Drive

Friendswood, Tx 77546

281-996-6915 Office

713-882-9750 Cell

281-992-4383 Fax

[www.gicaonline.com](http://www.gicaonline.com)

## Lyncker, Lissa A MVN-Contractor

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**From:** Keeler.Barbara@epamail.epa.gov  
**Sent:** Thursday, February 19, 2009 3:26 PM  
**To:** Barra.Michael@epamail.epa.gov; Rankin.Patrick@epamail.epa.gov;  
Frazer.Brian@epamail.epa.gov; Campbell.Ann@epamail.epa.gov;  
Miller.Clay@epamail.epa.gov; Owen, Gib A MVN; Coulson, Getrisc MVN; Lyncker, Lissa A  
MVN-Contractor; Parrish.Sharon@epamail.epa.gov; Landers.Timothy@epamail.epa.gov;  
Watson.Jane@epamail.epa.gov  
**Subject:** 404(c) comment

----- Forwarded by Barbara Keeler/R6/USEPA/US on 02/19/2009 03:25 PM  
-----

"Gale Helton"  
<ghelton@hydra-d  
yne.com>

02/19/2009 12:58  
PM

To  
Barbara Keeler/R6/USEPA/US@EPA  
cc  
Subject  
Hydradyne Hydraulics LLC

Barbara Keeler (6WQ-EC)

EPA Region 6

1445 Ross Avenue,

Dallas, TX 75202-2733.

Phone: (214) 665-6698.

E-mail: keeler.barbara@epa.gov

Dear Ms. Keeler:

Hydradyne Hydraulics LLC operates a Sales, Service and Fabrication concern at 2801 Peters Road, Harvey, La. We have operated along the Harvey Canal for over 40 years. We employ over 80 people in our facility on Peters Road. Our Corporate Headquarters is in Atlanta, and our primary business customers are located in Texas. We have maintained our company headquarters here in Harvey because of the history of our company and the loyalty of our employees working and living in the immediate area. We hope to continue to maintain this facility and grow our business as in the past.

It is my understanding that the EPA is currently taking comments on the Corps of Engineers proposed plan to build the West Closure Complex (WCC) in the area south of the Harvey & Algiers Canals.

The levee alignment for the East of the Harvey Canal Project initially began sometime around 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.

During Katrina, our building was wind damaged, but with the diligence of our employees, 19 days later on September 19, we were back here and operational.

Over the past two years, the Corps has studied five different alternatives for levee protection and has selected the WCC levee option in an effort to finalize this project. The businesses along the canal as well as the residents of the West Bank had NO protection during Katrina. During Hurricane Rita - a storm some 300 miles to the west - businesses along the Harvey Canal saw floodwaters coming dangerously close to the top of the existing levee. We have waited a long time, and we believe it is imperative that we move this project forward.

I certainly understand and appreciate the concerns that have been expressed for environmental impacts to the Bayou aux Carpes 404(c) area. It is my understanding that several agencies worked together with the Corps to help adopt a comprehensive plan to minimize adverse impacts within the 404(c) area and we applaud their effort. But much has been sacrificed by the business community over the past 20+ years. Some businesses are now behind the flood wall on Peters Road and others moved away completely.

I urge the EPA to move forward and to modify the 1985 Bayou aux Carpes Clean Water Act Section 404 (c) Final Determination. This project has full funding and it is critical that we move forward to protect the businesses and the residents East of the Harvey Canal.

A recent Economic Impact study of businesses along the canal (from Lapalco Blvd, to the Hero Pumping Station) 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. The potential for economic loss from a direct hit by a storm like Hurricane Katrina would be catastrophic. And, any delays in this project could mean the loss of companies and jobs.

Weighted against the many alternative alternatives, we believe this to be the best proposal, and will provide the needed protection necessary of our businesses to grow and prosper without fear of disaster.

Again, I urge you to modify the 404 (c) act to allow the WCC project.

Sincerely,

N. Gale Helton

Vice President

Hydradyne Hydraulics LLC

P.O. Box 760

Harvey, LA. 70059-0760

504-227-0254

The information in the Email and/or attachment(s) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. It may be confidential and/or privileged and is intended solely for the person or entity to which it is addressed. If you are not the intended recipient or an agent responsible for delivering it to the intended recipient, you have received it in error. The review, dissemination, copying, or taking of any action based on the contents thereof is strictly prohibited. If you have received this Email in error, please advise the sender by reply Email and then delete it and any attachment(s) from your system immediately. Thank you.

## Lyncker, Lissa A MVN-Contractor

---

**From:** Keeler.Barbara@epamail.epa.gov  
**Sent:** Thursday, February 19, 2009 2:45 PM  
**To:** Barra.Michael@epamail.epa.gov; Rankin.Patrick@epamail.epa.gov;  
Frazer.Brian@epamail.epa.gov; Campbell.Ann@epamail.epa.gov;  
Miller.Clay@epamail.epa.gov; Owen, Gib A MVN; Coulson, Getrisc MVN; Lyncker, Lissa A  
MVN-Contractor; Parrish.Sharon@epamail.epa.gov; Landers.Timothy@epamail.epa.gov;  
Watson.Jane@epamail.epa.gov  
**Subject:** 404(c) comments

----- Forwarded by Barbara Keeler/R6/USEPA/US on 02/19/2009 02:44 PM  
-----

"Philip J.  
Troxclair"  
<ptroxclair@bayou  
usteel.com> Barbara Keeler/R6/USEPA/US@EPA To  
02/19/2009 02:03 PM IER 12 cc  
Subject

As a business along Peters Road in Harvey, Louisiana, I strongly support the plans of the Army Corps of Engineers to construct a lock and floodwall around the 404c Bayou aux Carpes wetlands. I understand the construction will affect approximately 9.6 acres of this sensitive area, but we as a community need the protection from storm surge that the gate will provide. I appreciate the efforts of the Corps of Engineers and the EPA to lesson the affect upon this area. I urge the EPA to allow the Corps of Engineers to proceed with this project and provide the flood protection that is needed to protect businesses and individuals in Algiers, Belle Chasse, Harvey, and Marrero, Louisiana.

Philip Troxclair  
Mississippi River Recycling  
4390 Peters Road  
Harvey, LA 70058



# Industrial Welding Supply Co., Inc.

MAIN OFFICE  
111 Buras Drive  
Belle Chasse, LA 70037  
(504) 392-2400

1452 4th Street  
Harvey, LA 70058  
(504) 362-9395

1797 Grand Caillou Rd.  
Houma, LA 70363  
(985) 876-7575

41187 Hwy. 23 North  
Boothville, LA 70038  
(985) 534-9774

60077 Hwy. 11 N.  
Slidell, LA 70458  
(985) 645-0808

20961 Hwy. 1  
Golden Meadow, LA 70357  
(985) 475-5143

February 19, 2009

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

Dear Ms. Keeler:

IWS Gas and Supply has been on the East side of the Harvey Canal for over 25 years and during that time we have monitored the Corps plans to finalize the 100-year hurricane protection project.

The levee alignment for the East of the Harvey Canal Project has been studied, reviewed and changed several times 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.

Since hurricane Katrina, the Corps studied numerous alternative levee options in an effort to finalize this project. What resulted was the first phase of the new 100 year protection project, (i.e., the flood walls along Peters Road). Now is the time for the final phase of this project needs to move forward.

I certainly understand and appreciate the concerns that have been expressed for environmental impacts to the Bayou aux Carpes 404(c) area. It our understanding that several agencies worked together with the Corps to help adopt a comprehensive plan to minimize adverse impacts within the 404(c) area and we applaud their effort. But the business community has sacrificed much over the past 20+ years. Some businesses are now behind the floodwall on Peters Road and others have simply disappeared.

We would urge the EPA to move forward and modify the 1985 Bayou aux Carpes Clean Water Act Section 404 (c) Final Determination. This project has full funding and it is extremely critical that we move forward to protect the businesses and the residents located east of the Harvey Canal.

Recently an Economic Impact study of businesses along the canal (from Lapalco Blvd, to the Hero Pumping Station) 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.

*Quality Products ∞ Professional Service  
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# Industrial Welding Supply Co., Inc.

MAIN OFFICE  
111 Buras Drive  
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(504) 392-2400

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Harvey, LA 70058  
(504) 362-9395

1797 Grand Cailou Rd.  
Houma, LA 70363  
(985) 876-7575

41187 Hwy. 23 North  
Boothville, LA 70038  
(985) 534-9774

60077 Hwy. 11 N.  
Slidell, LA 70458  
(985) 645-0808

20961 Hwy. 1  
Golden Meadow, LA 70357  
(985) 475-5143

This study excluded companies such as IWS Gas and Supply and along the upper portion of Peters Road, the Destrehan corridor or Engineers Road. The potential for economic loss to this area is astronomical and we would urge 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,

Gary Hooter  
President  
IWS Gas and Supply

Ricky (Mousey) Chaisson  
President  
IWS Gases

Dennis Terry  
Controller  
IWS Gas and Supply

## Lyncker, Lissa A MVN-Contractor

---

**From:** Keeler.Barbara@epamail.epa.gov  
**Sent:** Friday, February 20, 2009 1:50 PM  
**To:** Barra.Michael@epamail.epa.gov; Rankin.Patrick@epamail.epa.gov;  
Frazer.Brian@epamail.epa.gov; Campbell.Ann@epamail.epa.gov;  
Miller.Clay@epamail.epa.gov; Owen, Gib A MVN; Coulson, Getrisc MVN; Lyncker, Lissa A  
MVN-Contractor; Parrish.Sharon@epamail.epa.gov; Landers.Timothy@epamail.epa.gov;  
Watson.Jane@epamail.epa.gov  
**Subject:** 404(c) comment

-----Forwarded by Barbara Keeler/R6/USEPA/US on 02/20/2009 01:46PM -----

To: Barbara Keeler/R6/USEPA/US@EPA  
From: Ken <kenanne1956@aol.com>  
Date: 02/20/2009 10:58AM  
Subject:

I recently read in the local paper that a hearing was held at the Corps of Engineers in regards to the Westbank Hurricane Project. I'm sure you are aware that this project represents the last link in full protection for the West Bank Community.

We have lived on the West Bank for more than 25 years. When I first moved here, the Corps had just begun laying out the alignment of the levee and our Congressional delegation worked hard to fund the project. What we got was a piecemeal project. And still, all these years later, as we leave town with every storm, we know our home, our community and our family and friends are not protected and that full protection is still years away!

We fully understand and appreciate the incredible value we have in the Bayou aux Carps area. However, if this project is not moved forward, the risk to the residents and businesses here would be catastrophic. I fully support the Corps proposed West Closure Gate project and ask that the EPA move this project forward by modifying 1985 Bayou aux Carpes Clean Water Act Section 404 (c) Final Determination .

Sincerely,

Connie & Kenny Nanney

---

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## Lyncker, Lissa A MVN-Contractor

---

**From:** Keeler.Barbara@epamail.epa.gov  
**Sent:** Friday, February 20, 2009 1:52 PM  
**To:** Barra.Michael@epamail.epa.gov; Rankin.Patrick@epamail.epa.gov;  
Frazer.Brian@epamail.epa.gov; Campbell.Ann@epamail.epa.gov;  
Miller.Clay@epamail.epa.gov; Owen, Gib A MVN; Coulson, Getrisc MVN; Lyncker, Lissa A  
MVN-Contractor; Parrish.Sharon@epamail.epa.gov; Landers.Timothy@epamail.epa.gov;  
Watson.Jane@epamail.epa.gov  
**Subject:** 404(c) comment

-----Forwarded by Barbara Keeler/R6/USEPA/US on 02/20/2009 01:49PM -----

To: Barbara Keeler/R6/USEPA/US@EPA  
From: "Peggy Bourgeois" <hcia@bellsouth.net>  
Date: 02/20/2009 09:42AM  
cc: "'Jerry Huffman'" <gjhuff@kwkplaw.com>  
Subject: Bayou aux Carpes

Barbara Keeler (6WQ-EC)

EPA Region 6

1445 Ross Avenue,

Dallas, TX 75202-2733.

Dear Ms. Keeler:

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 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

Jerry Huffman

Gerald J. Huffman, Jr.

President

Peggy Bourgeois

Executive Director

Harvey Canal Industrial Association

Phone: (504) 367-1721

Fax: (504) 367-8927

Cell: (504) 289-4653



**JEFFERSON PARISH  
LOUISIANA**

**OFFICE OF PARISH PRESIDENT**

**Our Mission is:**  
"Provide the services,  
leadership, and vision to  
improve the quality of life  
in Jefferson Parish."

**AARON F. BROUSSARD**  
PARISH PRESIDENT

February 20, 2009

Ms. Barbara Keeler  
Coastal & Wetlands Planning Coordinator  
EPA Region 6 (6WQ-EC)  
1445 Ross Ave., Suite 1200  
Dallas, TX 75202-2733

Dear Ms. Keeler:

As part of the critical Hurricane Risk Reduction System for the West Bank of Jefferson, Orleans and Plaquemines parishes, the Corps of Engineers is proposing the construction of the GIWW West Closure Complex located just west of where the Harvey and Algiers canals meet. Consisting of navigable floodgates, a 20,000 cubic feet per second drainage pumping station, levees, and floodwalls, this complex would block the storm surge from entering the Harvey and Algiers canals and provide substantial risk reduction to the nearly 250,000 residents in these areas. As part of this complex a floodwall along the west bank of the Gulf Intracoastal Waterway just south of the Old Estelle outfall canal will have to be constructed. This floodwall as currently planned requires that the EPA issue a modification to Bayou Aux Carpes 404c Final Determination to allow the Corps to construct the wall within 100 feet of the bank line for a distance not to exceed 4200 feet. In the current plan the wall is protected from barge impacts from the numerous barge tows traveling the Harvey and Algiers canals. This natural berm protection when enhanced will provide the most reliable protection for the wall and provide the most reliable system free from the real risk of damage from barge impacts.

At a recent public hearing, several representatives from environmental groups requested that the EPA deny the Corp's request to modify the 404c Final Determination and instead force the construction of the wall in the water adjacent to the bank line. While we understand that this is technically possible, we also understand that it will require substantial delay in construction time and result in cost increases in excess of fifty million dollars. Most importantly, the risk reduction provided by the existing bank line will be eliminated forcing the wall farther into the navigable barge channel and exposing the wall to barge impact damage that could prove catastrophic if it were to occur just prior to a tropical event. This is unacceptable and cannot be allowed to occur. The Corps has worked for many months with all stakeholders including those in the environmental community to reduce impacts resulting from this necessary flood protection project and has developed a plan that truly minimizes impacts to the environment.

The project, as proposed is the single most important factor in providing hurricane protection to the residents and businesses on the westbank of Jefferson Parish. The impact to this 10 acres on the fringe of Bayou Aux Carpes 404c wetland should be allowed in the best interest of the residents of Jefferson Parish and the taxpayers of this nation. Accordingly, I am requesting that the EPA expeditiously grant the Corps of Engineers' request to modify the Bayou Aux Carpes 404c Final Determination and allow for construction of this vital and historic flood protection.

Sincerely,

**AARON F. BROUSSARD**  
Parish President

# Plaquemines Parish Government

**BILLY NUNGESSER**  
Parish President

8056 Hwy. 23, Suite 200  
Belle Chasse, LA 70037

(504) 392-6690  
(504) 274-2462  
1-888-784-5387  
Fax: (504) 274-2463

February 20, 2009

Ms. Barbara Keeler

Environmental Protection Agency

Dear Ms, Keeler:

The following is Plaquemines Parish Government's position concerning the Bayou aux Carpes Clean Water Act Section 404(c) modification for construction of the GIWW West Closure Complex.

The Parish agrees with the Corps' request for the 404(c) modification. If denied, this would have substantial construction, cost and flood protection delays for Plaquemines, Jefferson and Orleans Parishes. The time, cost and overall environmental savings are the very reasons this project has been selected over the parallel levee protection plan. This is very important to the protection of hundreds of thousands of human lives and property in all of our parishes. Plaquemines Parish is currently working to develop a mitigation plan to which any adverse environmental impacts could be assigned. Also, Plaquemines Parish Government is working diligently developing a coastal restoration project to help with the rebuilding of Plaquemines Parish of which the sector gate forms a necessary and integral part.

Safety is another issue. Moving the floodwall into the water from the existing bank will cause a much higher probability of marine traffic impacting the floodwall structure; thus, again endangering the citizens and property of the mentioned parishes with flooding.

We are urgently requesting to allow this modification for the Corps to provide this necessary flood protection for our citizens.

Sincerely,



Billy Nungesser

Parish President

## Lyncker, Lissa A MVN-Contractor

---

**From:** Keeler.Barbara@epamail.epa.gov  
**Sent:** Friday, February 20, 2009 5:18 PM  
**To:** Barra.Michael@epamail.epa.gov; Rankin.Patrick@epamail.epa.gov;  
Frazer.Brian@epamail.epa.gov; Campbell.Ann@epamail.epa.gov;  
Miller.Clay@epamail.epa.gov; Owen, Gib A MVN; Coulson, Getrisc MVN; Lyncker, Lissa A  
MVN-Contractor; Parrish.Sharon@epamail.epa.gov; Landers.Timothy@epamail.epa.gov;  
Watson.Jane@epamail.epa.gov  
**Subject:** 404(c) comment

This gentleman spoke at the hearing. I don't know whether he submitted a written statement that night but we'll know when the transcript and exhibits are available.

Barbara Keeler  
Coastal & Wetlands Planning Coordinator  
EPA Region 6 (6WQ-EC)  
1445 Ross Ave., Suite 1200  
Dallas, TX 75202-2733  
tel: 214-665-6698  
fax: 214-665-6689  
e-mail: keeler.barbara@epa.gov

-----Forwarded by Barbara Keeler/R6/USEPA/US on 02/20/2009 05:14PM -----

To: Barbara Keeler/R6/USEPA/US@EPA  
From: Allen Hero <heroncson@bellsouth.net>  
Date: 02/20/2009 05:10PM  
Subject: IER12

Ms Keeler,

I am the managing partner of Numa C. Hero & Son which owns properties in Jefferson and Plaquemines Parishes. We are confident that this project will provide a better protection plan than the single levee system now in effect and encourage its construction.

The comments as to the ten acres of concern in the Bayou aux Carpes area seem to be misguided. The thin strip along the Intracoastal Canal is not all flotant marsh, but a berm area built up as a result of wave action from the traffic in the channel .

Allen Hero  
Numa C. Hero & Son  
428 Planters Canal Road  
Belle Chasse, LA 70037



# LOUISIANA WILDLIFE FEDERATION

*"... conserving our natural resources and your right to enjoy them."*

affiliated with



20 February 2009

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

RE: modification of CWA Sec. 404(c) determination for Bayou aux Carpes

Dear Ms. Keeler:

I am writing on behalf of the Louisiana Wildlife Federation concerning the infringement on the Bayou aux Carpes wetlands (9.6 acres) by the proposed Corps of Engineers hurricane protection work on the Westbank in the New Orleans Area. After reviewing the Corps' proposal, we believe that the Corps has not sufficiently evaluated alternative alignments of the project that could provide the desired protection while avoiding direct impacts to these important wetlands.

We understand the urgency of the Corps' work and do not wish to unnecessarily impede the swift accomplishment of its task. However, a more channelward alignment of the proposed barrier and berm may actually be more effective, and even thrifty, in achieving the protection needed, while sparing the loss and degradation of the Bayou au Carpes wetlands.

We therefore urge the Environmental Protection Agency to withhold approval of any request by the Corps of Engineers to alter the Bayou aux Carpes wetlands until the Corps completes a thorough evaluation of the alternative of aligning the proposed barrier and berm further channelward than the currently preferred alternative, and reports its finding to the public. At such time, a more informed decision can be made regarding the fate of these 9.6 acres.

Thank you for your consideration.

Yours in conservation,

Barney Callahan  
President

C NOD, USACE

U.S. Department of  
Homeland Security

United States  
Coast Guard



Commanding Officer  
U.S. Coast Guard  
Sector New Orleans

1615 Poydras St.  
New Orleans, LA 70112  
Staff Symbol: SPW  
Phone: 504.565.5000

16630  
23 February 2009

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

Dear Ms. Barbara Keeler:

Please accept the following comments offered on behalf of the United States Coast Guard regarding the EPA's request to move certain floodwalls associated with the Westbank Closure Complex Flood Protection Project off of the Section 404C parcel and into the navigable waters of the Gulf Intracoastal Waterway near the confluence of the Harvey and Algiers Canals. We referenced the below website: [www.nolaenvironmental.gov](http://www.nolaenvironmental.gov).

Sector New Orleans objects to any modifications of the U.S. Army Corps of Engineers (ACOE) project design that will further impede the navigable waters of the Gulf Intracoastal Waterway. If the ACOE has to reduce the width of the gates to accommodate the floodwall being moved into the channel, it will severely impact safe navigation through these flood gates in one of the most highly traveled waterways in Louisiana. We cannot have a floodwall in the waterway because of the increased hazards of vessels hitting the floodwall and causing a major marine incident. A shoreline is a necessity as a buffer between marine traffic and the floodwall.

The Gulf Intracoastal Waterway is paramount to the facilitation of commerce within the Gulf coast region and a floodwall in the waterway in this high traffic zone greatly increases the chances of potentially disastrous marine casualties.

If you have any questions please contact LCDR Eva Van Camp of my staff at (504) 565-5044.

Sincerely,

A handwritten signature in black ink, appearing to read "L. D. Stroh".

L. D. STROH  
Captain, U. S. Coast Guard  
Commander, Sector New Orleans

Copy: Gulf Intracoastal Canal Association

Thomas G. Halko  
P.O Box 8, 4518 Jean Lafitte Blvd.  
Lafitte, LA 70067-0008

February 22, 2009

Attention: Barbara Keeler, Regional Coordinator, Region 6  
United States Environmental Protection Agency

**sent via e-mail at Keeler.barbara@epa.gov**

Dear Ms Keeler:

RE: Bayou aux Carpes Clean Water Section 404(c), Corps project IER 12

Thanks to the EPA for extending the comment period. The Corps should have done the same. I hope a copy of this directed to them, as well as Senators Landrieu, Vitter and Representative Melancon will give voice to my displeasure at the Corps failure to extend their comment period.

In regards to the modification request, I ask that it be denied. Too often, sanctuaries -- protected, and those yet to be designated -- have been sacrificed in the name of progress and protection. The lack of clear thought and imagination that the Corps' GIWW flood gates and pumping project represents, is not deserving of any environmental offset.

Collectively, we need to take pause, and more completely examine the environmental, economic and culture impact of the project and the adverse environmental impact to the historic and economically vital communities of the Barataria Basin estuary. The funds for this one-half billion dollar project can be better spent with flood gates to the South as proposed by the "Donaldsonville-to-the-Gulf" study.

With best regards, I am yours truly,

*Thomas G. Halko*

Thomas G. Halko

c: U.S. Army Corps of Engineers  
Landrieu  
Vitter  
Melancon  
Kerner



February 23, 2009

Via Email: [keeler.barbara@epa.gov](mailto:keeler.barbara@epa.gov)

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

Re: 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

Dear Ms. Keeler:

American Rivers and the National Wildlife Federation appreciate the opportunity to comment on the 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.

American Rivers is a national conservation organization working to protect and restore healthy rivers and wetlands for the benefit of people, wildlife, and nature. American Rivers has a long history of working for effective restoration of Louisiana's coastal wetlands to provide storm and hurricane protection for New Orleans and surrounding parishes, and of working to ensure effective utilization of Clean Water Act § 404(c) to protect nationally significant wetland resources. American Rivers has more than 65,000 supporters nationwide, and works in partnership with thousands of river and conservation organizations.

The National Wildlife Federation is the nation's largest conservation education and advocacy organization with over four million members and supporters, affiliate conservation organizations in some 47 states and territories, and which is dedicated to inspiring Americans to protect, preserve and restore wildlife, wildlife habitat and natural resources for our children's future. The Federation has a long history of active involvement with protection, restoration and wise management of our nation's precious water resources.

Our organizations believe that developing a reliable hurricane protection system for the New Orleans area is essential, and that time is of the essence in both the planning and construction of such a system. However, because protecting and restoring the region's storm buffering coastal

wetlands is an indispensable component of such a system, hurricane protection planning must include both comprehensive wetland restoration and the most robust efforts possible to protect existing wetlands in the first instance. This is particularly true for wetlands protected under Clean Water Act § 404(c).

We greatly appreciate the significant progress made by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) in reducing the proposed impacts to the Bayou aux Carpes 404(c) area. However, we believe that the Corps has the ability to completely avoid impacts to this ecologically sensitive and significant area, and it should be required to do so. In addition, it is clear that the record prepared by the Corps fails to provide sufficient information upon which a determination to modify the 404(c) could reasonably be made.

### **1. The Existing Record Fails to Provide Information Upon Which EPA Can Reasonably Evaluate the Bayou aux Carpes 404(c) Modification Request**

As EPA is aware, the agency has used its authority under Clean Water Act § 404(c) quite sparingly. Of the tens of thousands of activities reviewed under Clean Water Act § 404 each year, only twelve have ever been prohibited under Section 404(c).<sup>1</sup> It is clear, then, that a 404(c) determination is of particular significance and is a recognition of the vital importance of the resources protected by that determination. As a result, a modification to a 404(c) determination should be granted only in the rarest of circumstances, and even then, only if the following analyses and tests are met:

First, it should be a fundamental prerequisite to consideration of any request to modify a 404(c) determination, that the applicant (here the Corps) have clearly demonstrated that no possible alternatives are available that would avoid impacts to the 404(c) area altogether. If such alternatives are available – or the applicant has failed to clearly demonstrate that they are not available – the requested modification should be denied. This is not an onerous requirement, and it is one that is squarely in line with the standard showings required under Clean Water Act § 404 and the 404(b)(1) Guidelines.<sup>2</sup>

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<sup>1</sup> Of these determinations, only three have ever been modified, and each modification was based on unique circumstances: (1) the 1988 404(c) determination for the Russo Development Corporation Site in New Jersey was modified in 1995 to allow Russo to seek authorization for a discharge on the site, which the company had previously illegally filled, if it performed significant mitigation; (2) the 1985 404(c) determination for Bayou aux Carpes was modified in 1992 to allow emergency relocation of a pipeline that would produce only minimal and temporary impacts; and (3) the 1984 404(c) determination for the M.A. Norden Company Site in Alabama was modified to allow construction of road over an existing railroad spur on the site after the company demonstrated that there were no practicable alternatives that would allow access to the company's upland area and EPA determined that the impacts to the 404(c) site would be minimal. <http://www.epa.gov/owow/wetlands/regs/404c.html> (last visited February 12, 2009).

<sup>2</sup> The Clean Water Act § 404(b)(1) Guidelines require that a § 404 permit (or an activity such as this that is otherwise subject to § 404) be denied “if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem.” 40 C.F.R. § 230.10(a). “An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.” This includes locating the project in an area not currently owned by the applicant. An

Second, in the highly unusual event that there are no possible alternatives that would completely avoid impacts to the 404(c) area, a modification should be considered only where a full and comprehensive assessment of impacts demonstrates that the requested modification is acceptable under the 404(c) criteria *and* the proposed project is of such national importance that it would warrant modification of an existing 404(c) designation.

These tests have not been met in this case. Critically, the Corps acknowledges the existence of an alternative that would avoid the 404(c) area altogether. In addition, neither the Draft Individual Environmental Report #12 (IER)<sup>3</sup> nor the Corps' November 4, 2008 request for modification provide sufficient information upon which a determination to modify the 404(c) could reasonably be made.

The lack of information in the IER is compounded by the segmented nature of the environmental review process being utilized for this project. IER#12 covers only a small portion of the proposed project, and critical analyses that should be carried out *before* the Corps makes a decision on the portion of the plan recommended in IER#12 will not be carried out until some later date (*e.g.*, cumulative impacts, mitigation, data gaps and uncertainties).

*Importantly, a full and comprehensive assessment of both (1) alternatives to avoid impacts to the 404(c) area altogether, and (2) impacts to the 404(c) area, need not slow down the Corps' efforts to provide hurricane protection for New Orleans. To the contrary, the Corps could proceed with planning for the vast majority of this project while these evaluations are being conducted.*

## **2. An Alternative that Would Completely Avoid Impacts to the Bayou aux Carpes 404(c) Site Has Been Summarily and Inappropriately Dismissed**

As noted above, while we appreciate the efforts of EPA and the Corps to reduce the proposed impacts to the Bayou aux Carpes 404(c) area, we believe that the Corps has the ability to completely avoid impacts to this ecologically sensitive and significant area, and that it should be required to do so.

The IER describes an alternative that “would eliminate all discharges of fill material and eliminate all impacts to the Bayou aux Carpes CWA Section 404(c) area.” IER #12 at 49. However, this alternative was summarily dismissed by the Corps based on unsubstantiated “constructability and navigation concerns” and “engineering and construction challenges.” In total, the IER devotes only 2 short paragraphs to the discussion of this alternative.<sup>4</sup>

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area that is not presently owned by the applicant may be a practicable alternative if it “could be reasonably obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity.” 40 C.F.R. § 230.10(a)(2).

<sup>3</sup> IER #12 addresses the GIWW, Harvey, and Algiers Levees and Floodwalls Jefferson, Orleans, and Plaquemines Parishes, Louisiana.

<sup>4</sup> The full text of this discussion from page 49 of the IER is as follows:  
“2.5.3.4 Alternative G – GIWW C

This limited discussion is not supported by any evidence in the IER, and cannot be supported by any reasonable assessment of the facts on the ground. For example, the IER summarily concludes that the only way to avoid the 404(c) area would be to “construct the eastern innovative floodwall completely within the GIWW” which the Corps claims would adversely affect navigation. IER at 49. Both assertions are incorrect and contradicted by other provisions within the IER.

The GIWW has an authorized width of just 125 feet, but the waterway along the eastern portion of the 404(c) area where the floodwall would be built is between 500 and 600 feet wide (with much of this extra width resulting from erosion caused by barge traffic). As a result, the GIWW occupies only a minor portion of the waterway adjacent to the eastern portion of the 404(c) area. Thus, the floodwall would not have to be constructed “completely within the GIWW” to avoid the 404(c) area. Instead, the 100 foot wide floodwall could be constructed in an area that is both outside of the 404(c) area *and* outside of the GIWW.

The Corps’ claims that constructing the floodwall outside of the 404(c) area would adversely affect navigation is not supportable as a matter of law, and is contradicted by other significant elements of the Corps’ recommended plan.

First, as a matter of law, the Corps may only maintain the GIWW as a 125 foot wide by 12 foot deep navigation channel. Because the area just offshore of the eastern edge of the 404(c) area is *not* part of the federally authorized GIWW navigation channel, construction of the floodwall in that area could not reduce the width of the authorized navigation channel to less than 125 feet. As a result, construction of a floodwall just offshore of the 404(c) area could not adversely effect navigation within the authorized GIWW.

Moreover, we have advised that the spoil bank that now forms the edge of the Bayou aux Carpes area – and upon which the Corps wants to construct the floodwall – was, at the time of the

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Bayou aux Carpes CWA Section 404c area alternatives that would avoid impacts to that area were considered. Alternative G is similar to WCC but would construct the eastern innovative floodwall completely within the GIWW, avoiding all discharges of dredge and/or fill material in the Bayou aux Carpes CWA Section 404(c) area. This alternative was eliminated from further consideration due to constructability and navigation concerns. The construction a floodwall within the heavily used navigation channel that would eliminate all discharges of fill material and eliminate all impacts to the Bayou aux Carpes CWA Section 404(c) area wetland would create engineering and construction challenges producing significant increases in construction time and cost necessary to maintain the same structure reliability achieved by placement of the wall on the bank.

The channel geometry in this area, in particular the very tight curves and narrow channel in the Harvey Canal directly adjacent to this portion of the Bayou aux Carpes CWA Section 404(c) area present challenges that would require impractical actions to achieve a structure that would be able to be completed by June 2011. This action would require the relocation of the navigation channel as well as the wall and berms and or structures required to protect the wall from barge impacts. A small channel behind the wall to maintain hydraulic flows to the Bayou aux Carpes CWA Section 404(c) area would also have to be constructed under this alternative. The greatly increased construction cost and durations as well as the increased risk to the walls make moving the walls into the channel impractical.”

original 404(c) designation, set back from the water's edge. This area is now at the water's edge only because approximately 100 feet or more of land along portions of the eastern side of the Bayou aux Carpes area has eroded since the original designation, most likely due to navigation on the GIWW. If this information is correct (and it could readily be ascertained through comparisons of maps), it would mean that construction of the floodwall just offshore of the current boundaries of the 404(c) area would likely be in an area that was formerly wetlands within the boundaries of the original 404(c) area. As a result, construction in this area could not affect either the authorized GIWW or navigation within the GIWW. Moreover, the shallow nature of the waterway at the area just offshore of the eastern edge of the 404(c) site would seem to make this area entirely unsuitable for commercial navigation.

Second, the recommended plan includes construction of foreshore protection in the waterway along another stretch of the eastern edge of the 404(c) area:

“In the GIWW adjacent to the Bayou aux Carpes CWA Section 404(c) area, 2,000 linear feet (LF) of foreshore dike protection using 650 lb stone would be constructed to prevent impacts (i.e., scouring, bank erosion, etc.) from occurring within the 404c area due to the discharge from the 20,000 cfs pump station (figure 4a, 4c, and 4d; diagram 2). This foreshore dike protection would be constructed within the GIWW adjacent to but not within the Bayou aux Carpes CWA Section 404(c) area. Foreshore protection would not be expected to alter existing hydrologic conditions within the Bayou aux Carpes CWA Section 404(c) area.” IER at 28; see also IER at 29, diagram 2.

Despite the fact that at least a portion of this foreshore protection would be constructed in an area of the waterway that appears to be at least as narrow as the portion where a floodwall outside of the 404(c) area would need to be constructed, the IER raises no concerns whatsoever regarding adverse effects on navigation from this foreshore protection. *See* IER at 28; IER at 29, diagram 2. If the foreshore protection would not adversely affect navigation, moving the floodwall to just offshore of the 404(c) area also should not cause any navigation impacts.

Third, the recommended plan includes a closure complex with channel gates through which barges will pass. Those gates will have a much smaller area of passage for barges than would be created by construction of the floodwall just offshore of the 404(c) area *and* outside of the GIWW. For example, the Main Channel Gate will have either an opening or footprint of 150 ft to 300 ft, while the Bypass Channel Gate will have either an opening or footprint of 75 ft to 150 ft. *See* IER at 25, Table 1; IER 153 (“This complex would include a 150-ft to 300-ft main channel gate, a 75-ft to 150-ft bypass channel closure gate.”). These gates would be part of the Closure Complex Structure located at – and connected to – the southern end of the proposed floodwall. Presumably, the Corps has designed those gates with sufficient clearance to allow safe navigation. As a result, safe navigation clearly does not require the full 500 to 600 feet of clearance, including areas outside the authorized channel, that currently exists along the portion of the 404(c) area where the floodwall would be built.

EPA should require the Corps to prepare a full and comprehensive evaluation of alternative alignments that would completely avoid impacts to the Bayou aux Carpes site before EPA evaluates – or makes any type of decision regarding – the requested modification to the 404(c) determination. EPA should deny the requested modification if an alternative alignment would avoid impacts altogether (and of course EPA should deny the requested modification if the impacts would violate the 404(c) criteria).

### **3. The Impacts to Wetlands in the 404(c) Area Have Not Been Meaningfully Evaluated**

It is beyond dispute that the Bayou aux Carpes 404(c) area consists of high value, nationally significant wetlands. As noted in the IER, the area:

“is a highly productive and diverse wetland habitat that is of significant value to the ecosystem for many species of fish and wildlife,” and the “wetlands and open water bodies of the 404c area provide nursery, feeding and spawning habitat for numerous recreationally and commercially important freshwater and estuarine fish and shellfish species.” IER at 70.

\* \* \*

“The wetlands serve as valuable feeding, resting, nesting, hunting, and/or escape habitat for numerous species of game and non-game mammals, commercially important furbearers, songbirds, raptors, migratory and resident waterfowl, wading birds, and woodpeckers, as well as many species of amphibians and reptiles, including the American alligator (*Alligator mississippiensis*). Some important wildlife inhabiting the area are the gray squirrel (*Sciurus carolinensis*), pileated woodpecker (*Dryocopus pileatus*), mink (*Mustela vison*), wood duck (*Aix sponsa*), and great egret (*Ardea alba*). These wetlands also serve as groundwater recharge areas, storage areas for storm and flood water, and natural water filtration areas. These wetlands store waters during a rain or tropical storm event and release the water slowly after absorbing pollutants and excess nutrients.” IER at 71

More detail on the ecological value of the Bayou aux Carpes 404(c) area can be found in the October 16, 1985 Final 404(c) Determination. (<http://www.epa.gov/owow/wetlands/pdf/BayouAuxCarpesFD.pdf> last visited February 17, 2009).

Despite the vital importance of the Bayou aux Carpes wetlands, the IER fails to fully evaluate the direct impacts, and fails completely to provide any specific information on the indirect and cumulative impacts to the 404(c) area. The absence of a robust wetlands impacts analysis means that EPA has no basis for making a determination regarding the requested modification.

The only specific information in the IER on the impacts to the 404(c) area is that the proposed action would directly impact “approximately 9.6 acres of cypress-tupelo swamp and BLH in the

Bayou aux Carpes CWA Section 404(c) area” and those impacts would be permanent. IER at 71. However, evidence within the IER suggests that this could understate the direct impacts. For example, while in some places the IER indicates that the total construction corridor is 4,200 feet long by 100 feet wide – which would yield the 9.6 acres of direct and permanent impacts – in other places the IER states that the floodwall footprint could take up that entire area. The IER states at page 65 that the “proposed action consists of constructing an innovative T-wall *no longer than 4,200 ft and no wider than 100 ft* along the eastern boundary of the Bayou aux Carpes CWA Section 404(c) area.” IER at 65 (emphasis added).

If the floodwall footprint covers the full 9.6 acres, the direct impacts from construction must be larger. Moreover, even if the 9.6 acres covers the entire construction corridor, it is difficult to imagine that construction would not cause additional impacts outside of that limited construction corridor, even with the most rigorous adherence to best management practices during construction. The IER does not explain how it will avoid direct impacts outside of the 9.6 acre area, other than to say that it will construct the floodwall “via water based equipment.” IER at 30. The absence of any discussion of the steps that will be taken to avoid additional direct impacts adds to the extensive unreliability of the impacts analyses.

Critically, the IER does not identify any specific secondary or cumulative impacts from the proposed action. Instead, the IER provides only the most generalized statement about the potential for such impacts:

“[O]verall indirect and cumulative impacts due to additional wetland losses and levee construction may have a lasting and delayed impact on wetland habitat due to altered hydrological regimes leading to habitat alterations, changes in water salinity and nutrient load, and increased rates of subsidence. These factors may contribute to long-term wetland loss within the region and subsequent negative trickle-down effects on fish and wildlife communities dependent upon nearby wetland habitat. Cumulative wetland impacts would be expected due to implementation of the proposed action in concert with additional WBV projects. Construction of the proposed action would contribute to the cumulative losses of cypress-tupelo swamp and BLH within the HSDRRS. Cumulative wetland impacts would be mitigated.” IER at 64

\* \* \*

“In general, the overall indirect and cumulative impacts due to additional wetland losses and levee construction for each alternative may have a lasting and delayed impact on wetland habitat due to altered hydrological regimes leading to habitat alterations, changes in water salinity and increased rates of subsidence. These factors may contribute to long-term wetland loss within the region and subsequent negative trickle-down effects on fish and wildlife communities dependent upon wetland habitat.” IER at 68.

Indirect impacts can be significant. For example, the seminal textbook on wetlands makes it clear that even small alterations in wetlands hydrology can produce significant and ecosystem-

wide changes: “*When hydrologic conditions in wetlands change even slightly, the biota may respond with massive changes in species composition and richness and in ecosystem productivity.*”<sup>5</sup>

Indeed, “[h]ydrology is probably the single most important determinant of the establishment and maintenance of specific types of wetlands and wetland processes,” and even “small changes in hydrology can result in significant biotic changes.”<sup>6</sup> This is because:

Hydrology affects the species composition and richness, primary productivity, organic accumulation, and nutrient cycling in wetlands. . . . Water depth flow patterns, and duration and frequency of flooding, which are the result of all the hydrologic inputs and outputs, influence the biochemistry of the soils and are major factors in the ultimate selection of the biota of wetlands. . . . Hydrologic conditions can directly modify or change chemical and physical properties such as nutrient availability, degree of substrate anoxia, soil salinity, sediment properties, and pH.<sup>7</sup>

The indirect impacts, including hydrologic changes, must be fully evaluated before EPA makes a determination on the requested modification. For example, it is self-evident that construction of a floodwall along the eastern side of the 404(c) area will affect hydrology. The floodwall will significantly reduce overbank flooding along almost 0.8 miles of the eastern edge of the 404(c) area. The proposed floodwall would also significantly reduce the direct hydrologic connection in that same area, through both the impervious and pervious sheet piling that will be used to construct the base of the floodwall. *See* IER at 27, Diagram 1. Indeed, reducing overbank flooding is *the purpose* of the above-ground portion of the floodwall, while minimizing underseepage (*i.e.*, the hydrological connection to the waterway) is *a primary purpose* of the underground sheet piling.

The direct and indirect impacts from relocating the Enterprise pipeline are also not evaluated in the IER. The IER states only that directional drilling will be used to drill under the 404(c) area to avoid impacts: “Adverse impacts to 404c area wildlife would be avoided by relocating the Enterprise Pipeline via directional drilling for 4,000 ft past the current ROW inside the 404c to a point west of the V-line levee. Using this method to relocate the pipeline *minimizes surface impacts to wetlands habitats and fisheries and wildlife species* because the pipeline would be drilled deep under the ground.” IER at 86 (emphasis added). No other details are provided, not even the depth at which the directional drilling will take place. The IER does not discuss the direct impacts that cannot be avoided through directional drilling, and does not discuss the indirect impacts that would seem inevitable from drilling under the surface of the 404(c) area. *See, e.g.*, IER at 27.

The IER also fails to provide any analysis to support its summary conclusion that “Foresore protection would not be expected to alter existing hydrologic conditions within the Bayou aux

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<sup>5</sup> William J. Mitsch and James G. Gosselink, *Wetlands* (2nd ed.) (1993) at 68 (emphasis added).

<sup>6</sup> *Id.* at 68.

<sup>7</sup> *Id.* at 67-68.

Carpes CWA Section 404(c) area.” *See* IER at 28. If this unsupported assumption is incorrect, the foreshore protection would affect the hydrology along an additional 0.38 miles of the 404(c) area. *See* IER at 25, Table 1 (foreshore protection will be 2,000 feet long).

As noted above, the IER includes only the most general statement on the potential for cumulative impacts from the recommended alternative, and it fails completely to address the cumulative impacts to the 404(c) area. Instead, the IER states that cumulative impacts will be discussed in a document that will be known as the Comprehensive Environmental Document or CED, which will be completed sometime in the future. IER at 14. According to the Corps, the CED will, among other things, document “cumulative impacts on a system-wide basis” and provide “updated information for any IER that had incomplete or unavailable data at the time it was posted for public review.” IER at 16 and 14.

Cumulative impacts, particularly within the 404(c) area, must be comprehensively evaluated before EPA takes any action on the Corps’ modification request. For example, as noted above, we have been advised that approximately 100 feet or more of the land along portions of the eastern side of the Bayou aux Carpes area have eroded due to navigation on the GIWW since the site was originally designated under 404(c). The spoil bank that now forms the edge of the Bayou aux Carpes area – and upon which the Corps wants to construct the floodwall – was originally set back from the water’s edge. Other changes to the 404(c) area almost certainly have occurred since the original designation in 1985, and these must be evaluated and considered before EPA makes a decision on the requested modification.

Importantly, the IER also fails to discuss any of the storm damage reduction benefits that would be lost due to the loss of wetlands that would occur if the proposed floodwall is constructed within the Bayou aux Carpes 404(c) area.

A full and comprehensive understanding of the direct, indirect, and cumulative wetland impacts is essential for making a reasoned decision on the Corps’ request to modify the Bayou aux Carpes 404(c) determination. EPA should not act in the absence of such information.

#### **4. The Impacts to Fish and Wildlife Have Not Been Analyzed**

Clean Water Act § 404(c) allows EPA to prohibit disposals that will have an “unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.” A comprehensive evaluation of the impacts to fishery areas and wildlife must be carried out before EPA can make a decision on the requested modification.

However, neither the IER nor the Corps’ request for modification provide any meaningful evaluation of these types of impacts. The IER contains only the most vague statements regarding the impacts of its proposed activities on fish and wildlife. According to the IER, construction of the floodwall on the eastern edge of the Bayou aux Carpes CWA 404(c) area would:

“directly impact approximately 9.6 acres of potential estuary habitat within the EPA designated Bayou aux Carpes CWA Section 404(c) area. This estuary habitat is considered an important fisheries resource within the greater Bayou Barataria Estuary and the loss of this habitat could impact fisheries populations dependent on this area. IER at 80-81.

\* \* \*

“directly impact the wildlife. The construction of the wall would directly remove valuable habitat. Wildlife species would likely relocate into adjacent similar habitat. There would also be temporary indirect impacts to wildlife including noise and vibration that could potentially force species farther from the construction area; however, habitat adjacent to the wall would likely stabilize following construction completion. Construction would be expected to take 2 years. IER at 86.

The Fish and Wildlife Coordination Act (FWCA) report for the IER is similarly vague, particularly with respect to the likely impacts to fish and wildlife within the 404(c) area. While the vagueness of the FWCA report may result from the vagueness of the information provided by the Corps, poor planning by the Corps is not an excuse for an inadequate assessment of impacts by either the U.S. Fish and Wildlife Service, or by EPA in its analysis of the requested modification to the 404(c) designation.

A full and comprehensive understanding of the direct, indirect, and cumulative impacts of the project on fishery areas and wildlife is essential for making a reasoned decision on the Corps' request to modify the Bayou aux Carpes 404(c) determination. EPA should not act in the absence of such information.

##### **5. The Potential for Mitigation or Augmentation Features Does Not Offset Impacts to the 404(c) Area**

While the IER states that the project's impacts will be mitigated, the mitigation features have not been studied, designed, planned, or committed to. IER at 157. Because the details of the proposed mitigation are completely unknown (and, at this time, are unknowable), EPA cannot evaluate the potential for mitigation to offset the impacts to the 404(c) area. Indeed, until the full range of impacts to the 404(c) area are identified, EPA cannot even determine how much, or what kind of, mitigation would be needed. As a result, the potential for mitigation cannot be used to offset the impacts of the proposed project to the 404(c) area.

The IER also attempts to partially justify the proposed impacts to the Bayou aux Carpes 404(c) area through holding out the potential for “augmentation features” for the 404(c) site. IER at 160-63. However, like the mitigation, the augmentation features have not been studied, designed, planned, or committed to. Until full planning for the potential augmentation features has been carried out, EPA cannot determine whether any augmentation features will be implemented, and if so, what the effects of those augmentation features might be. As a result,

the potential for augmentation features cannot be used to offset the impacts of the proposed project to the 404(c) area.

Moreover, there is a very real potential for the proposed augmentation to actually cause harm to the 404(c) area. For example, the largest augmentation feature being considered would involve gapping the canal to the north of the 404(c) area to allow storm runoff to flow through the wetland. Since this water would be urban runoff, which could carry high levels of nitrogen and phosphorus, metals, petroleum products, and other toxins, great care would need to be taken to ensure such water would not cause damage (instead of benefit) to the 404(c) wetlands over both the short and long term. The potential value of such augmentation features is further undermined by the lack of a plan to monitor the proposed augmentation, and the failure to evaluate the operations and maintenance that would be required to implement such augmentation features. The potential value of the augmentation features is further undermined by the very limited baseline study that would be carried out. The IER states that a one year baseline study will be carried out, but a study of at least two years and probably longer would be needed to provide a reliable picture of the current conditions (for example, a single year study in a particularly wet or dry year could produce unreliable results).

## 6. Conclusion

For the reasons set forth above, the record cannot support a 404(c) modification, and the requested modification should be denied. At a minimum, EPA should delay its decision until the necessary evaluations have been carried out. To this end, EPA should require the Corps to (1) clearly demonstrate that there are no possible alternative alignments that would avoid impacts to the 404(c) site altogether, and (2) provide a full and comprehensive evaluation of the full range of impacts from the proposed modification before EPA makes a decision regarding the requested modification. Without this information, EPA cannot reasonably determine whether the requested modification would have an “unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.”

Sincerely,



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# FAX TRANSMISSION



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Date: 2/23/2009

Number of Pages, Including Fax Cover Sheet: 3

To: ~~BARBARA KEELER~~

Fax #: (214) 665-7373

From: DAVID MILLER, DIRECTOR OF IMPLEMENTATION  
OFFICE OF COASTAL PROTECTION + RESTORATION

COMMENTS:

## CONFIDENTIALITY NOTICE

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# State of Louisiana

**BOBBY JINDAL**

GOVERNOR

February 23, 2009

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

Dear Ms. Keeler:

I am responding to the Environmental Protection Agency's (EPA) January 14, 2009, Federal Register Notice entitled: "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." The requested amendment is needed for implementation of the work described in Individual Environmental Report (IER) No. 12 for the West Bank and Vicinity Hurricane Protection Project, GIWW, Harvey and Algiers Levees and Floodwalls, prepared by the U.S. Army Corps of Engineers (USACE).

As the project's Non-Federal Sponsor, the State of Louisiana is opposed to moving the current T-Wall alignment into the GIWW channel to avoid the Bayou Aux Carpes 404 (c) Site. Such an alignment would severely impact the project completion schedule and cost; the reliability of the hurricane protection system; and the State's operation and maintenance, repair, replacement and rehabilitation (OMRR&R) responsibilities over the life of the project. The encroachment of the T-Wall/Access Road into the GIWW channel would pose an increased risk to the hurricane protection system from navigation traffic. The plan presented in IER No. 12 represents an allowable risk based upon the 100-foot Right-of-Way limits negotiated by the USACE and the EPA, and represents a least cost, least risk, and least impact option over the other alternatives outlined in that document.

For the reasons outlined above, the State of Louisiana strongly supports the requested amendment of the Bayou Aux Carpes Section 404(c) Site to allow that hurricane protection project feature to go forward as described in IER No. 12. Furthermore, we oppose moving the current T-Wall alignment into the GIWW channel to avoid impacts to the Bayou Aux Carpes 404 (c) Site.

Ms. Barbara Keeler (6WQ-EC)  
February 23, 2009  
Page 2

If you have any questions regarding this matter, please contact my office at  
(225)-342-4683.

Sincerely,



David Miller, P.E.  
Director of Implementation,  
Office of Coastal Protection & Restoration

DM:df:ap

cc: David Frugé, Chief, Planning and Project Management Division  
Chris Williams, Administrator, Project Management Branch  
James McMenis, Project Manager, Project Management Branch  
Gerald Sphorer, Executive Director, West Jefferson Levee District  
Julie Vignes, USACE, New Orleans District  
Kevin Wagner, USACE, New Orleans District  
Tim Connell, USACE, New Orleans District  
Gib Owen, USACE, New Orleans District

Atkinson comment to EPA

----- Forwarded by Barbara Keeler/R6/USEPA/US on 02/25/2009 08:30 AM  
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Corps of Engineers proposed West Closure Complex

Paul Atkinson  
to:  
Barbara Keeler

02/24/2009 08:12 PM

Dear Ms. Keeler,

I write to you at the EPA Region 6 office to comment on the Corps' plans to construct the West Closure Complex near the Bayou aux Carpes Section 404c area.

I am writing as both a 43-year homeowner of the New Orleans West Bank and Editor of the Harvey Canal Industrial Association Communiqué newsletter. It is my understanding that the Corps has made great efforts to work with the EPA and other agencies to avoid damage to the highly-sensitive Bayou aux Carpes 404c area.

The West Closure Complex project holds great promise to protect the residents and businesses of the West Bank from future hurricanes. Additionally, I am told that the funding for this \$500 million plus project is approved and ready to go. I ask you and the EPA to approve the Corps' request to modify the 1985 Bayou aux Carpes Clean Water Act so this major work can begin immediately.

Sincerely,

Paul Atkinson,  
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patkinson19@cox.net