

EPA Comments on Draft IER 14

To: Gib Owen,
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The Environmental Protection Agency has reviewed Draft Individual Environmental Report (IER) 14 for the Westwego to Harvey Levee and we offer the following comments.

Reach WBV-14f

The Highway 45 to the V-Line Levee Floodwall section describes a preferred alternative with a flood side shift, which would impact a forested buffer zone between the levee and the existing borrow pits. We believe that work in this area should be focused on minimizing these impacts to the forested buffer zone, possibly by further analyzing alternatives for a protected side shift.

Mitigation of all impacts to the Jean Lafitte National Historic Park and Preserve is of utmost importance and a commitment to develop a thorough mitigation plan, with the consent of the National Park Service, should be clearly stated in the IER 14. Further, all unavoidable adverse impacts to habitats within the National Park resulting from the construction of the preferred alternative for IER 14 should be mitigated within the National Park.

Section 3.2.1.1, second paragraph, indicates that the wetland forests on the flood side of the levee are in a transitional phase and are predicted to succeed "from a swamp area to a bottomland hardwood forest, which would contain a few dominant cypress trees." Due to hydrologic conditions, it seems improbable that the area would transition to anything other than a more wet habitat. Please explain the basis for this conclusion.

Bayou aux Carpes 404(c) Area, Reach WBV-14e

We agree with the alternative analysis for reach WBV-14e that resulted in a protected side shift, thereby avoiding impacts to the Bayou aux Carpes 404(c) area. In addition, we request that all possible measures be employed to protect against any impacts to the Bayou aux Carpes 404(c) area during the construction process.

The discussion under Section 3.2.3 needs to be clarified, particularly with respect to misleading discussions of the authority under which EPA conducted a Clean Water Act Section 404(c) determination, and the authority under which it now stands. Accordingly, we offer the following as a substitute for that section, including a heading revision.

3.2.3 Bayou aux Carpes Wetlands Area

As originally authorized in the 1960's, the Harvey Canal-Bayou Barataria Levee Project, south of the V-line levee, included draining over 3,000 acres of the Bayou aux Carpes swamp for development purposes. In response to environmental concerns by EPA (which was considering a "veto" of the project under Section 404(c) of the Clean Water Act) and several public interest groups, the Corps of Engineers agreed to a modified project design in 1976. The project was modified by: 1) substituting floodgates for earthen closures at the mouths of the Bayou Des Familles, Bayou aux Carpes, and the Southern Natural Gas Pipeline Canal; 2) eliminating the land reclamation features; and 3) stipulating that, if a pumping station was needed for flood control, it be operated so as to maintain the integrity of the wetlands. Jefferson Parish agreed to the modification, but was unable to provide local assurances for the modified project due to State court litigation brought by area property owners. The

landowners also filed suit in federal court, requesting that the court order the Corps to complete the original project. In that lawsuit, the U.S. District Court (on remand from the U.S. Court of Appeals for the 5th Circuit), issued an order that stayed further proceedings and gave EPA a timeframe within which to decide whether or not to proceed with an action under Section 404(c) of the Clean Water Act. This provision of the Clean Water Act affords EPA the authority to designate areas in which discharges of dredged or fill material are prohibited. One reason the Corps of Engineers had ordered the Harvey Canal-Bayou Barataria Levee Project modified in 1976 was a threatened "veto" by EPA under that authority.

In October 1985, EPA exercised its authority under Section 404(c) of the Clean Water Act and, with three specific exceptions, prohibited discharges of dredged or fill material to wetlands in the Bayou aux Carpes site. This is an area bounded by the existing V-line levee, the Estelle Canal, Bayou Barataria, Bayou des Familles, and the Lafitte-Larose Hwy. The Federal District Court for the Eastern District of Louisiana subsequently found the EPA action, which rendered the original project infeasible, was consistent with the law and supported by the Agency's administrative record. The prohibition on discharges of dredged or fill material in this area remains in effect today.

In the 1980s, the Corps of Engineers proposed to construct a hurricane protection levee for the West Bank of the Parish. The preferred alternative would have resulted in the discharge of dredged or fill material to 59 acres of wetlands in the Bayou aux Carpes and to 257 acres of wetlands in the Jean Lafitte National Historic Park and Preserve. EPA rated that Draft EIS "environmentally unacceptable" based on impacts to the Bayou aux Carpes 404(c) area, inconsistency with a separate agreement with Jefferson Parish regarding wetland protection at the site, and other wetland and water quality impacts. As an alternative, EPA supported the "V-Levee North" alignment, which is the alignment that was subsequently adopted and constructed.

In addition, Section 3.2.3.1, Existing Conditions, should be revised to include a discussion of a unique habitat type in the Bayou aux Carpes 404(c) area, namely float marsh. For the last 14 years, EPA Region 6 has intermittently funded a team of ecologists lead by Dr. Charles Sasser, from the LSU Coastal Ecology Institute, to locate, map, and classify floating marshes in portions of coastal Louisiana. Prior to this work, it had been nearly five decades since any scientists had studied this marsh type. EPA interest stemmed from a lack of understanding about the habitat type and the associated management implications. Available evidence indicates that these types of marshes function quite differently from other marsh types. With regard to the Bayou aux Carpes 404(c) area, therefore, it would be critical that the hydrologic modeling for any new hurricane protection structures factor in the presence of floating marsh.

This same section in the Draft IER that describes the existing conditions of the Bayou aux Carpes 404(c) area should note that it exhibits naturally regenerating cypress trees. According to the 2005 Louisiana Governor's Science Working Group on Coastal Wetland Forest Conservation and Use, this area would be classified as Condition Class I: Sites with Potential for Natural Regeneration. The Science Working Group explained the exacting environmental requirements for successful natural regeneration of cypress and advocated placing priority on maintaining hydrologic conditions in these swamp forests. Section 3.2.2.1 (Cypress-Tupelo Swamps, Existing Conditions) should be clarified with respect to the presence of cypress in reach WBV-14e, within the Bayou aux Carpes 404(c) area.

The Bayou aux Carpes description under the Significant Resources section should also make note of the pending legislation to add it to the Jean Lafitte National Historic Park and Preserve. Although this is a legislative matter (and mentioned in the Mitigation section), it speaks to the existing environmental conditions, namely the high quality of the wetland habitat and the national value it exhibits.

Finally, statements regarding the quality of wetland forests on the protected side of reaches WBV-14e and WBV-14d (Section 3.2.1, third paragraph) should be corrected. The IER states that these forests are relatively pristine. However, this habitat has been significantly degraded over time due to hydrologic alterations.

Thank you in advance for your consideration of these comments. Please let me know if you have any questions or would like to discuss these comments in further detail.

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