

Appendix R

Draft PIER 36 Public Review Comments and CEMVN Responses

TABLE OF CONTENTS

Comment Response Matrices

Public and Agency Comments

CEMVN Responses

Comment Response Matrices

Date Received	Person	Comment (may be paraphrased or summarized)	Final Response
9-18-2013	Nicholas Dilks Ecosystem Investment Partners	We strongly recommend that Corps' Record of Decision (ROD) acknowledge the presence of the Chef Menteur Pass Mitigation Bank as a source of brackish marsh mitigation available for HSDRRS use either as the preferred alternative (subject to credit availability and price at time of solicitation) or at least as a source of alternative mitigation if the Corps-constructed alternatives prove to be unfeasible or overly expensive.	The PIER does not evaluate specific mitigation banks that may be eligible to provide credits to compensate for these impacts and individual banks are not being selected or eliminated from consideration in this document. To be eligible to sell credits to compensate for HSDRRS impacts, a bank must be approved by CEMVN and must be in full compliance with its Mitigation Banking Instrument (MBI) (including its mitigation work plan and all performance criteria), its other legal instruments (such as its conservation servitude and its financial assurances), and the standards set forth in 33 CFR Part 332. The recorded conservation servitude and any financial assurances must likewise comply with current MVN standards.
9-18-2013	Nicholas Dilks Ecosystem Investment Partners	We recommend that the ROD acknowledge the ability of the Corps to use an available procurement methods (such as a multi-award purchase order contract with negotiated delivery schedules) to meet the Corps' mitigation needs.	Do not concur.
9-18-2013	Nicholas Dilks Ecosystem Investment Partners	In Paragraph 2 in Section 2 under "NEPA SCOPING" of the PIER, the Corps states that the selection criteria for mitigation banks only included banks for which a perpetual conservation servitude was in place. The New Orleans District has also created a policy that marsh mitigation banks cannot have a life beyond 20 years and that perpetual conservation servitudes on marsh mitigation banks are not appropriate or required, therefore precluding, through internal policy, the use of any mitigation bank for any marsh restoration (fresh, intermediate, or brackish) required by HSDRSS. This internal policy combined with the stated selection criteria has allowed the New Orleans District to circumvent the intent of WRDA 2007 for any marsh mitigation through creation of a circumstance that cannot be met. The Sponsor of Chef Menteur Pass Mitigation Bank initially tried to place a permanent conservation servitude on the bank when it was permitted, but was discouraged by the Corps from doing so. The Sponsor has subsequently placed a permanent conservation servitude on the bank, which meets all the Corps requirements, which it would have done initially if it was informed that the absence of a permanent servitude would be an elimination factor.	This comment does not accurately state Corps' regulatory policy. The PIER does not evaluate specific mitigation banks that may be eligible to provide credits to compensate for these impacts and individual banks are not being selected or eliminated from consideration in this document. To be eligible to sell credits to compensate for HSDRRS impacts, a bank must be approved by CEMVN and must be in full compliance with its Mitigation Banking Instrument (MBI) (including its mitigation work plan and all performance criteria), its other legal instruments (such as its conservation servitude and its financial assurances), and the standards set forth in 33 CFR Part 332. The recorded conservation servitude and any financial assurances must likewise comply with current MVN standards.
9-18-2013	Nicholas Dilks Ecosystem Investment Partners	The New Orleans District has also set an internal policy to only consider using mitigation banks when 100% of the mitigation (measured in AAHUs) that the Corps requires for a given habitat type are on a bank's ledger (or on a combination of multiple banks' ledgers). As the only approved brackish marsh mitigation bank in the LPV, this would require the Chef Menteur Pass Mitigation Bank to have 100% of the total HSDRRS credit need on its ledger at this yet undetermined time. While the 1,084 acre Chef Menteur Pass Mitigation Bank has been approved by the Corps regulatory branch since 2008 to generate a total of 251 AAHUs (260% of the 96.13 AAHUs needed by HSDRRS to mitigate for non-Refuge brackish marsh impacts), has completed 65.3 acres of marsh restoration already, and is ready to complete the rest on a given delivery schedule, it does not currently have enough credits on the ledger to meet the 100% "rule" established by the internal policy. Once again, only due to the difference between the regulatory branch's requirement for banks and the Civil Works requirements for HSDRSS, the Chef Menteur Pass Mitigation Bank has been excluded from being considered as part of the HSDRSS mitigation solution, when in fact it could be a significant part of the solution.	The PIER does not evaluate specific mitigation banks that may be eligible to provide credits to compensate for these impacts and individual banks are not being selected or eliminated from consideration in this document. To be eligible to sell credits to compensate for HSDRRS impacts, a bank must be approved by CEMVN and must be in full compliance with its Mitigation Banking Instrument (MBI) (including its mitigation work plan and all performance criteria), its other legal instruments (such as its conservation servitude and its financial assurances), and the standards set forth in 33 CFR Part 332. The recorded conservation servitude and any financial assurances must likewise comply with current MVN standards.
9-18-2013	Nicholas Dilks Ecosystem Investment Partners	EIP has been informed by Civil Works staff that its policy for 100% credit availability was also based on the policy that 100% of the mitigation had to occur through one project. EIP notes that the final configuration of the Bayou Savage Brackish Marsh Mitigation selected as the Tentatively Selected Plan consists of partial construction of marsh enhancement on Refuge Lands (BSFS-5) and partial construction of brackish marsh on private lands (BSFS-4) which are not presently under control by the Corps or the Non-Federal Sponsor. We understand that these private lands are NOT within the Refuge Acquisition boundaries, and therefore cannot be considered a single and complete project. The mitigation is in effect two projects one on Refuge Lands and one on private lands, each of which contributes to the overall mitigation. The Corps is being inconsistent with respect to the selection of banks and Corps Constructed projects.	Do not concur. The project is contiguous with a refuge area and contributes to a larger project for Brackish marsh mitigation.
9-18-2013	Nicholas Dilks Ecosystem Investment Partners	The PIER fails to take into consideration the credit release schedule of mitigation banks like the Chef Menteur Pass Mitigation Bank when determining credit "availability". Based upon the credit release schedule in the Chef Menteur Pass Bank's Mitigation Bank Instrument (MBI) and construction schedules committed to by the Bank's Sponsor, that bank will have enough AAHU's on its ledger within the next 36 months to satisfy the full HSDRRS non-Refuge mitigation needs. In contrast, it is unlikely that the Corps-constructed plan will have initiated any construction within that time. The credit release schedule, set by the New Orleans District, in consultation with the IRT, provides the Corps with the ability to ensure the success of mitigation within a mitigation bank. This credit release schedule should be the basis of consideration of the definition of "availability" of credits to supply HSDRSS. It is possible for the Corps to procure credits as they are released, just like the Corps procures other goods and services with a delivery timeline. The mitigation credit delivery schedule from a given bank would be stipulated and secured by a purchase order to be negotiated as part of the Corps' solicitation.	The PIER does not evaluate specific mitigation banks that may be eligible to provide credits to compensate for these impacts and individual banks are not being selected or eliminated from consideration in this document. To be eligible to sell credits to compensate for HSDRRS impacts, a bank must be approved by CEMVN and must be in full compliance with its Mitigation Banking Instrument (MBI) (including its mitigation work plan and all performance criteria), its other legal instruments (such as its conservation servitude and its financial assurances), and the standards set forth in 33 CFR Part 332. The recorded conservation servitude and any financial assurances must likewise comply with current MVN standards.
9-18-2013	Nicholas Dilks Ecosystem Investment Partners	The Corps has constructed HSDRSS in advance of mitigating the impacts by many years, inconsistent with the 404b1 Guidelines which govern the administration of the 404 program between the Corps and USEPA. The Corps should be trying to find the most expedient way to meet these requirements. It seems that the Tentatively Selected Plan has the potential to stretch out the process of actually getting mitigation in place for many additional years. Putting together contracts for obtaining credits from mitigation bankers could shorten this process considerably.	Comment Noted. The PIER affords the opportunity to proceed with purchase of mitigation bank credits for BLH-wet and swamp habitats.
9-18-2013	Nicholas Dilks Ecosystem Investment Partners	We note that the PIER references the Department of Interior (DOI) policy (FR Vol 64, No 175, 10 Sept 1999) that requires impacts on National Wildlife Refuge (NWR) lands to be mitigated on NWR lands. Corps fails to state that that same policy prohibits mitigation on NWR lands for non-NWR impacts. The Corps should state the full DOI policy in the PIER and explain what justified the October 31, 2007 USFWS waiver from the Interior policy, as it is material to why the Corps is proposing to mitigate on NWR lands for non-NWR impacts when the majority of wetland impacts occurred on non-NWR lands. EIP understands that the Waiver contains certain requirements and conditions that define when the waiver is applicable. It is our understanding that the conditions of this waiver include requirements that: 1) "Suitable/feasible off-Refuge mitigation sites which will retain public use functions as well as ecological functions are not available within the same watershed for in-kind mitigation." and 2) The "approved plan provides sufficient funding of O&M and monitoring for the life of the project."	Do not concur. The USFWS and refuge personnel are an active participant on the Planning Team and in the development of mitigation projects.
9-18-2013	Nicholas Dilks Ecosystem Investment Partners	Concerning the availability of suitable and feasible off-Refuge mitigation sites, the PIER makes no mention of the brackish marsh mitigation bank (the Chef Menteur Pass Mitigation Bank) that has been in operation in the same watershed since 2008 and has been approved by the Corps (in consultation with the Interagency Review Team, consisting of USEPA, USFWS, NOAA-NMFS, LDWF and LDNR) to generate over 1,084 acres (251 AAHUs) of brackish marsh mitigation; substantially more than the 96.13 AAHUs of HSDRSS non-NWR brackish marsh requirements, with all the advantages the Corps identifies in the PIER as to why banks are preferable mitigation. In a letter from the USFWS to EIP dated September 11, 2013, the USFWS cites the current status of credit availability as the reason why it maintains that no suitable/feasible off-refuge mitigation sites are available in the same watershed. This is a temporary condition of the Chef Menteur Bank which as recently as July 2013 had over 125 acres/credits available, and still has the potential to generate over 1,000 acres/credits of brackish marsh mitigation. Again, the definition of "available" (having 100% of the needed credits on a bank's ledger at a given moment in time) is not a suitable metric and has not been the standard used for other habitat types where banks are the preferred alternative. The Chef Menteur Bank is therefore a suitable, feasible and available off-refuge mitigation site leaving one of the key conditions of the 2007 waiver un-met.	The PIER does not evaluate specific mitigation banks that may be eligible to provide credits to compensate for these impacts and individual banks are not being selected or eliminated from consideration in this document. To be eligible to sell credits to compensate for HSDRRS impacts, a bank must be approved by CEMVN and must be in full compliance with its Mitigation Banking Instrument (MBI) (including its mitigation work plan and all performance criteria), its other legal instruments (such as its conservation servitude and its financial assurances), and the standards set forth in 33 CFR Part 332. The recorded conservation servitude and any financial assurances must likewise comply with current MVN standards.
9-18-2013	Nicholas Dilks Ecosystem Investment Partners	EIP understands that although the Non Federal Sponsor and the Corps have signed a Project Partnership Agreement for the HSDRSS project that includes a commitment by the State to provide the O&M of mitigation sites, the ability of the State to fund such obligations are subject to the appropriation of funds by the State's legislature for such operation, maintenance, repair, rehabilitation, and replacement. The Corps is required under 33 CFR 332 to ensure that mitigation will mitigate the impacts to Waters of the United States, it is hard to see how the Project Partnership Agreement is enforceable since the State cannot obligate a future legislature in appropriating funds for operations, maintenance and repair of the mitigation sites. In contrast, as the PIER notes on Page 6-9, "purchase of mitigation bank credits relieves the CEMVN and NFS of the responsibility for monitoring and of demonstrating mitigation success."	As a prerequisite to the signing of the Lake Pontchartrain and Vicinity Project Partnership Agreement (PPA), the Coastal Protection and Restoration Authority Board of Louisiana's (CPRAB) (formerly known as the Coastal Protection and Restoration Authority of Louisiana) provided the Federal Government with a certification that expressly states that CPRAB has the financial capability to fulfill its obligations as set forth in the LPV PPA. The PPA is an enforceable agreement. Mitigation banks are also governed by enforceable agreements known as Mitigation Banking Instruments (MBIs). Unfortunately, some mitigation bank sponsors have breached the obligations set forth in the MBI's governing their bank. While banks that are currently in breach of their MBI's are not eligible to sell credits to compensate for HSDRRS impacts, from the Corps' perspective of assessing the confidence that any particular mitigation project will achieve and continue to demonstrate long-term success, banks do not offer any advantage over a Corps-constructed project for which CPRA would maintain O&M responsibility.
9-18-2013	Nicholas Dilks Ecosystem Investment Partners	Based on the September 11, 2013 letter cited above, we believe the USFWS incorrectly assumes that a) "marsh mitigation usually requires little additional funding for operations, maintenance and monitoring" when marsh restoration is in fact one of the most expensive habitats to maintain over a 50-year period and b) "the Corps will provide the funding for operations, maintenance and monitoring" when in fact the Corps is explicitly not responsible for such funding under its agreement with the NFS. Again, this leaves a condition of the 2007 waiver unmet and puts into serious question the feasibility of the Corps-constructed on-refuge mitigation plan.	Comment Noted.
9-18-2013	Nicholas Dilks Ecosystem Investment Partners	EIP believes that the above demonstrates that at least two of the conditions of the USFWS waiver have not been met, and the Corps must reconsider the choice of mitigation on NWR in accordance with DOI policy. Of the projects identified in the PIER as potential brackish marsh restoration, all of Bayou Sauvage project is within refuge lands, 1/3 of the Fritch project is within refuge lands, all off Big Branch project is within refuge lands and 1/2 of the Golden Triangle is within refuge lands.	Do not concur. The USFWS and refuge personnel are an active participant on the Planning Team and in the development of mitigation projects.

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9-18-2013	Nicholas Dilks Ecosystem Investment Partners	EIP notes that the PIER does not discuss land control for any of the potential HSDRSS mitigation sites on non-Refuge land. For areas that are not on Refuge lands, including the 48.8 acres of marsh restoration defined as BSFS-4 in Figure 30, the PIER needs to discuss the steps the Corps has taken to secure land control from the current, private owner. Without land control, the Corps cannot proceed with any of the mitigation. It seems that land availability should be part of the screening criteria of the PIER. We understand that the Non Federal Sponsor is unwilling to use condemnation I eminent domain as a tool for gaining land control with landowners unwilling to provide voluntary access to these sites.	The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. In the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
9-18-2013	Nicholas Dilks Ecosystem Investment Partners	EIP notes that the USFWS will consider mitigation lands acquired by the Corps or Non-Federal Sponsor and then added to the Refuge to meet the requirements of mitigating on-Refuge impacts. Page iii of the November 12, 2012 Fish and Wildlife Coordination Act Report- Mitigation Plan for HSDRRS states that, if mitigation lands are purchased for inclusion within a NWR those lands must meet certain requirements, including a requirement that, "the lands must be located within a refuge's acquisition boundary." EIP notes again that approximately 48.8 acres defined as BSFS-4 on Figure 30 of the PIER is located on land that is neither owned by the USFWS nor within the approved acquisition boundary of the Bayou Sauvage NWR. Does the Corps intend to acquire these lands for inclusion in the NWR in order to claim them as meeting a portion of the on-Refuge mitigation needed?	Mitigation proposed adjacent to the NWR but not within the NWR acquisition boundary provides compensatory mitigation for impacts to non-refuge lands.
10-3-2013	B Clark Heebe	PIER #36 indicates that the government has intentions of taking private land (which the Corps refers to as the "Fritchie Marsh"), from an unwilling landowner, for use as a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I believe it is my duty to object to this abusive practice of expropriating privately owned land from unwilling land owners for mitigation purposes.	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
9-25-2013	John H Musser V	PIER #36 indicates that the government intends to take private land (the "Fritchie Marsh"), from an unwilling landowner, in order to establish a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I am obligated to strenuously object to this abusive practice of expropriating privately owned land from unwilling land owners for optional self- imposed mitigation purposes.	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
9-25-2013	Louis M Freeman Jr	PIER #36 indicates that the government has intentions of taking private land (which the Corps refers to as the "Fritchie Marsh"), from an unwilling landowner, for use as a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I believe it is my duty to object to this abusive practice of expropriating privately owned land from unwilling land owners for mitigation purposes.	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
9-25-2013	Tim DePaula	PIER #36 indicates that the government has intentions of taking private land (which the Corps refers to as the "Fritchie Marsh"), from an unwilling landowner, for use as a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I believe it is my duty to object to this abusive practice of expropriating privately owned land from unwilling land owners for mitigation purposes.	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
10-3-2013	Tommy Flower	PIER #36 indicates that the government has intentions of taking private land (which the Corps refers to as the "Fritchie Marsh"), from an unwilling landowner, for use as a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I believe it is my duty to object to this abusive practice of expropriating privately owned land from unwilling land owners for mitigation purposes.	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
9-25-2013	Ellen Rowley	PIER #36 indicates that the government has intentions of taking private land (which the Corps refers to as the "Fritchie Marsh"), from an unwilling landowner, for use as a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I believe it is my duty to object to this abusive practice of expropriating privately owned land from unwilling land owners for mitigation purposes.	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
9-25-2013	Debbie Locicero	PIER #36 indicates that the government has intentions of taking private land (which the Corps refers to as the "Fritchie Marsh"), from an unwilling landowner, for use as a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I believe it is my duty to object to this abusive practice of expropriating privately owned land from unwilling land owners for mitigation purposes.	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.

Date Received	Person	Comment (may be paraphrased or summarized)	Final Response
10-3-2013	Jennifer N Willis	I have reviewed PIER #36 for the Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation and I write to you in opposition. The apparent intention of the government to expropriate land for "mitigation" of property that is located in a completely different geographical area is an abuse of the entire mitigation process. First, the Corps should do on-site mitigation at the area that was purportedly damaged or, if that is not feasible, on adjacent property. If neither of these options is viable after a real, arms-length assessment, the mitigation should be accomplished using private mitigation banks that have been created for this express purpose.	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
10-3-2013	Jennifer N Willis	As I understand the process, the Corps has created the mitigation requirement out of whole cloth and without statutory authority. In other words, it self-imposed a mitigation requirement and is now using that requirement to justify an unconstitutional taking of private property. If this type of abuse is allowed, no private property is secure. The Corps has an obligation to accomplish mitigation, if mitigation is indeed required, with the least intrusion on private land ownership.	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
9-25-2013	John Rowan	PIER #36 indicates that the government has intentions of taking private land (which the Corps refers to as the "Fritchie Marsh"), from an unwilling landowner, for use as a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I believe it is my duty to object to this abusive practice of expropriating privately owned land from unwilling land owners for mitigation purposes.	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
9-25-2013	Maunsell Howard	I object strongly to pier 36. Why should the government have the right to take control of private land?!!	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
9-25-2013	Mike Letourneau	PIER #36 indicates that the government has intentions of taking private land (which the Corps refers to as the "Fritchie Marsh"), from an unwilling landowner, for use as a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I believe it is my duty to object to this abusive practice of expropriating privately owned land from unwilling land owners for mitigation purposes.	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
9-25-2013	Peter B Sloss	PIER #36 indicates that the government has intentions of taking private land (which the Corps refers to as the "Fritchie Marsh"), from an unwilling landowner, for use as a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. I object to this practice of expropriating privately owned land from unwilling land owners for mitigation purposes.	comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
10-3-2013	Jeffrey A Raines	PIER #36 indicates that the government has intentions of taking private land (which the Corps refers to as the "Fritchie Marsh"), from an unwilling landowner, for use as a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I believe it is my duty to object to this abusive practice of expropriating privately owned land from unwilling land owners for mitigation purposes.	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
9-25-2013	Bridget Kennedy	PIER #36 indicates that the government has intentions of taking private land (which the Corps refers to as the "Fritchie Marsh"), from an unwilling landowner, for use as a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I believe it is my duty to object to this abusive practice of expropriating privately owned land from unwilling land owners for mitigation purposes.	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.

Date Received	Person	Comment (may be paraphrased or summarized)	Final Response
9-25-2013	Adam R Wirth	PIER #36 indicates that the government has intentions of taking private land (which the Corps refers to as the "Fritchie Marsh"), from an unwilling landowner, for use as a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I believe it is my duty to object to this abusive practice of expropriating privately owned land from unwilling land owners for mitigation purposes.	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
9-25-2013	Peter L Freeman	PIER #36 indicates that the government has intentions of taking private land (which the Corps refers to as the "Fritchie Marsh"), from an unwilling landowner, for use as a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I believe it is my duty to object to this abusive practice of expropriating privately owned land from unwilling land owners for mitigation purposes.	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
9-25-2013	Chris McClanahan	PIER #36 indicates that the government has intentions of taking private land (which the Corps refers to as the "Fritchie Marsh"), from an unwilling landowner, for use as a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I believe it is my duty to object to this abusive practice of expropriating privately owned land from unwilling land owners for mitigation purposes.	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
9-25-2013	Regan Leopold	PIER #36 indicates that the government has intentions of taking private land (which the Corps refers to as the "Fritchie Marsh"), from an unwilling landowner, for use as a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I believe it is my duty to object to this abusive practice of expropriating privately owned land from unwilling land owners for mitigation purposes.	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
9-25-2013	Richard Kelley	After reviewing PIER #36, it has come to my attention that the PIER identifies Fritchie Marsh as a potential sight for mitigation. You should know that this property I has been owed by my family for generations. The title from which we derive our ownership predates the founding of both the State of Louisiana and the United States government. The Corps attempt to abuse its power is contrary to law and renders the implementative of your mitigation rules unconstitutional. We strenuously fight the un-American proposal. The government cannot take a private citizen's land (and business) merely because the government desires to own it. Our enjoyment of the property has been impaired by the unauthorized publication by the Corps. The Corps' conduct in identifying my property as a potential mitigation site has both diminished the property value and damaged business relationships associated with the property.	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
9-25-2013	Sara Gambel	PIER #36 indicates that the government has intentions of taking private land (which the Corps refers to as the "Fritchie Marsh"), from an unwilling landowner, for use as a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I believe it is my duty to object to this abusive practice of expropriating privately owned land from unwilling land owners for mitigation purposes.	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
9-25-2013	L Noel Johnson Jr	PIER #36 indicates that the government has intentions of taking private land (which the Corps refers to as the "Fritchie Marsh"), from an unwilling landowner, for use as a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I believe it is my duty to object to this abusive practice of expropriating privately owned land from unwilling land owners for mitigation purposes.	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
9-25-2013	Christian Hooper	PIER #36 indicates that the government has intentions of taking private land (which the Corps refers to as the "Fritchie Marsh"), from an unwilling landowner, for use as a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I believe it is my duty to object to this abusive practice of expropriating privately owned land from unwilling land owners for mitigation purposes.	Comment noted. The Corps is statutorily obligated to compensate for impacts arising from the Corps project, i.e., LPV. To fulfill this statutory requirement, the Corps has actively considered options, including mitigation banks. The Corps is also investigating land that meets the screening criteria as potential mitigation sites. In order to investigate such potential sites, the Corps has requested permission from the landowner. The Corps may need to ask the U.S. Department of Justice (DOJ) to exercise eminent domain in order to gain temporary right of entry to land that it wishes to investigate. At this time, the Corps has not determined whether it will construct mitigation projects on sites owned by private landowners. However, in the event that the Corps determines that it needs to acquire land for one or more mitigation sites, the Corps will offer just compensation to each landowner, based on the fair market value of the land, consistent with the U.S. Constitution and federal law. In addition, the Corps will make good faith efforts to negotiate with each landowner. In the event that there is an impasse over price and/or clouds on title that cannot be resolved, the Corps may ask DOJ to exercise eminent domain to acquire the land. With the filing of a Declaration of Taking in a condemnation case, the U.S. will deposit in the court registry the Government estimate of just compensation. The landowner is entitled to a hearing on the issue of just compensation, and the federal court will ultimately determine the amount of just compensation that is owed to the landowner, unless the parties reach settlement beforehand.
12-Aug-13	Jara and Jeff Roux	I think the basic premise is missing the point. The entire basin needs to be looked at and not selective eastern/south/southeastern areas. Couldn't find Tangipahoa/ Livingston/ and other parishes all the way to Gonzales. Seems Isaac pushed water up to there. Seems we build here/then build there and still can't find the Scarlet Pimpernel. I realize Congress has a say in what goes on from the funding side but this needs to be overcome. We took a tour of the Old Mandeville area and one of the comments "It's nice except for 2/3 days a year" Same went for Madisonville. Laplace has taken a long time to recover after the 2/3 day event (Isaac was a bit longer when it stalled) Predicted—No!!!! As I said after Katrina we should have had a system like the TVA set up to manage this massive project. Use the water to our benefit.	Comment noted.

Date Received	Person	Comment (may be paraphrased or summarized)	Final Response
9-23-2013	Lawrence A Selzer The Conservation Fnd	On behalf of The Conservation Fund, I write to submit public comments and urge the Corps of Engineers to identify the Chef Menteur Pass Mitigation Bank as the preferred alternative for brackish marsh mitigation in the Programmatic Individual Environmental Report #36, Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes Louisiana (PIER #36 for HSDRRS), which was released for public comment on August 12, 2013.	The PIER does not evaluate specific mitigation banks that may be eligible to provide credits to compensate for these impacts and individual banks are not being selected or eliminated from consideration in this document. To be eligible to sell credits to compensate for HSDRRS impacts, a bank must be approved by CEMVN and must be in full compliance with its Mitigation Banking Instrument (MBI) (including its mitigation work plan and all performance criteria), its other legal instruments (such as its conservation servitude and its financial assurances), and the standards set forth in 33 CFR Part 332. The recorded conservation servitude and any financial assurances must likewise comply with current MVN standards.
9-23-2013	Lawrence A Selzer The Conservation Fnd	In order to permanently protect and restore this important feature, we urge the Corps of Engineers join us in support of this important conservation effort by prioritizing this location for its pending investments under the Lake Pontchartrain Vicinity Hurricane Storm Damage and Risk Reduction System mitigation. Specifically, we recommend that the Corps' PEIR #36 HSDRRS Record of Decision (ROD) identify the Chef Menteur Pass Mitigation Bank-located on the land bridge-as the preferred alternative (subject to credit availability and price at time of solicitation) for brackish marsh mitigation. At a minimum, it should be identified as a source of alternative mitigation if the Corps-constructed options prove to be unfeasible or overly expensive.	The PIER does not evaluate specific mitigation banks that may be eligible to provide credits to compensate for these impacts and individual banks are not being selected or eliminated from consideration in this document. To be eligible to sell credits to compensate for HSDRRS impacts, a bank must be approved by CEMVN and must be in full compliance with its Mitigation Banking Instrument (MBI) (including its mitigation work plan and all performance criteria), its other legal instruments (such as its conservation servitude and its financial assurances), and the standards set forth in 33 CFR Part 332. The recorded conservation servitude and any financial assurances must likewise comply with current MVN standards.
9-23-2013	Lawrence A Selzer The Conservation Fnd	The Water Resources Development Act (WRDA) 2007 requires the Corps to consider the use of mitigation banks in Civil Works projects. We note that the PIER recognizes that requirement and selects mitigation banks for some of the habitat type mitigation required, but has ignored mitigation banks for other habitat types such as brackish marsh. There should be no inconsistency under Corps policy. The Chef Menteur Pass Mitigation Bank should receive equal preference, in accordance with WRDA 2007.	The PIER does not evaluate specific mitigation banks that may be eligible to provide credits to compensate for these impacts and individual banks are not being selected or eliminated from consideration in this document. To be eligible to sell credits to compensate for HSDRRS impacts, a bank must be approved by CEMVN and must be in full compliance with its Mitigation Banking Instrument (MBI) (including its mitigation work plan and all performance criteria), its other legal instruments (such as its conservation servitude and its financial assurances), and the standards set forth in 33 CFR Part 332. The recorded conservation servitude and any financial assurances must likewise comply with current MVN standards.
9-23-2013	Lawrence A Selzer The Conservation Fnd	In addition, the Corps' 404(b)(1) Guidelines, which govern the administration of the Corps' Civil Works program as required by WRDA 2007, require mitigation concurrent with construction in most circumstances. The Corps has constructed HSDRSS in advance of mitigating the impacts by many years. The Corps should be seeking the most expedient way to meet the mitigation requirements, and obtaining available credits from mitigation banks is the most expeditious means of completing the required mitigation.	Comment noted.
9-25-2013	Matt Rota and Sandra Slifer GRN and LWV	Section 1.3 in PEIR #36 states that "the public has expressed concern that sufficient funding be allocated for the HSDRRS mitigation efforts and that the HSDRRS mitigation is completed in a timely manner." These concerns were never fully addressed. The reasoning behind delaying the mitigation was that the Corps did not know the final impacts until construction was completed. This is not and has never been an adequate reason.	Comment Noted.
9-25-2013	Matt Rota and Sandra Slifer GRN and LWV	Regulatory Guidance from the Corps for the Section 404 and Section 10 programs emphasizes that compensatory mitigation should be done concurrently, or even before construction, wherever possible. (US Army Corps of Engineers, Regulatory Guidance Letter No. 02-2, December 24, 2002). According to the above Regulatory Guidance, Construction should be concurrent with authorized impacts to the extent practicable. Advance or concurrent mitigation can reduce temporal losses of aquatic function and facilitate compliance...In general when impacts to aquatic resources are authorized before mitigation is initiated, Districts will require: 1) a Corps-approved mitigation plan; 2) a secured mitigation project site; 3) appropriate financial assurances in place, and 4) legally protected, adequate water rights where necessary. Initial physical and biological improvements should be completed no later than the first full growing season following the impacts from authorized activities. If beginning the initial improvements within that time frame is not practicable, then other measures that mitigate for the consequences of temporal loss should be included in the mitigation plan.	Comment Noted. Impacts resulting from temporal loss will be determined following final design and impact analysis that will be disclosed in subsequent NEPA documents Tiering off the PIER.
9-25-2013	Matt Rota and Sandra Slifer GRN and LWV	We appreciate the Corps' diligence in avoiding wetlands as borrow material sources, as noted in the PIER #36. We hope that this policy continues and can be utilized in other future Corps projects.	Comment Noted.
9-25-2013	Matt Rota and Sandra Slifer GRN and LWV	On page 2-46, the PIER states that "because all of the mitigation projects were designed based on the intermediate [sea level rise] scenario to account for potential uncertainties in future [sea level rise] impacts, the risk of the proposed projects not successfully meeting the mitigation requirements due to [sea level rise] has been minimized." We request clarification how using the intermediate estimate minimizes the risk of unsuccessful projects. The more severe estimate of sea level rise should also be used and shared in the PIER to fully evaluate the potential successes/failures of the projects.	Do not concur. Sea level rise is an uncertainty. Design features and/or adaptive management and monitoring will be built into the project to help ensure the project's success. The intent of compensatory mitigation is to offset unavoidable habitat losses by replacing those impacted habitats by restoring, establishing, or enhancing a naturally functioning system. Once the project meets its long term success criteria, it will experience natural successional phases common to that habitat type. Once the functions and services of the affected habitat have been replaced and the mitigation project becomes a naturally functioning, self-sustaining system whose habitat is protected in perpetuity, the compensatory mitigation obligation is satisfied.
9-25-2013	Matt Rota and Sandra Slifer GRN and LWV	Improving impaired water bodies. Several of the waterbodies that will be impacted by the projects proposed in PIER #36 are considered impaired and not meeting their designated uses, and are therefore listed on Louisiana's Clean Water Act §303(d) List. The PIER and subsequent IERs should demonstrate how these activities will not cause or contribute to impairments to Primary Contact, Secondary Contact, and Fish and Wildlife Propagation Uses. This is an excellent opportunity to actually improve the water quality of these waterbodies.	Comment Noted. This analysis would occur following further design of the programmatic features. The design details and impacts associated with the proposed programmatic features, including any impacts to water bodies, would be disclosed in subsequent NEPA documents tiering off of the PIER.
9-25-2013	Matt Rota and Sandra Slifer GRN and LWV	Antidegradation. Under Clean Water Act regulations, antidegradation rules state that you cannot reduce the water quality of waterbodies that are attaining their uses without a social and/or economic rationale. An antidegradation analysis must be done by the Corps or LDEQ before any of these projects proceeds.	Comment Noted. Before any project proceeds to construction the Corps would obtain water quality certification from Louisiana DEQ. The design details and impacts associated with the proposed programmatic features would be disclosed in subsequent NEPA document Tiering off of the PIER.
9-25-2013	Matt Rota and Sandra Slifer GRN and LWV	Outstanding Natural Resource Waters (ONRWs). Louisiana waterbodies listed as Outstanding Natural Resource Waters (ONRWs) have extra protections under the Clean Water Act and Louisiana regulations. In short, these waters cannot be degraded from current levels. The PIER and subsequent IERs must address how ONRWs, such as the LaBranche wetlands, will be protected.	Comment Noted.
9-25-2013	Matt Rota and Sandra Slifer GRN and LWV	All practicable alternatives have not been assessed. Section 2.9.3 of PIER #36 very briefly looks at "Alternatives Eliminated from Further Consideration." These alternatives are extremely conceptual and do not give the public an idea as to what the alternatives actually are, they are simply the extreme options of mitigation bank only, corps construction only, and no action. There would be many other options available.	Do not Concur. Alternatives were formulated in accordance with the Implementation Guidance derived from video teleconference factsheets and the CEMVN commander's Intent. Detailed information on the screening criteria is located in Appendix E of the Final PIER.
9-25-2013	Matt Rota and Sandra Slifer GRN and LWV	One alternative that we request be analyzed are the projects listed in the MRGO Ecosystem Restoration Plan (http://www.mrgo.gov/). This Corps-approved plan includes restoration projects for several wetland types and much of the planning work has already been done (and it is currently not fully funded due to lack of local partner cost-share). The Corps should look at the MRGO Ecosystem Restoration Plan for further mitigation alternatives.	Restoration projects approved or considered in other planning studies were considered for this effort.
9-25-2013	Matt Rota and Sandra Slifer GRN and LWV	When will the alternative NEPA arrangements expire? The alternative NEPA arrangements were established in 2007. Since then, several organizations, including GRN, have not appreciated the expedited process, due to the lack of comprehensive environmental review before projects are started. Therefore, we request a definitive answer as to when the alternative NEPA arrangements will no longer be in effect.	The NEPA Emergency Alternative Arrangements are only applicable to LPV and WBV projects related to the hurricane protection authorizations (100-year levees and floodwalls, selective armoring, IHNC closure structures, outfall closure structures and pump stations) that were funded under the 4th Supplemental (Public Law 109-234, Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006). Together, these projects are known as the Hurricane and Storm Damage Risk Reduction System (HSDRRS). All other Corps projects continue to follow normal NEPA procedures. The Alternative Arrangements will conclude when the HSDRRS construction is complete. Because that construction is winding down, relatively few NEPA documents currently produced by MVN fall under the Alternative Arrangements. However, mitigation is an integral feature of the HSDRRS and the documents evaluating the HSDRRS mitigation features will continue to be produced under the Alternative Arrangements until the HSDRRS mitigation obligations have been satisfied.
9-25-2013	Matt Rota and Sandra Slifer GRN and LWV	Figures and tables should be included in main PIER document. While we understand that there are a significant number of figures and tables in this PIER, it is difficult to be switching between documents to reference figures, tables, and maps. In future documents, we request that they be part of the main document.	Comment Noted. Due to the volume of tables and figures necessary for the report we feel it best to provide them via appendix.
9-25-2013	David Cresson CCA	The Corps should prioritize expedient mitigation alternatives. The Corps' 404(b)(1) Guidelines, which govern the administration of the 404 program between the Corps and USEPA, require mitigation concurrent with construction in most circumstances. The Corps has constructed the levees under HSDRSS in advance of mitigating the impacts by many years. The Corps should be trying to find the most expedient way to meet the mitigation requirements. It seem that, with respect to marsh mitigation, the Tentatively Selected Plan has the potential to further delay mitigation for many additional years. The Corps-constructed plan for marsh mitigation ignores the existing approved Chef Menteur mitigation bank and instead relies on a Corps-constructed plan that has not yet started, and requires acquisition of property currently owned by private landowners. Obtaining credits from mitigation bankers could shorten this process considerably. Chef Menteur Pass is already being restored to re-create brackish marsh wetlands.	In 2008, the Corps released twenty-five percent of the total anticipated credits for the Chef Menteur Pass Mitigation Bank, with a requirement to construct within one year following that release; however, construction did not commence until 2011. To date, there are no acres within the Bank that have met the initial success criteria as set forth in and required by its MBI. To be eligible to sell credits to compensate for HSDRRS impacts, the Chef Menteur bank must be in full compliance with its Mitigation Banking Instrument (MBI) (including its mitigation work plan and all performance criteria), its other legal instruments (such as its conservation servitude and its financial assurances), and the standards set forth in 33 CFR Part 332. The recorded conservation servitude and any financial assurances must likewise comply with current MVN standards.
9-25-2013	David Cresson CCA	The Record of Decision should allow for flexibility in the ultimately chosen marsh mitigation outcome. In Section 2.8 PROPOSED ACTION the PIER acknowledges that for habitat types where mitigation bank credits are the preferred alternative (e.g., BLH and swamp), availability and cost of credits at the time of solicitation remains uncertain, and the Corps-constructed projects would be a suitable substitute if availability and cost are an issue at the time. We believe that the Corps' Record of Decision (ROD) should acknowledge the presence of the Chef Menteur Pass Mitigation Bank as a source of brackish marsh mitigation available for HSDRRS use either as the preferred alternative (subject to credit availability and price at the time of solicitation) or at least as a source of alternative mitigation if the Corps-constructed alternatives prove to be unfeasible or overly expensive. This would also expedite the required mitigation.	The PIER does not evaluate specific mitigation banks that may be eligible to provide credits to compensate for these impacts and individual banks are not being selected or eliminated from consideration in this document. To be eligible to sell credits to compensate for HSDRRS impacts, a bank must be approved by CEMVN and must be in full compliance with its Mitigation Banking Instrument (MBI) (including its mitigation work plan and all performance criteria), its other legal instruments (such as its conservation servitude and its financial assurances), and the standards set forth in 33 CFR Part 332. The recorded conservation servitude and any financial assurances must likewise comply with current MVN standards.

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9-25-2013	David Cresson CCA	Brackish Marshes significantly contribute to sustaining the fisheries that support the recreational and commercial fishing industries that are vital to Louisiana's economy. In addition to protecting the Land Bridge, CCA believes restoring the brackish marsh would result in significant benefits to fish habitat within Chef Menteur Pass. These brackish marshes provide vital nursery habitats for numerous species of fish including speckled trout, redfish, flounder and bass. Young fish can hide in the marsh vegetation while the shallow brackish areas physically exclude larger fish, providing the necessary protection during development. The shelter and numerous food sources within the marshes greatly increase the chances that young fish reach adulthood. Marshes also improve water quality by filtering out pollutants in the water, helping to produce high-quality fish populations that sustain vibrant recreational and commercial fishing industries in Louisiana.	Comment Noted.
24-Sep-13	Virginia M Fay NMFS	Details and recommendations identified in the November 2012, draft Fish and Wildlife Coordination Act Report are necessary items warranting fulfillment as the mitigation features progress. Final scaling of mitigation should be based upon and accomplished during advanced engineering and design, but prior to release of a supplemental PIER. This is to ensure no net loss of wetlands and corresponding functions by basing mitigation projections on final impact numbers and final design. Furthermore, contingency measures and/or adaptive management are necessary to ensure attainment of no net loss of wetlands.	CEMVN appreciates the preliminary and early feedback provided on the HSDRRS marsh mitigation projects and will continue to coordinate closely with NMFS as these projects undergo advanced design and further NEPA compliance.
24-Sep-13	Virginia M Fay NMFS	The PIER adequately addresses wetland impacts and mitigation for forested habitats. Because the PIER introduced marsh impacts and corresponding mitigation which will be covered in supplemental documents, NMFS scrutinized the potential adequacy of the marsh mitigation to satisfy impacts to EFH. NMFS recognizes this consultation does not pertain to the marsh impacts. However, we found it prudent to provide preliminary and early feedback on the marsh mitigation. Preliminarily, the mitigation for the fresh and intermediate marsh as conceptualized in the TSMP A likely would compensate for impacts to EFH. This is based upon a potential net gain of over 100 acres of EFH by constructing marsh mitigation for refuge non-tidal wetlands in tidally influenced areas. The Bayou Sauvage alternative may be acceptable in amount for brackish marsh impacts, but a final determination cannot be made at this time. For brackish marsh, the Bayou Sauvage mitigation will warrant reassessment as a matter of routine as do all final features, but also because the alternative was modified by the USACE to place fill material on approximately 100 acres of existing marsh for the purpose of nourishment. Although we do not object to such nourishment, means should be included to avoid adverse overfilling impacts. The concept would have to be re-evaluated based on the final design and resized according to functional impacts to the existing and created marsh.	CEMVN appreciates the preliminary and early feedback provided on the HSDRRS marsh mitigation projects and will continue to coordinate closely with NMFS as these projects undergo advanced design and further NEPA compliance.
24-Sep-13	Virginia M Fay NMFS	Given the amount and rate of loss of coastal marshes in Louisiana, NMFS has long supported marsh creation as the preferred form of mitigation for tidal marsh impacts. The marsh creation projects evaluated under the final array of mitigation alternatives are acceptable to NMFS as compensatory mitigation provided final details are based on advanced design through coordination with NMFS and other interested natural resource agencies. Recent inspections of the marsh creation mitigation projects highlights the importance of capturing functionality lags in the initial scaling of mitigation, as well as to reconcile partial success and attain no net loss of wetlands. For example, it may be impracticable or cause more environmental harm than good to grade high elevations down. Further, it may be more cost effective to create more marsh up front to cover performance uncertainties than to fill relatively small amounts of open water which were supposed to have been marsh, but experienced more settlement than expected. Issues with attainment of success criteria are anticipated for marsh creation mitigation due to variability in elevations resulting from soils, contractor performance, and differential settlement of backfilled in situ borrow canals. Therefore, one option is to improve benefit projections using the Wetland Value Assessment (WV A) for final scaling of mitigation by updating model assumptions to make them realistic and accurate to the maximum extent practicable. Potential examples for improvement are: 1. Future with project loss rates should be based upon the final design (i.e., 100% Design Decision Report) settlement curves for initial and long term performance projections. 2. Re-assess the 50% reduction in historic loss rate assumption used to project the future with project loss rate (prior to any adjustments for accretion or sea level rise). 3. Assume a portion or all of the in-situ borrow does not result in marsh. 4. Assume all or a portion of the containment dikes do not get credit as marsh. 5. Re-assess the duration of functionality lags for tidal function for various WV A variables. Even with potential improved accuracy of assessments, means to fund corrective or contingency actions in the adaptive management phase should be included in the final PIER and future supplemental documents. If funds are insufficient to support corrective actions, these documents should disclose this limitation and environmental risk to the public.	CEMVN appreciates the preliminary and early feedback provided on the HSDRRS marsh mitigation projects and will continue to coordinate closely with NMFS as these projects undergo advanced design and further NEPA compliance.
24-Sep-13	Virginia M Fay NMFS	NMFS has coordinated often with the U.S. Army Corps of Engineers (USACE) on potential impacts to water quality associated with borrow pits in open water. Literature searches conducted by NMFS were provided to the USACE on this matter and a number of existing borrow pits in Lake Pontchartrain have been demonstrated to create hypoxic conditions. The design of the borrow pits includes sequential means developed with natural resource agencies to site and size borrow in an attempt to minimize creating hypoxia. It is suggested those sequential means be identified as best management practices in the Appendix. Even though pits have been designed in an attempt to minimize impacts to water quality, no monitoring is included to demonstrate adverse impacts do not result. To address potential adverse environmental impacts, approaches exist to address hypoxia concerns through design considerations or after-the-fact with monitoring. Modern design capabilities (e.g., modeling) exist to demonstrate up-front risks to water quality are minimized, but those tools can be costly with residual risk. As the literature suggests, potential environmental impacts from open water borrow pits vary by location and estuary. The USACE is encouraged to include water quality monitoring in supplemental and final PIERs to assess if hypoxia develops. Such monitoring would help with the development of potential contingency measures for future designs if not also for corrective action. The USACE's monitoring of water quality for Individual Environmental Report 11 and the Mississippi River-Gulf Outlet Ecosystem Restoration Study was helpful in this regard. It is suggested scopes of work similar to those be included and repeated annually for three years. NMFS is willing to assist the USACE in further scoping a monitoring plan to assess impacts to water quality.	CEMVN appreciates the preliminary and early feedback provided on the HSDRRS marsh mitigation projects and will continue to coordinate closely with NMFS as these projects undergo advanced design and further NEPA compliance.
24-Sep-13	Virginia M Fay NMFS	The completion of mitigation to offset remaining HSDRRS impacts to wetlands (e.g., purchasing of credits or construction) should be expedited. Given the time since impacts occurred, and potential real estate acquisition challenges, NMFS has a growing concern over the increasing delay to finalize and construct mitigation. Across the TSMP A, increasing temporal loss of wetland functions resulting from delayed implementation of mitigation should be assessed and final mitigation increased accordingly. With the fiscal climate and continuing plan evaluations, funding for completion of the mitigation and any needed increases must be safeguarded. Means should be utilized to expedite completion of mitigation. For example, construction of mitigation on National Wildlife Refuge properties should proceed to final design, environmental clearance and construction.	CEMVN appreciates the preliminary and early feedback provided on the HSDRRS marsh mitigation projects and will continue to coordinate closely with NMFS as these projects undergo advanced design and further NEPA compliance.
24-Sep-13	Virginia M Fay NMFS	Elevation as an indicator of hydroperiod is of paramount importance to assess mitigation success, especially for marsh mitigation. LIDAR surveys are identified as the type of elevation data to be collected. The implications of its availability and accuracy by marsh and vegetation type should be established with the Project Delivery Team, including the natural resource agencies, for further consideration. Use of LIDAR should not be at the exclusion of conventional elevation survey data if an alternative or check is necessary to meet timing or quality control/quality assurance needs of mitigation performance monitoring.	CEMVN appreciates the preliminary and early feedback provided on the HSDRRS marsh mitigation projects and will continue to coordinate closely with NMFS as these projects undergo advanced design and further NEPA compliance.
24-Sep-13	Virginia M Fay NMFS	The USACE should comply with the recommendations identified in the November 12, 2012, Fish and Wildlife Coordination Act (i.e., 3- 6, 11 - 13, 17, and 19, relative to EFH).	Concur.
24-Sep-13	Virginia M Fay NMFS	Mitigation for marsh impacts should be rescaled based on revised impact analyses to be conducted on final designs (i.e., 100% Design Decision Reports). If the amount of mitigation increases, the amount of funds should be adjusted accordingly and represented in the financial assurances.	Mitigation quantities will be based on actual impacts as reflected in as-built drawings. The Corps will mitigate for all marsh impacts and has budgeted sufficient funds for the effort.
24-Sep-13	Virginia M Fay NMFS	The specific dollar amount and mechanism for financial assurances should be identified.	The LPV Project Partnership Agreement between the CPRA of Louisiana and the Federal Government provides the required financial assurances for this mitigation project. In the event that the non-Federal sponsor fails to perform, the CEMVN has the right to complete, operate, maintain, repair, rehabilitate or replace any project feature, including mitigation features, but such action would not relieve CPRA of its responsibility to meet its obligations and would not preclude the US from pursuing any remedy at law or equity to ensure CPRA's performance.
24-Sep-13	Virginia M Fay NMFS	Adaptive management or contingency plans should be developed and included to reconcile mitigation shortfalls from overfilling or underfilling marsh creation mitigation sites.	Concur.
9-Sep-13	Rhonda Smith EPA	EPA supports the goal of establishing large, contiguous mitigation tracts, as opposed to numerous small tracts; however, we are not aware of the legal or regulatory basis for disqualifying a mitigation bank because it lacks available credits to fully offset impacts to a certain wetland type. <i>Recommendation:</i> • EPA recommends the Corps review the policies it has applied to HSDRRS mitigation decisions to ensure consistency with Clean Water Act (CWA) Section 404 mitigation policies. Specifically, the Corps should review the policy that banks must be able to provide 100% of needed mitigation credits in order to be eligible for use in offsetting HSDRRS impacts. Similarly, the Corps should explain why the Wetland Value Assessment model is used to quantify mitigation for the HSDRRS program, whereas the Modified Charleston Method (MCM) is used in the CW A Section 404 regulatory program.	Please reference section 2.8 Proposed Action in the PIER that states "If appropriate and cost-effective, the Corps may choose to purchase mitigation bank credits from more than one bank to fulfill the compensatory mitigation requirements for a particular habitat type." As per EC 1105-2-412, any model used for civil works projects must be certified by the National Ecosystem Restoration Planning Center of Expertise. The modified Charleston method has not gone through the certification process and is not a certified model. As such, it cannot be used for civil works projects.

Date Received	Person	Comment (may be paraphrased or summarized)	Final Response
9-Sep-13	Rhonda Smith EPA	There is ample experience in the New Orleans District with restoring forested wetlands to provide compensatory mitigation. In most instances, the forested wetland restoration involves some combination of hydrologic restoration (e.g., plugging or backfilling drainage canals), tree planting, and control of nuisance species. We are not aware of any active or completed forested wetland restoration projects in which trees are planted on dredged material, as is being proposed in some of the HSDRRS mitigation options being considered by the Corps. While we would have confidence regarding the success of planting marsh species on dredged material, the planting of woody vegetation on such soils might present unique challenges and risks. <i>Recommendation:</i> • In the event that mitigation banks do not remain the preferred option for forested wetland mitigation, EPA recommends the Corps review any available information pertaining to re-establishing forested wetland on dredged material, prior to selecting such an option for offsetting HSDRRS impacts.	Existing conditions at Bonnet Carre for both the BLH and swamp restoration features are such that leveling of the project areas is anticipated to either leave the areas at the elevations necessary for BLH/swamp establishment or that only minimal additional borrow would be required to reach those elevations. This borrow would be obtained from a site in Lake Pontchartrain adjacent to the floodway that receives sedimentary deposits whenever the Bonnet Carre is opened to convey Mississippi River water into Lake Ponchartrain. Similar sediments are also deposited within the Bonnet Carre during the floodway's operation and have not prevented forested habitats from thriving within the Bonnet Carre. Since little to no borrow is anticipated to be necessary for these projects and since the same material deposited in the Bonnet Carre during flood events will also be placed in the mitigation areas, confidence is high that successful BLH and swamp establishment will occur at these sites.
9-Sep-13	Rhonda Smith EPA	When dredged material is used to re-establish or nourish wetlands, there is a risk that the dredged material will settle to elevations which are too high or too low to support the desired wetland vegetation. In either case, additional work could be needed to establish elevations conducive to wetland hydrology and vegetation. In particular, the cost of remobilizing a dredge to augment site elevations can be significant. <i>Recommendation:</i> • In cases where dredged material is used to achieve HSDRRS mitigation goals, has the Corps set aside sufficient funds to cover such potential costs? The use of dredged material to re-establish wetlands should contain adequate funding for contingencies.	The proposed action in PIER 36 is to buy mitigation bank credits for BLH and swamp general impacts or, if credits cannot be obtained for reasons specified in PIER 36, then the Bonnet Carre projects would be constructed for those habitat types. Confidence is high that the required elevations for BLH-Wet and swamp survival will either occur with leveling of the Bonnet Carre sites or would be achieved with the addition of minimal dredged material. The PDT recognizes the uncertainties when using dredged material to achieve wetland elevations at deeper open water sites and is working with the resource agencies to come up with a plan for the programmatic features during TIER completion to ensure the required elevation for each habitat type on sufficient acreage will be achieved to fully mitigate those impacts. Currently, the programmatic features in the PIER have been oversized by using a FWOP condition based on the intermediate SLR scenario to help address this issue.
9-Sep-13	Rhonda Smith EPA	The Corps concluded that there is little risk of adverse water quality impacts from open water borrow areas. For example, page 311 of the PIER contains the following statement: "Approximately 155 acres of lake water bottom would be deepened by an average of 12 feet. It is anticipated that anoxic conditions would be avoided with this depth of dredging ... " <i>Recommendation:</i> • Explain the technical basis for this finding. Describe the monitoring the Corps is performing to determine if this statement is accurate or if adverse water quality conditions develop. Please describe the adaptive management or contingency plans the Corps will enact in case there are adverse water quality effects in open-water borrow areas.	The proposed borrow plan has been developed with an emphasis of mimicking a natural depression in the lake bottom. A gradual side slope of 1V:3H has been designed for the borrow pits. This gradual slope would facilitate tidal flushing. The depth of the dredge pits would be 10 to 11 feet below the existing mud line of Lake Pontchartrain and Lake Borgne. Water depths in the vicinity of the proposed borrow pits are 8 to 9 feet deep. The proposed borrow depth was developed through an analysis of the existing water quality data in the vicinity of the project areas. Post construction, maximum water depths would be approximately 20 feet from the surface of the water at the borrow sites. Monitoring of dissolved oxygen levels in a dredged hole along the south shore of Lake Pontchartrain indicated that chronic, low (<2parts per million) dissolved oxygen conditions only occurred at depths of 40ft and greater and infrequently occurred at shallower depths (Flocks and Franze 2001). Depths in the 20-foot range rarely dropped below the critical threshold of 2 parts per million and during certain times of the year, much of the lake experiences low oxygen conditions. In 2007, the United States Geological Survey (USGS) was contracted to conduct water quality sampling within and in the vicinity of the now deauthorized MRGO navigation channel. To date, three years of sampling data have been collected within and around the deauthorized MRGO navigation channel. From 2008 to 2010, nine locations had monthly water quality monitoring of salinity, dissolved oxygen, and pH. Current trends in the data suggest that hypoxia does not form until approximately 25feet in depth for this area. Though the MRGO channel does experience hypoxia formation below the 25 foot depth; the USGS data indicates sufficient mixing does occur above this depth. Since Lake Pontchartrain and Lake Borgne water bodies are readily mixed (much more than the MRGO channel), MVN believes that the proposed pit design, combined with the hydrological nature of Lakes would ensure that sufficient mixing of the water column would result to prevent hypoxia formation within the borrow pits.
9-Sep-13	Rhonda Smith EPA	The Corps has identified the Bonnet Carre Spillway as the second-ranked option for offsetting non-refuge bottomland hardwood and swamp impacts. However, the PIER indicates that there is a high risk of seedling mortality associated with opening of the spillway: "However, as evidenced by past plantings of BLH species in the spillway outfall area, near total mortality of planted BLH seedlings could occur if such a flooding event occurs before seedlings reach this age. Given the relatively high probability of the spillway being open within 4 years or less, following completion of the initial plantings proposed in the mitigation features, the adaptive management plan for this mitigation project assumes that the canopy and midstory species initially planted will have to be completely re-planted on two separate occasions." (Appendix K, 4. Adaptive Management Plan Recommendation: The PIER should more clearly describe why the Bonnet Carre Spillway is a second ranked option, despite this known risk of seedling mortality.	The risk of seedling mortality from opening of the Bonnet Carre Spillway was considered during the AEP when comparing the different projects mitigating BLH and swamp impacts (see table B-2). Although there is some risk that seedlings could be adversely impacted by an opening of the spillway, that risk is relatively limited (≤40%) and it is anticipated that within approximately 4 to 5 years following the initial planting of tree seedlings, the planted trees will be able to tolerate openings of the spillway. Replanting of the site if the site is impacted is a very minor component of the overall mitigation project cost and could be overcome to some degree by planting larger trees. Important benefits attributable to the Bonnet Carre are that it is already owned by the public (making it implementable almost a year before any other project), is contiguous with a resource managed area, is located in a Parish where the impacts occurred, and provides a habitat linkage with adjacent forested systems (see table B-3 and B-5).
9-Sep-13	Jeffrey D Weller USFWS	The draft PIER #36 is well written and well organized. It provides an adequate description of fish and wildlife resources in the study area, the purpose and need for the proposed action, and the potential impacts associated with each alternative location. The Service has provided comments throughout the planning process regarding our support for the tentatively-selected plan, timing of mitigation relative to impacts, and recommendations for implementing on-refuge and off-refuge mitigation on Service lands. Comments and recommendations provided in planning aid letters dated September 13, 2012; February 25, 2013; May 14, 2013; and the draft Fish and Wildlife Coordination Act Report dated November 21, 2013, still remain valid and are incorporated herein by reference.	Acknowledged.
9-Sep-13	Jeffrey D Weller USFWS	While we are generally in support of the Tentatively Selected Mitigation Plan alternative, we are concerned that using the mitigation bank alternative could have negative repercussions. The Corps has the opportunity and resources to construct a "permittee-responsible" mitigation project. By going to a mitigation bank, the Corps could exhaust credits available in any one mitigation bank thus creating a hardship on an individual landowner/permittee. Mitigation banks provide a cost savings and feasible mitigation alternative for the individual landowner. A mitigation bank serves the individual landowner who does not have the resources to construct a mitigation project or whose project typically does not require the amount of mitigation that warrants a self-mitigation project. We recommend that the Corps consider the availability of credits at a bank and within a hydrologic unit when evaluating the mitigation bank alternative to avoid exhausting credits available for individual landowners/permittee.	We understand and, to a degree, share your concerns. However, the general mitigation bank component of the TSMPA remains as our recommended plan for reasons discussed in Section 2 of the PIER. It is noted that existing mitigation banks capable of providing credits for mitigating general (e.g. non-refuge) BLH-Wet FS and BLH-Dry PS impacts appear to currently have a substantial number of credits available and the purchase of the necessary credits would not come close to exhausting the availability of such credits in the LPV basin. It is also noted that existing mitigation banks capable of providing credits for mitigating general swamp impacts appear to currently have a significant number of credits available and the purchase of the necessary credits would not exhaust the availability of such credits in the LPV basin. Please keep in mind that WRDA 2007 Section 2036(c) requires that we first consider the use of mitigation banks as mitigation for wetland impacts, which is consistent with the wetland mitigation guidance contained in 33 CFR Section 332.3(b)1).
9-Sep-13	Jeffrey D Weller USFWS	The Corp proposes to conduct BLH enhancement work on private lands as mitigation for impacts to BLH-wet habitats at Bayou Sauvage NWR. It is our understanding that the lands in question would be appropriated by condemnation from an unwilling seller. While we would certainly desire to see the lands in question purchased and made a part of Big Branch Marsh NWR, it is the policy of the Service to acquire lands from willing sellers only. It is not the policy of the Service to acquire lands through condemnation. While the lands in question would be appropriated through condemnation by the Corps and then transferred to the Service, the net effect would be the same, which is casting the Service in the role of beneficiary of the condemnation process. It is the position of the Service at this time that any lands acquired through the condemnation process (excluding those condemned for unclear title) will not be accepted by donation, transfer, sale or other means to become part of a national wildlife refuge. Based on this position the Service would not consider any such action or work-performed following such action as meeting the necessary mitigation requirements for impacts to refuge lands. We strongly encourage the Corps to seek alternatives within refuge lands to fulfill the necessary mitigation requirements. The Service has proposed and still supports the fulfillment of mitigating on-refuge BLH-wet impacts (flood side) with protected side alternative locations. Such locations for the restoration of BLH have been identified within the boundaries of Bayou Sauvage NWR, and have been provided to the Corps on previous occasions.	Condemnation is a legitimate tool available to the Corps for purposes of implementing projects. However, the Corps is committed to working closely with the USFWS and NWR in achieving a mitigation project that meets the mission of both agencies.
9-Sep-13	Jeffrey D Weller USFWS	Additional NEPA analysis will investigate design alternatives of the alternative features. It is important that the Service and other natural resource agencies (i.e., the National Marine Fisheries Service (NMFS), the Louisiana Department of Wildlife and Fisheries, the Environmental Protection Agency, and the Louisiana Department of Natural Resources) are involved in the analysis of these alternative designs and construction processes. Accordingly, in order to provide feedback regarding potential impacts to natural resources and to provide measures of avoiding and minimizing those impacts, the Service and the other natural resource agencies should be provided opportunities to review and comment on engineering and design reports and plans and specification documents. At that time more detailed Wetland Value Assessments can be conducted by the Service on the proposed mitigation projects, and resizing efforts can be finalized.	Additional NEPA analysis concerning the programmatic elements of the TSMPA will be provided in future TIER(s). During the course of preparing the TIER(s) and through the associated PED process, proposed mitigation design features within a particular Corps-constructed mitigation project will likely be adjusted/modified. We will coordinate such adjustments and/or modifications with the Interagency Team (natural resource agencies), the PDT, and the Non-Federal Sponsor. Such coordination will include preparing more detailed and/or updated WVAs for the proposed mitigation features; however, these WVAs will be generated during the preparation of the TIER(s) rather than during preparation of the final project plans and specifications (P&S), since final P&S cannot be completed until after the TIER(s) is approved. The Interagency Team members and the Non-Federal Sponsor will be provided the opportunity to review and comment on the final P&S and associated engineering design reports
9-Sep-13	Jeffrey D Weller USFWS	The forthcoming NEPA analyses for the Programmatic Features will include a biological assessment and ESA Section 7 consultation for projects impacting Gulf sturgeon critical habitat. We further recommend that species that may occur also be included in the biological assessment (i.e., West Indian manatee; and Kemp's ridley, loggerhead, and green sea turtles). The Service recommends that the Corps coordinate with the NMFS, who is responsible for consultations with the Corps regarding impacts to the Gulf sturgeon, and its designated critical habitat, in estuarine and marine waters in Louisiana [March 19, 2003, Federal Register (Volume 68, No. 53)], and all species of sea turtles in estuarine waters. Please contact the NMFS Regional Office in St. Petersburg, Florida, for information concerning those species and critical habitat. Ms. Cathy Tortorici (727/209-5953) is the contact for information regarding Gulf sturgeon and its designated critical habitat, and Mr. Eric Hawk (727/824-5312) is the contact for information regarding sea turtles. Should the proposed project directly or indirectly affect those species under the jurisdiction of the NMFS, further consultation with that office will be necessary. Should plans change significantly, or work not implemented within one year following coordination with the Service and NMFS, we recommend that the Corps reinitiate coordination with each office to ensure that the proposed project would not adversely affect any Federally listed threatened or endangered species or their habitat.	Your recommendations are acknowledged. Appropriate biological assessments will be prepared in conjunction with preparation of the future TIER(s) and appropriate ESA Section 7 consultation will be conducted in conjunction with generation of the TIER(s). If mitigation plans change significantly following completion of the ESA Section 7 consultation process or after approval of the TIER(s), we will reinitiate such consultation with USFWS and NMFS. The same course of action will occur if a particular Corps-constructed project is not implemented within one year of completion of the TIER(s) and completion of the initial ESA Section 7 consultation process
9-Sep-13	Jeffrey D Weller USFWS	With regards to the Bonne Carre Dry-BLH, Wet-BLH, and Swamp Restoration projects, the Corps has made a "no effect" determination for project impacts on West Indian manatee, Gulf sturgeon, pallid sturgeon, and sea turtles. Because these species may occur in either one of the alternative borrow areas, we cannot concur with the "no effect" determination at this time. A "no effect" determination is the appropriate conclusion when the proposed action will not affect listed species or critical habitat. A "may affect," but "not likely to adversely affect" determination is an appropriate conclusion when effects on listed species are expected to be discountable, or insignificant, or completely beneficial. In order to ensure compliance with the ESA, we recommend that the Corps re-examine the projects to determine whether they may affect those species listed above and provide a basis for that determination	Should the Bonnet Carre BLH-Dry and BLH-Wet Restoration Project and/or the Bonnet Carre Swamp Restoraton Project ultimately be selected to fulfill the applicable mitigation requirements (refer to Section 2 of PIER), we will re-examine the projects as recommended and will initiate informal ESA Section 7 consultation with USFWS and NMFS.
9-Sep-13	Jeffrey D Weller USFWS	Section 2.1 Mitigation Measure Development and Screening Criteria, Intermediate Marsh, page 2-1 -The last sentence references brackish marsh and should be revised accordingly.	The cited text in Section 2.1 has been revised.

Date Received	Person	Comment (may be paraphrased or summarized)	Final Response
9-Sep-13	Jeffrey D Weller USFWS	Section 2.1 Mitigation Measure Development and Screening Criteria, Bottomland Hardwoods, page 2-1 - It should be noted that "dry" bottomland hardwoods are typically a product of altered hydrology resulting from being located within a leveed system.	Do not concur. We feel the generic description of dry bottomland hardwoods is adequate as written.
9-Sep-13	Jeffrey D Weller USFWS	Section 2.5, Tentatively Selected Mitigation Plan Alternative, Table 2-3. Summary of changes to TSMP designs, page 2-41 and 2-42- To be consistent with the other project descriptions we recommend including borrow information for the Bayou Sauvage Refuge BLH-Wet/Intermediate Marsh Restoration project and indicate that no fill or grading will be required for the "Fritchie Refuge BLH-Wet Enhancement" project.	Borrow information for the Bayou Sauvage Refuge BLH-Wet/Intermediate Marsh Restoration project has been added. No language has been added for the Fritchie project as the table is only meant to show what the project does require. Project specific details can found under section 2.3.
9-Sep-13	Jeffrey D Weller USFWS	Section 3.2.1.2.3, Mitigation for Impacts to Non-Refuge Intermediate Marsh, Caernarvon - Terrebonne Basin is inadvertently referenced in this section and should be revised to the Breton Sound Basin.	The cited text in Section 3.2.1.2.3 has been revised.
9-Sep-13	Jeffrey D Weller USFWS	Section 3.2.3.4.2, Fisheries, Aquatic Resources and Water Quality, Bayou Sauvage, page 3-47 -Unlike the Bayou Des Mats project, the Bayou Sauvage intermediate marshes are currently within a managed unit and aquatic organism ingress and egress is dependent on the water control structures constructed under the Coastal Wetlands Planning, Protection, and Restoration Act, Bayou Sauvage National Wildlife Refuge Hydrologic Restoration, Phase 1 (PO-16) project. Please revise accordingly.	Section 3.2.3.4.2 has been revised to mention the issue stated in your comment.
9-Sep-13	Jeffrey D Weller USFWS	Section 6.2.2.3, Cumulative Impacts, Threatened and Endangered Species, page 6-2- While extensive areas of Lakes Pontchartrain and Borgne are designated Gulf sturgeon critical habitat, habitat that provides the primary constituent elements necessary for Gulf sturgeon to survive and reproduce may be further limited within that designated area. Please revise accordingly.	We agree with your statement, but do not feel that changes to the text in Section 6.2.2.3 are necessary. As applicable, the future TIER(s) and associated biological assessments will further evaluate potential impacts of Corps-constructed mitigation projects (current programmatic elements of the TSMPA) to Gulf sturgeon and Gulf sturgeon critical habitats. Such evaluations will include an evaluation of whether affected Gulf sturgeon critical habitats provide the primary constituent elements necessary for this species to survive and reproduce and whether such elements are limited by various factors.
9-Sep-13	Jeffrey D Weller USFWS	Appendix D: Mitigation of Impacts to Open Water Habitats, Section 2.1, Page D-3- Impacts to species protected by the ESA cannot be mitigated under Section 7 of the ESA. If the Service determines that an impact to a particular habitat does not require mitigation under the Fish and Wildlife Coordination Act, it should be understood that we have considered the value of the habitat to all fish and wildlife resources including federally-listed threatened and endangered species and designated critical habitat, and decided that those impacts would not require mitigation. Our Consultation under Section 7 of the ESA will result in concurrence with a Corps' determination of "no effect", "not likely to adversely affect", or "adversely affect" in terms of listed species for alternative features. We recommend removing actions that would adversely affect threatened or endangered species and federally designated critical habitat as an example.	Comment noted. The design of Corps-constructed projects that are components of the TSMPA will strive to avoid adverse impacts to threatened species, endangered species, and federally designated critical habitats to the greatest extent practicable. Potential impacts will be addressed further in the applicable TIER(s).
9-Sep-13	Jeffrey D Weller USFWS	Appendix D: Mitigation of Impacts to Open Water Habitats, Section 3, Page D-4- The Service classifies submerged aquatic vegetation habitat as a Resource Category 2 habitat and, therefore, it should have "in-kind" mitigation. However, we acknowledge the fact that "inkind" mitigation may be very difficult and somewhat unpredictable compared to marsh mitigation. Therefore, we would accept "out-of-kind" mitigation, that being marsh creation or similar aquatic habitat restoration. Section 3 should be revised to include a Resource Category 2 description.	Comment noted. The cited document is draft and the final policy and approach to mitigating impacts to open water habitats will be determined in the applicable TIER(s).
9-Sep-13	Jeffrey D Weller USFWS	Appendix I: LPV & WBV HSDRRS Mitigation: Wetland Value Assessment (WV A) Model Assumptions and Related Guidance- The Service has worked with the Corps and other natural resource agencies to develop these assumptions and accepts them for use with the LPV and WBV mitigation. These assumptions may be used as a template for future civil works projects; however, for future projects coordination with the natural resource agencies will be necessary to develop area and project specific assumptions.	Concur.
9-Sep-13	Jeffrey D Weller USFWS	Appendix J: General Mitigation Guidelines -Distances within the document are expressed in feet or meters; either standard or both should be presented.	Do not concur.
9-Sep-13	Jeffrey D Weller USFWS	Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Planting Guidelines for Bottomland Hardwood (BLH) Habitats (page J -1), third sentence- The word "height" should be replaced with the phrase "total length" because height typically refers to the length above the root collar which would not be correct.	Do not concur.
9-Sep-13	Jeffrey D Weller USFWS	Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Species for Wet Bottomland Hardwood Habitats (BLH-Wet Habitats), first and second paragraphs and last and first sentences, respectively (page J-2)- The minimum number of hard mast, soft mast, and midstory species should be 5, 5, and 4, respectively.	Appendix J contains general draft guidelines. Site-specific planting plans will be developed for Programmatic features of the TSMPA (Corps-constructed mitigation projects) as part of the applicable TIER(s), in coordination with the Interagency Team, the PDT, and the Non-Federal Sponsor.
9-Sep-13	Jeffrey D Weller USFWS	Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Species for Wet Bottomland Hardwood Habitats (BLH-Wet Habitats), Table 1B (page J-2)- We recommend adding pumpkin ash to this list with a percent composition of 10 to15, and decreasing the Drummond red maple percentage to 5 to 15.	Appendix J contains general draft guidelines. Site-specific planting plans will be developed for Programmatic features of the TSMPA (Corps-constructed mitigation projects) as part of the applicable TIER(s), in coordination with the Interagency Team, the PDT, and the Non-Federal Sponsor.
9-Sep-13	Jeffrey D Weller USFWS	Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Species for Wet Bottomland Hardwood Habitats CBLH-Wet Habitats), Table 1 C (page J-3)- Saltbush, roughleaf dogwood, and honey locust should be removed from this table based on factors such as likelihood of natural regeneration, value to wildlife, and commercial availability of seedlings.	Appendix J contains general draft guidelines. Site-specific planting plans will be developed for Programmatic features of the TSMPA (Corps-constructed mitigation projects) as part of the applicable TIER(s), in coordination with the Interagency Team, the PDT, and the Non-Federal Sponsor.
9-Sep-13	Jeffrey D Weller USFWS	Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Species for Dry Bottomland Hardwood Habitats (BLH- Dry Habitats), first paragraph, second sentence, and Tables 2A (page J-3) and 2B (page J-4)- The percentage of hard and soft mast should be 60 and 40, respectively and the percentage of water oak should be reduced to 5.	Appendix J contains general draft guidelines. Site-specific planting plans will be developed for Programmatic features of the TSMPA (Corps-constructed mitigation projects) as part of the applicable TIER(s), in coordination with the Interagency Team, the PDT, and the Non-Federal Sponsor.
9-Sep-13	Jeffrey D Weller USFWS	Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Species for Dry Bottomland Hardwood Habitats (BLH- Dry Habitats), first paragraph, last sentence, (page J-3)- The number of hard and soft mast species utilized should be 5 for each.	Appendix J contains general draft guidelines. Site-specific planting plans will be developed for Programmatic features of the TSMPA (Corps-constructed mitigation projects) as part of the applicable TIER(s), in coordination with the Interagency Team, the PDT, and the Non-Federal Sponsor.
9-Sep-13	Jeffrey D Weller USFWS	Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Species for Dry Bottomland Hardwood Habitats (BLH- Dry Habitats), second paragraph, first sentence, (page J-3)- The number of midstory species utilized should be 5.	Appendix J contains general draft guidelines. Site-specific planting plans will be developed for Programmatic features of the TSMPA (Corps-constructed mitigation projects) as part of the applicable TIER(s), in coordination with the Interagency Team, the PDT, and the Non-Federal Sponsor.
9-Sep-13	Jeffrey D Weller USFWS	Appendix 1: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Species for Dry Bottomland Hardwood Habitats (Dry-Wet Habitats), Table 2C (page J-4)- Elderberry, roughleaf dogwood, and honey locust should be removed from this table based on factors such as likelihood of natural regeneration, value to wildlife, and commercial availability of seedlings.	Appendix J contains general draft guidelines. Site-specific planting plans will be developed for Programmatic features of the TSMPA (Corps-constructed mitigation projects) as part of the applicable TIER(s), in coordination with the Interagency Team, the PDT, and the Non-Federal Sponsor.
9-Sep-13	Jeffrey D Weller USFWS	Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Planting Guidelines for Swamp Habitats, third and fourth sentences, (page J-5)- The word "tall" should be replaced with the phrase "total length" because tall typically refers to the length above the root collar which would not be correct.	Do not concur
9-Sep-13	Jeffrey D Weller USFWS	Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Planting Guidelines for Swamp Habitats, second paragraph, fourth sentence, (page J-5)- The minimum number of canopy species should be 4.	Appendix J contains general draft guidelines. Site-specific planting plans will be developed for Programmatic features of the TSMPA (Corps-constructed mitigation projects) as part of the applicable TIER(s), in coordination with the Interagency Team, the PDT, and the Non-Federal Sponsor.
9-Sep-13	Jeffrey D Weller USFWS	Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Planting Guidelines for Swamp Habitats, second paragraph, fifth sentence, (page J-5)- The minimum percentage of bald cypress should be 60 as correctly displayed in Table 3A.	Appendix J contains general draft guidelines. Site-specific planting plans will be developed for Programmatic features of the TSMPA (Corps-constructed mitigation projects) as part of the applicable TIER(s), in coordination with the Interagency Team, the PDT, and the Non-Federal Sponsor.
9-Sep-13	Jeffrey D Weller USFWS	Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Planting Guidelines for Swamp Habitats, Table 3A, (page J-5)- We recommend adding pumpkin ash to this list with a percent composition of 10 to 15, and removing the Drummond red maple.	Appendix J contains general draft guidelines. Site-specific planting plans will be developed for Programmatic features of the TSMPA (Corps-constructed mitigation projects) as part of the applicable TIER(s), in coordination with the Interagency Team, the PDT, and the Non-Federal Sponsor.
9-Sep-13	Jeffrey D Weller USFWS	Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Planting Guidelines for Swamp Habitats, Table 3B (page J-6)- Roughleaf dogwood should be removed from this table based on factors such as likelihood of natural regeneration, value to wildlife, and commercial availability of seedlings.	Appendix J contains general draft guidelines. Site-specific planting plans will be developed for Programmatic features of the TSMPA (Corps-constructed mitigation projects) as part of the applicable TIER(s), in coordination with the Interagency Team, the PDT, and the Non-Federal Sponsor.
9-Sep-13	Jeffrey D Weller USFWS	Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Deviations from Typical Planting Guidelines, fourth paragraph, second to last sentence, (page J-6)- The phrase "and in coordination with the natural resource agencies" should be added to the end of this sentence.	Do not concur.

Date Received	Person	Comment (may be paraphrased or summarized)	Final Response
9-Sep-13	Jeffrey D Weller USFWS	Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Additional Mitigation Guidelines, Guidelines for Surface Water Management Features and Structures, (page J-10)- The Service recommends that the use of "indicators of reduction in soil" tubes (IRIS) be examined as a means of reducing hydrology monitoring costs. Additional information on this technique can be found in the literature listed below: Jenkinson, B.J., D.P. Franzmeir, W.C. Lynn. 2002. Soil Hydrology on an End Moraine and a Dissected Till Plain in West-Central Indiana. Soil Science Society of America Journal, Volume 66: 1367-1376. National Technical Committee for Hydric Soils. 2007. The Hydric Soil Technical Standard. Technical Note 11. Available URL: ftp://ftpfc.c.egov.usda.gov/NSSC/Hydric_Soils/notell.pdf .	Recommendation noted.
9-Sep-13	Jeffrey D Weller USFWS	Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Additional Monitoring Reports, second, third, and fourth bullets (page J -15) and fifth through sixth bullets on page J-22- The Service agrees with the type of data that should be gathered but does not agree with the proposed techniques used to gather this data. The Service recommends that the data gathering techniques be similar to those utilized by mitigation banks in Louisiana and that finalization of the technique be done in coordination with the Service and other natural resource agencies.	Do not concur. The monitoring methods proposed are scientifically valid. Site-specific mitigation monitoring plans will be developed for programmatic components of the TSMFA and addressed in the TIER(s). The proposed methodologies will be further coordinated with the Interagency Team, the PDT, and the Non-Federal Sponsor during the process of preparing the TIER(s). It is further noted that USFWS has recently accepted the proposed monitoring methodologies addressed in the cited portions of Appendix J.
9-Sep-13	Jeffrey D Weller USFWS	Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Additional Monitoring Reports, Bottomland Hardwood Mitigation Bullet 7 – 8 (page J-16), and Swamp Mitigation Bullet 8-9 (page J-23) - Where mitigation sites do not involve water control structures manipulating water levels will be difficult. Every effort to achieve appropriate elevations to sustain targeted wetland habitats should be made during the design and construction. For mitigation projects that would not be able to manipulate hydrology water table elevation data would not be necessary. As an alternative we recommend collecting soils data to determine if appropriate hydric soil conditions are being met.	Recommendation noted.
9-Sep-13	Jeffrey D Weller USFWS	Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Monitoring Schedule and Responsibilities, sixth paragraph, last sentence, (page J-17) and last sentence of first paragraph of page J-18- The phrase "and/or vegetative controls of invasive or nuisance species" be added after the words "supplemental plants.	Do not concur. Appendix J contains general draft guidelines. Site-specific mitigation monitoring schedules and responsibilities will be developed for Corps-constructed mitigation projects as part of the applicable TIER(s), and will be coordinated with the Interagency Team, the PDT, and the Non-Federal Sponsor during the process of preparing the TIER(s).
9-Sep-13	Jeffrey D Weller USFWS	Appendix K: Bonnet Carre , Mitigation Program for General BLH Impacts, and Appendix L: Bonnet Carre , Mitigation Program for General Swamp Impacts - Comments provided for the General Mitigation Guidelines (Appendix J) are applicable to the Bonnet Carre Restoration Projects as well. Please revise accordingly.	Do not concur. We believe the mitigation programs set forth in Appendices K and L are sufficient as currently written. Should either of these two Corps-constructed mitigation projects need to be implemented, which is doubtful, we will coordinate further with the Interagency Team and Non-Federal Sponsor during the development of final project plans and specifications.
9-Sep-13	Jeffrey D Weller USFWS	Appendix K: Bonnet Carre , Mitigation Program for General BLH Impacts, Initial Planting of Mitigation Features, Table 2-1 and 2-2, page K-4- The percentage of water oak should be reduced to 5 and saltbush should be deleted from the list of midstory species.	Do not concur.
9-Sep-13	Jeffrey D Weller USFWS	Appendix N: Adaptive Management Plan, 3.0 Monitoring for Project Success, first paragraph, second sentence, (page N-8)- The phrase "and natural resource agencies" should be added behind the words "local sponsor.	Concur. Site-specific monitoring plans for other Corps-constructed projects will be provided in the applicable TIER(s). Development of these plans will be coordinated with the Interagency Team, PDT, and Non-Federal Sponsor.

Agency and Public Comments

2002 Clipper Park Road, Suite 201
Baltimore, MD 21211

P 443.921.9441

F 410.235.1503

www.ecosystempartners.com

September 18, 2013

Colonel Richard Hansen
Commander, New Orleans District
U.S. Army Corps of Engineers
Post Office Box 60267
New Orleans LA 70160-0267

Subject: Response to the Draft Programmatic Individual Environmental Report #36, Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes Louisiana, (PIER #36)

Dear Colonel Hansen

I am writing to comment on the above-referenced PIER #36 that was released on August 12, 2013, and available for public comment through September 25, 2013. Overall, our comments to the PIER stem from two areas of concern:

- 1) Consistency with the emphasis established by the Water Resources Development Act (WRDA) 2007 for the prioritized use of mitigation banks for Corps Civil Works projects and the process / criteria used by the Corps in evaluating the “availability” of mitigation banks and credits for the marsh mitigation component of the HSDRRS program.
- 2) The feasibility of the Corps-constructed projects identified as the preferred alternatives in the PIER given a) incorrect assumptions about the status of conditions set forth in the US Fish & Wildlife Service’s 2007 waiver of prohibitions on mitigation on National Wildlife Refuges and b) the ability of the Corps to acquire or take private land for mitigation purposes.

In Section 2.8 PROPOSED ACTION the PIER acknowledges that for habitat types where mitigation bank credits are the preferred alternative (e.g. BLH and swamp), availability and cost of credits at the time of solicitation remains uncertain, and that Corps-constructed projects would be a suitable *substitute* if availability and cost are an issue at that time. As the following letter will detail, given the need for the Corps to be consistent with the provisions of WRDA 2007, the availability of the Chef Menteur Pass Mitigation Bank as an existing, fully permitted mitigation bank and the significant feasibility questions surrounding the Corps-constructed projects, why would the Corps not take a similar approach for brackish marsh mitigation?

Accordingly, we strongly recommend that the Corps' Record of Decision (ROD) acknowledge the presence of the Chef Menteur Pass Mitigation Bank as a source of brackish marsh mitigation available for HSDRRS use either as the preferred alternative (subject to credit availability and price at time of solicitation) or at least as a source of alternative mitigation if the Corps-constructed alternatives prove to be unfeasible or overly expensive.

Furthermore, we recommend that the ROD acknowledge the ability of the Corps to use all available procurement methods (such as a multi-award purchase order contract with negotiated delivery schedules) to meet the Corps' mitigation needs.

Issue 1. Consistency with WRDA 2007 and the process to select Mitigation Banks:

WRDA 2007 requires the Corps to consider the use of mitigation banks in Civil Works projects. We note that the PIER recognizes that requirement and selects mitigation banks for some of the habitat type mitigation required, but has ignored mitigation banks for other habitat types such as Brackish Marsh. The reason why seems to be about internal policy decisions which have led to a Tentatively Selected Plan which we believe has flawed assumptions and conclusions, including:

- In Paragraph 2 in Section 2 under "NEPA SCOPING" of the PIER, the Corps states that the selection criteria for mitigation banks only included banks for which a perpetual conservation servitude was in place. The New Orleans District has also created a policy that marsh mitigation banks cannot have a life beyond 20 years and that perpetual conservation servitudes on marsh mitigation banks are not appropriate or required, therefore precluding, through internal policy, the use of any mitigation bank for any marsh restoration (fresh, intermediate, or brackish) required by HSDRRS. This internal policy combined with the stated selection criteria has allowed the New Orleans District to circumvent the intent of WRDA 2007 for any marsh mitigation through creation of a circumstance that cannot be met. The Sponsor of Chef Menteur Pass Mitigation Bank initially tried to place a permanent conservation servitude on the bank when it was permitted, but was discouraged by the Corps from doing so. The Sponsor has subsequently placed a permanent conservation servitude on the bank, which meets all the Corps requirements, which it would have done initially if it was informed that the absence of a permanent servitude would be an elimination factor.
- The New Orleans District has also set an internal policy to only consider using mitigation banks when 100% of the mitigation (measured in AAHUs) that the Corps requires for a given habitat type are on a bank's ledger (or on a combination of multiple banks' ledgers). As the only approved brackish marsh mitigation bank in the LPV, this would require the Chef Menteur Pass Mitigation Bank to have 100% of the total HSDRRS credit need on its ledger at this yet undetermined time. While the 1,084 acre Chef Menteur Pass Mitigation Bank has been approved by the Corps regulatory branch since 2008 to generate a total of 251 AAHUs (260% of the 96.13 AAHUs needed by HSDRRS to mitigate for non-Refuge brackish marsh impacts), has completed 65.3 acres of marsh restoration already, and is ready to complete the rest on a given delivery schedule, it does not currently have enough credits on the ledger to meet the 100% "rule" established by

the internal policy. Once again, only due to the difference between the regulatory branch's requirement for banks and the Civil works requirements for HSDRSS, the Chef Menteur Pass Mitigation Bank has been excluded from being considered as part of the HSDRSS mitigation solution, when in fact it could be a significant part of the solution.

- EIP has been informed by Civil Works staff that its policy for 100% credit availability was also based on the policy that 100% of the mitigation had to occur through one project. EIP notes that the final configuration of the Bayou Savage Brackish Marsh Mitigation selected as the Tentatively Selected Plan consists of partial construction of marsh enhancement on Refuge Lands (BSFS-5) and partial construction of brackish marsh on private lands (BSFS-4) which are not presently under control by the Corps or the Non-Federal Sponsor. We understand that these private lands are NOT within the Refuge Acquisition boundaries, and therefore cannot be considered a single and complete project. The mitigation is in effect two projects one on Refuge Lands and one on private lands, each of which contributes to the overall mitigation. The Corps is being inconsistent with respect to the selection of banks and Corps Constructed projects.
- The PIER fails to take into consideration the credit release schedule of mitigation banks like the Chef Menteur Pass Mitigation Bank when determining credit "availability". Based upon the credit release schedule in the Chef Menteur Pass Bank's Mitigation Bank Instrument (MBI) and construction schedules committed to by the Bank's Sponsor, that bank will have enough AAHU's on its ledger within the next 36 months to satisfy the full HSDRRS non-Refuge mitigation needs. In contrast, it is unlikely that the Corps-constructed plan will have initiated *any* construction within that time. The credit release schedule, set by the New Orleans District, in consultation with the IRT, provides the Corps with the ability to ensure the success of mitigation within a mitigation bank. This credit release schedule should be the basis of consideration of the definition of "availability" of credits to supply HSDRSS. It is possible for the Corps to procure credits as they are released, just like the Corps procures other goods and services with a delivery timeline. The mitigation credit delivery schedule from a given bank would be stipulated and secured by a purchase order to be negotiated as part of the Corps' solicitation.
- The Corps has constructed HSDRSS in advance of mitigating the impacts by many years, inconsistent with the 404b1 Guidelines which govern the administration of the 404 program between the Corps and USEPA. The Corps should be trying to find the most expedient way to meet these requirements. It seems that the Tentatively Selected Plan has the potential to stretch out the process of actually getting mitigation in place for many additional years. Putting together contracts for obtaining credits from mitigation bankers could shorten this process considerably.

Issue 2- The Feasibility of Corps-Constructed Projects:

We note that the PIER references the Department of Interior (DOI) policy (FR Vol 64, No 175, 10 Sept 1999) that requires impacts on National Wildlife Refuge (NWR) lands to be mitigated on NWR lands. The Corps fails to state that that same policy *prohibits* mitigation on NWR lands for non-NWR impacts. The Corps should state the full DOI policy in the PIER and explain what

justified the October 31, 2007 USFWS waiver from the Interior policy, as it is material to why the Corps is proposing to mitigate on NWR lands for non-NWR impacts when the majority of wetland impacts occurred on non-NWR lands.

EIP understands that the Waiver contains certain requirements and conditions that define when the waiver is applicable. It is our understanding that the conditions of this waiver include requirements that:

- 1) *“Suitable/feasible off-Refuge mitigation sites which will retain public use functions as well as ecological functions are not available within the same watershed for in-kind mitigation.”*
- 2) The, *“approved plan provides sufficient funding of O & M and monitoring for life of the project.”*

1. First, concerning the availability of suitable and feasible off-Refuge mitigation sites, the PIER makes no mention of the brackish marsh mitigation bank (the Chef Menteur Pass Mitigation Bank) that has been in operation in the same watershed since 2008 and has been approved by the Corps (in consultation with the Interagency Review Team, consisting of USEPA, USFWS, NOAA-NMFS, LDWF and LDNR) to generate over 1,084 acres (251 AAHUs) of brackish marsh mitigation; substantially more than the 96.13 AAHUs of HSDRSS non-NWR brackish marsh requirements, with all the advantages the Corps identifies in the PIER as to why banks are preferable mitigation. In a letter from the USFWS to EIP dated September 11, 2013, the USFWS cites the current status of credit availability as the reason why it maintains that no suitable/feasible off-refuge mitigation sites are available in the same watershed. This is a temporary condition of the Chef Menteur Bank which as recently as July 2013 had over 125 acres/credits available, and still has the potential to generate over 1,000 acres/credits of brackish marsh mitigation. Again, the definition of “available” (having 100% of the needed credits on a banks’ ledger at a given moment in time) is not a suitable metric and has not been the standard used for other habitat types where banks are the preferred alternative. The Chef Menteur Bank is therefore a suitable, feasible and available off-refuge mitigation site leaving one of the key conditions of the 2007 waiver un-met.
2. Second, EIP understands that although the Non Federal Sponsor and the Corps have signed a Project Partnership Agreement for the HSDRSS project that includes a commitment by the State to provide the O&M of mitigation sites, the ability of the State to fund such obligations are subject to the appropriation of funds by the State’s legislature for such operation, maintenance, repair, rehabilitation, and replacement. The Corps is required under 33 CFR 332 to ensure that mitigation will mitigate the impacts to Waters of the United States, it is hard to see how the Project Partnership Agreement is enforceable since the State cannot obligate a future legislature in appropriating funds for operations, maintenance and repair of the mitigation sites. In contrast, as the PIER notes on Page 6-9, *“purchase of mitigation bank credits relieves the CEMVN and NFS of the responsibility for monitoring and of demonstrating mitigation success.”*

Again, based on the September 11, 2013 letter cited above, we believe the USFWS incorrectly assumes that a) “marsh mitigation usually requires **little additional funding** for operations, maintenance and monitoring” when marsh restoration is in fact one of the most expensive habitats to maintain over a 50-year period and b) “**the Corps will provide the funding** for operations, maintenance and monitoring” when in fact the Corps is explicitly *not* responsible for such funding under its agreement with the NFS. Again, this leaves a condition of the 2007 waiver unmet and puts into serious question the feasibility of the Corps-constructed on-refuge mitigation plan.

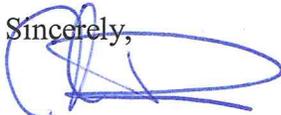
EIP believes that the above demonstrates that at least two of the conditions of the USFWS waiver have not been met, and the Corps must reconsider the choice of mitigation on NWR in accordance with DOI policy. Of the projects identified in the PIER as potential brackish marsh restoration, all of Bayou Sauvage project is within refuge lands, 1/3 of the Fritchie project is within refuge lands, all off Big Branch project is within refuge lands and ½ of the Golden Triangle is within refuge lands.

EIP notes that the PIER does not discuss land control for any of the potential HSDRRS mitigation sites on non-Refuge land. For areas that are not on Refuge lands, including the 48.8 acres of marsh restoration defined as BSFS-4 in Figure 30, the PIER needs to discuss the steps the Corps has taken to secure land control from the current, private owner. Without land control, the Corps cannot proceed with any of the mitigation. It seems that land availability should be part of the screening criteria of the PIER. We understand that the Non Federal Sponsor is unwilling to use condemnation / eminent domain as a tool for gaining land control with landowners unwilling to provide voluntary access to these sites.

In addition, EIP notes that the USFWS will consider mitigation lands acquired by the Corps or Non-Federal Sponsor and then added to the Refuge to meet the requirements of mitigating on-Refuge impacts. Page iii of the November 12, 2012 *Fish and Wildlife Coordination Act Report – Mitigation Plan for HSDRRS* states that, if mitigation lands are purchased for inclusion within a NWR those lands must meet certain requirements, including a requirement that, “*the lands must be located within a refuge’s acquisition boundary.*” EIP notes again that approximately 48.8 acres defined as BSFS-4 on Figure 30 of the PIER is located on land that is neither owned by the USFWS nor within the approved acquisition boundary of the Bayou Sauvage NWR. Does the Corps intend to acquire these lands for inclusion in the NWR in order to claim them as meeting a portion of the on-Refuge mitigation needed?

We appreciate this opportunity to provide comment on this document.

Sincerely,



Nicholas Dilks
Managing Partner

CC: Garret Graves, Chairman, Louisiana Coastal Protection and Restoration Authority
Senator David Vitter
Senator Mary Landrieu
Congressman Cedric Richmond
Dan Ashe, Director, US Fish & Wildlife Service
Lawrence Selzer, President and CEO, The Conservation Fund

B. CLARK HEEBE

817 Bocage Lane – Mandeville, LA 70471 - (985) 624-2644 - Fax: (985) 264-2633

November 27, 2013

Colonel Richard Hansen
Commander, New Orleans District
U.S. Army Corps of Engineers
Post Office Box 60267
New Orleans, Louisiana 70160-0267
mvnvironmental@usace.army.mil

Re: Comment on Draft Programmatic Individual Environmental Report #36, Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes Louisiana (PIER #36)

Dear Colonel Hansen:

After reviewing PIER #36 for the Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, I felt compelled to write and provide a public comment regarding the government's apparent desire to take private land to satisfy the Corps self-imposed mitigation requirement for government projects (a requirement which is wasteful, increases the cost of hurricane protection projects and, if implemented as proposed, would violate the most basic of American freedoms -- and the Constitution).

PIER #36 indicates that the government has intentions of taking private land (which the Corps refers to as the "Fritchie Marsh"), from an unwilling landowner, for use as a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I believe it is my duty to object to this abusive practice of expropriating privately owned land from unwilling land owners for mitigation purposes.

Private landowners purchase property with the expectation of maintaining peaceful ownership of that property absent some government necessity. When it comes to mitigation, however, the necessity requirement is not fulfilled. First, the requirement is self-imposed (and wholly discretionary) and, therefore, not really necessary in the normal expropriation sense. Second, willing landowners, mitigation banks, state projects and other avenues should be utilized -- just as private developers must do under the Corps' rules.

The fact that the government believes it can just take private, unwilling sellers' land to fulfill a self-imposed requirement is, in a word, scary. Americans do not purchase land just to have it taken upon the whim by the government as has happened in other countries such as Argentina and Russia. This attempted abuse of government power, causes me to re-think my support of coastal and hurricane protection projects.

Americans purchase land with the constitutional right to maintain peaceful possession and ownership of that land absent government necessity. Such a requirement is not met when the government does not seek to obtain mitigation land from willing sellers and/or mitigation banks. The government cannot be allowed to take unwilling, private landowners' land just because it wants it or because it would be good land to have. We, as Americans, have always been free from such misuses and abuses of power.

Sincerely,

Clark Heebe

504-421-7760

**John H. Musser, V
1206 Milan Street
New Orleans, Louisiana 70115
(504) 899-4411**

September 25, 2013

Via Fax: 504-862-2088

Colonel Richard Hansen
Commander, New Orleans District
U.S. Army Corps of Engineers
Post Office Box 60267
New Orleans, Louisiana 70160-0267

Re: Comment on Draft Programmatic Individual Environmental Report #36,
Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction
Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist,
and St. Tammany Parishes Louisiana (PIER #36)

Dear Colonel Hansen:

After reviewing PIER #36 for the Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, I am compelled to offer my public comment regarding (and opposing) the government's apparent desire to seize private land to satisfy a self-imposed (and thus optional) mitigation requirement for government projects. This specious requirement increases the cost of hurricane protection projects and, if implemented as proposed, is violative of the most basic of laws: the United States Constitution.

PIER #36 indicates that the government intends to take private land (the "Fritchie Marsh"), from an unwilling landowner, in order to establish a *potential* mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I am obligated to strenuously object to

this abusive practice of expropriating privately owned land from unwilling land owners for optional self- imposed mitigation purposes.

Private citizens and companies purchase property with the expectation of maintaining peaceful ownership and quiet enjoyment of that property absent some government *necessity*. When it comes to mitigation, however, the necessity requirement is not fulfilled. First, because the requirement is self-imposed, it is in reality wholly discretionary; and, therefore, not “necessary” in the expropriation sense. Second, willing landowners, mitigation land banks, state projects and other avenues are already in existence and available for mitigation purposes, and should be utilized first, just as private developers must do under the Corps’ existing rules.

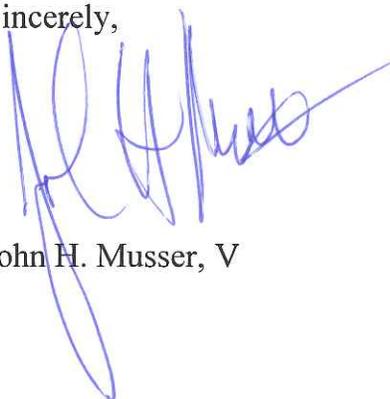
The fact that the Corps believes it can just seize land from private, unwilling sellers’ land to fulfill a self-imposed “requirement” is, in a word, terrifying. Americans do not purchase property just to have it taken upon the whim by the government as has happened in other countries, like Venezuela, Cuba, Argentina and Russia. This country is a democracy, and such a naked attempt to abuse governmental power certainly gives us all pause, and leads us to question support of coastal and hurricane protection projects.

Americans purchase land with the constitutional right to maintain peaceful possession, enjoyment and ownership of that land, in the absence of a governmental *necessity*. This requirement is not met if the government whimsically chooses not to purchase or otherwise obtain the discretionary mitigation land from willing sellers and/or mitigation banks. The government cannot be allowed to take unwilling, private landowners’ land just because it wants it or because it believes it would be good land to have. The landowner has rights, and we, as Americans, have always been free from such patent misuses and abuses of power.

For the foregoing reasons, I vehemently object to the expropriation aspects of PIER #36.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



John H. Musser, V

From: [Louis M. Freeman Jr.](#)
To: [MVN Environmental](#)
Subject: [EXTERNAL] Draft Programmatic Individual Environmental Report #36
Date: Wednesday, September 25, 2013 8:30:19 PM
Attachments: [priv land owner obj ltr.pdf](#)

Louis M. Freeman Jr.

louis@lmfjr.com
7557 S. Bocage Ct.
Baton Rouge, LA 70809
(225) 362-3383

September 25, 2013

Colonel Richard Hansen
Commander, New Orleans District
U.S. Army Corps of Engineers
Post Office Box 60267
New Orleans, Louisiana 70160-0267
mvnenvironmental@usace.army.mil

Re: Comment on Draft Programmatic Individual Environmental Report #36, Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes Louisiana (PIER #36)

Dear Colonel Hansen:

After reviewing PIER #36 for the Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, I felt compelled to write and provide a public comment regarding the government's apparent desire to take private land to satisfy the Corps self-imposed mitigation requirement for government projects (a requirement which is wasteful, increases the cost of hurricane protection projects and, if implemented as proposed, would violate the most basic of American freedoms -- and the Constitution).

PIER #36 indicates that the government has intentions of taking private land (which the Corps refers to as the "Fritchie Marsh"), from an unwilling landowner, for use as a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I believe it is my duty to object to this abusive practice of expropriating privately owned land from unwilling land owners for mitigation purposes.

Private landowners purchase property with the expectation of maintaining peaceful ownership of that property absent some government necessity. When it comes to mitigation, however, the necessity requirement is not fulfilled. First, the requirement is self-imposed (and wholly discretionary) and, therefore, not really necessary in the normal expropriation sense. Second, willing landowners, mitigation banks, state projects and other avenues should be utilized -- just as private developers must do under the Corps' rules.

The fact that the government believes it can just take private, unwilling sellers' land to fulfill a self-imposed requirement is, in a word, scary. Americans do not purchase

land just to have it taken upon the whim by the government as has happened in other countries such as Argentina and Russia. This attempted abuse of government power, causes me to re-think my support of coastal and hurricane protection projects.

Americans purchase land with the constitutional right to maintain peaceful possession and ownership of that land absent government necessity. Such a requirement is not met when the government does not seek to obtain mitigation land from willing sellers and/or mitigation banks. The government cannot be allowed to take unwilling, private landowners' land just because it wants it or because it would be good land to have. We, as Americans, have always been free from such misuses and abuses of power.

Sincerely,

Louis M. Freeman, Jr.

From: [Tim DePaula](#)
To: [MVN Environmental](#)
Subject: [EXTERNAL] PIER 36
Date: Wednesday, September 25, 2013 5:26:34 PM

Re: Comment on Draft Programmatic Individual Environmental Report #36, Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes Louisiana (PIER #36)

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Sincerely,

Tim DePaula

From: [Flower, Tommy](#)
To: [MVN Environmental](#)
Subject: [EXTERNAL] Pier #36 objection
Date: Wednesday, September 25, 2013 5:21:32 PM
Attachments: [priv land owner obj ltr.docx](#)

Please see me attached letter regarding Pier #36

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September 25, 2013

Colonel Richard Hansen
Commander, New Orleans District
U.S. Army Corps of Engineers
Post Office Box 60267
New Orleans, Louisiana 70160-0267
mvnenvironmental@usace.army.mil

Re: Comment on Draft Programmatic Individual Environmental Report #36, Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes Louisiana (PIER #36)

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Sincerely,

Tommy Flower

From: [Ellen Rowley](#)
To: [MVN Environmental](#)
Subject: [EXTERNAL] Comment on Draft Programmatic Individual Environmental Report #36
Date: Wednesday, September 25, 2013 5:16:39 PM

September 25, 2013

Colonel Richard Hansen

Commander, New Orleans District

U.S. Army Corps of Engineers

Post Office Box 60267

New Orleans, Louisiana 70160-0267

mvnenvironmental@usace.army.mil <<mailto:mvnenvironmental@usace.army.mil>>

Re: Comment on Draft Programmatic Individual Environmental Report #36, Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes Louisiana (PIER #36)

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Sincerely,

Ellen Rowley Sibille

670 Seneco Drive

Ponchatoula, LA 70454

From: [Debbie Locicero](#)
To: [MVN Environmental](#)
Subject: [EXTERNAL] Comment on Draft Programmatic Individual Environmental Report #36 (PIER #36)
Date: Wednesday, September 25, 2013 5:15:30 PM

ATTN: Colonel Richard Hansen
Commander, New Orleans District
U.S. Army Corps of Engineers
Post Office Box 60267
New Orleans, Louisiana 70160-0267
mvnenvironmental@usace.army.mil <<mailto:mvnenvironmental@usace.army.mil>>

Re: Comment on Draft Programmatic Individual Environmental Report #36, Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes Louisiana (PIER #36)

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Sincerely,
Debbie LoCicero

Jennifer N. Willis
319 Fairway Drive
New Orleans, LA 70124
A504-484-1226

November 27, 2013

Colonel Richard Hansen
Commander, New Orleans District
U.S. Army Corps of Engineers
Post Office Box 60267
New Orleans, Louisiana 70160-0267
mvnenvironmental@usace.army.mil

Re: Comment on Draft Programmatic Individual Environmental Report #36, Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes Louisiana (PIER #36)

Dear Colonel Hansen:

I have reviewed PIER #36 for the Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation and I write to you in opposition. The apparent intention of the government to expropriate land for “mitigation” of property that is located in a completely different geographical area is an abuse of the entire mitigation process. First, the Corps should do on-site mitigation at the area that was purportedly damaged or, if that is not feasible, on adjacent property. If neither of these options is viable after a real, arms-length assessment, the mitigation should be accomplished using private mitigation banks that have been created for this express purpose.

As I understand the process, the Corps has created the mitigation requirement out of whole cloth and without statutory authority. In other words, it self-imposed a mitigation requirement and is now using that requirement to justify an unconstitutional taking of private property. If this type of abuse is allowed, no private property is secure.

The Corps has an obligation to accomplish mitigation, if mitigation is indeed required, with the least intrusion on private land ownership.

Sincerely,

//signed//

Jennifer N. Willis

From: [John Rowan](#)
To: [MVN Environmental](#)
Subject: [EXTERNAL] Colonel Richard Hansen
Date: Wednesday, September 25, 2013 5:13:25 PM

September 25, 2013

Commander, New Orleans District

U.S. Army Corps of Engineers

Post Office Box 60267

New Orleans, Louisiana 70160-0267

mvnenvironmental@usace.army.mil <<mailto:mvnenvironmental@usace.army.mil>>

Re: Comment on Draft Programmatic Individual Environmental Report #36, Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes Louisiana (PIER #36)

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Sincerely,

John F Rowan, Jr.

Sent from my iPhone

From: [Maunsell Howard](#)
To: [MVN Environmental](#)
Subject: [EXTERNAL] Pier 36
Date: Wednesday, September 25, 2013 5:07:08 PM

I object strongly to pier 36. Why should the government have the right to take control of private land ?
!!

Thanks,
Maunsell

From: [Mike Letourneau](#)
To: [MVN Environmental](#)
Subject: [EXTERNAL] PIER #36
Date: Wednesday, September 25, 2013 5:07:00 PM

Dear Colonel Hansen:

After reviewing PIER #36 for the Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, I felt compelled to write and provide a public comment regarding the government's apparent desire to take private land to satisfy the Corps self-imposed mitigation requirement for government projects (a requirement which is wasteful, increases the cost of hurricane protection projects and, if implemented as proposed, would violate the most basic of American freedoms -- and the Constitution).

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Sincerely,

Mike Letourneau

**PETER B. SLOSS
217 FRIEDRICHS AVENUE
METAIRIE, LA 70005**

September 25, 2013

Via Telefax 504-862-2088

Colonel Richard Hansen
Commander, New Orleans District
U.S. Army Corps of Engineers
Post Office Box 60267
New Orleans, Louisiana 70160-0267

Re: Comment on Draft Programmatic Individual Environmental Report #36, Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes Louisiana (PIER #36)

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Colonel Richard Hansen
Commander, New Orleans District
U.S. Army Corps of Engineers
25 September 2013
Page 2

and other avenues should be utilized -- just as private developers must do under the Corps' rules.

Based on the above, please note my objection to PIER #36.

Sincerely,

A handwritten signature in blue ink, appearing to read "P.B. Sloss", with a stylized flourish at the end.

Peter B. Sloss

PBS/rb

From: [Jeff Raines](#)
To: [MVN Environmental](#)
Subject: [EXTERNAL] PIER # 36
Date: Wednesday, September 25, 2013 4:56:06 PM
Attachments: [ATT00003.htm](#)
[priv_land_owner_obj_ltr.docx](#)
[ATT00004.htm](#)

See the attached lett

Sent from my iPhone

Begin forwarded message:

From: Jeffrey Raines <JRaines@mrsnola.com>
Date: September 25, 2013, 4:47:45 PM CDT
To: "jeffraines@cox.net" <jeffraines@cox.net>
Subject: FW: URGENT

Jeffrey A. Raines

Murphy, Rogers, Sloss & Gambel

§ 701 Poydras St., Suite 400

New Orleans, LA 70139

Phone: 504-523-0400

Direct: 504-274-3833

Fax: 504-523-5574

Email: jraines@mrsnola.com

Web: www.mrsnola.com <<http://www.mrsnola.com/>>

This e-mail transmission, and any documents, files or e-mail messages attached to it, may contain confidential information that is attorney work product or legally privileged. If you are not the intended recipient, or an authorized representative of the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. If you have received this transmission in error, please notify the sender at telephone 504.523.0400 (fax 504.523.5574) immediately, and destroy the original transmission and its attachments without reading them.

From: Gary Gambel
Sent: Wednesday, September 25, 2013 4:15 PM
To: All-Users
Subject: RE: URGENT

From: Gary Gambel
Sent: Wednesday, September 25, 2013 4:10 PM
To: All-Users
Subject: URGENT

The Corps of Engineers is attempting to expropriate Las Conchas Island (a MRSG client) or a big part of it to use as mitigation for wetlands impacts related to the construction of hurricane protection projects south of New Orleans. We think the government taking is unlawful, and intend to fight it. we recently learned that the Corps is actually seeking public comment on its plan. TODAY is the deadline to object. I am attaching a template or form letter, that was prepared to be used in objecting....this can be submitted by email; but must be sent TODAY. Please consider objecting (if you have a non- MRS email, use it preferably). Many thanks. Should there be any questions, I will be on the road, but will be on my cel 504 729 8899. Gary

Gary J. Gambel

Murphy, Rogers, Sloss & Gambel

§ 200 West Thomas Street

Hammond, LA 70401

Phone: 985-340-2007

Fax: 985-340-2005

Email: ggambel@mrsnola.com

Web: www.mrsnola.com <<http://www.mrsnola.com/>>

§ 701 Poydras St., Suite 400

New Orleans, LA 70139

§ 321 St. Joseph Street

Baton Rouge, LA 70802

September 25, 2013

Colonel Richard Hansen
Commander, New Orleans District
U.S. Army Corps of Engineers
Post Office Box 60267
New Orleans, Louisiana 70160-0267
mvnenvironmental@usace.army.mil

Re: Comment on Draft Programmatic Individual Environmental Report #36, Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes Louisiana (PIER #36)

Dear Colonel Hansen:

After reviewing PIER #36 for the Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, I felt compelled to write and provide a public comment regarding the government's apparent desire to take private land to satisfy the Corps self-imposed mitigation requirement for government projects (a requirement which is wasteful, increases the cost of hurricane protection projects and, if implemented as proposed, would violate the most basic of American freedoms -- and the Constitution).

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Sincerely,

From: [BRIDGET KENNEDY](#)
To: [MVN Environmental](#)
Subject: [EXTERNAL] Appropriation of private land for government use.
Date: Wednesday, September 25, 2013 4:55:51 PM

Bridget Kennedy

6302 Magazine Street

New Orleans, LA 70118

September 25, 2013

Colonel Richard Hansen

Commander, New Orleans District

U.S. Army Corps of Engineers

Post Office Box 60267

New Orleans, Louisiana 70160-0267

mvnenvironmental@usace.army.mil <<mailto:mvnenvironmental@usace.army.mil>>

Re: Comment on Draft Programmatic Individual Environmental Report #36,
Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk
Reduction Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St.
John the Baptist, and St. Tammany Parishes Louisiana (PIER #36)

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Sincerely,

Bridget Kennedy

BK

September 25, 2013

Colonel Richard Hansen
Commander, New Orleans District
U.S. Army Corps of Engineers
Post Office Box 60267
New Orleans, Louisiana 70160-0267
mvnenvironmental@usace.army.mil

Re: Comment on Draft Programmatic Individual Environmental Report #36, Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes Louisiana (PIER #36)

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Sincerely,



Adam R. Wirth

6034 Pitt ST

New Orleans, LA 70118

From: [Peter Freeman](#)
To: [MVN Environmental](#)
Subject: [EXTERNAL] Comment on Draft Programmatic Individual Environmental Report #36
Date: Wednesday, September 25, 2013 4:45:23 PM

Dear Colonel Hansen,

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Sincerely,

Peter L Freeman
6039 Coliseum St
New Orleans, LA 70118

From: [Jodi Helmer](#)
To: [MVN Environmental](#)
Subject: [EXTERNAL] Signed Doc from Chris McClanahan
Date: Wednesday, September 25, 2013 4:40:57 PM
Attachments: [SKMBT_C65413092516370.pdf](#)

September 25, 2013

Colonel Richard Hansen
Commander, New Orleans District
U.S. Army Corps of Engineers
Post Office Box 60267
New Orleans, Louisiana 70160-0267
mvnenvironmental@usace.army.mil

Re: Comment on Draft Programmatic Individual Environmental Report #36, Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes Louisiana (PIER #36)

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Sincerely,

f. Chris McClamhan

From: [Regan Leopold](#)
To: [MVN Environmental](#)
Subject: [EXTERNAL] USACE
Date: Wednesday, September 25, 2013 4:26:37 PM
Attachments: [Corp.pdf](#)

Please see attached

September 25, 2013

Colonel Richard Hansen
Commander, New Orleans District
U.S. Army Corps of Engineers
Post Office Box 60267
New Orleans, Louisiana 70160-0267
mvnenvironmental@usace.army.mil

Re: Comment on Draft Programmatic Individual Environmental Report #36, Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes Louisiana (PIER #36)

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Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Cooper". The signature is written in a cursive, flowing style with a large initial "R".

LAS CONCHAS PARTNERSHIPS, L.L.C.

45 Cypress Road • Covington, Louisiana 70433-4305
985-867-9595 • Fax 985-893-9902

September 25, 2013

Colonel Richard Hansen
Commander, New Orleans District
U.S. Army Corps of Engineers
Post Office Box 60267
New Orleans, Louisiana 70160-0267
mvnenvironmental@usace.army.mil

Re: Response to Draft Programmatic Individual Environmental Report #36, Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes Louisiana (PIER #36)

Dear Colonel Hansen:

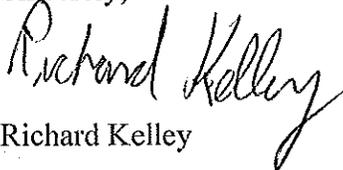
I am writing to comment on the PIER #36 that was released on August 12, 2013, which is available for public comment through September 25, 2013 according to the nolaenvironmental.gov website.

After reviewing PIER #36, it has come to my attention that the PIER identifies Fritchie Marsh as a potential sight for mitigation. You should know that this property I has been owed by my family for generations. The title from which we derive our ownership predates the founding of both the State of Louisiana and the United States government.

The Corps attempt to abuse its power is contrary to law and renders the implementative of your mitigation rules unconstitutional. We strenuously fight the un-American proposal. The government cannot take a private citizen's land (and business) merely because the government desires to own it.

Our enjoyment of the property has been impaired by the unauthorized publication by the Corps. The Corps' conduct in identifying my property as a potential mitigation site has both diminished the property value and damaged business relationships associated with the property.

Sincerely,



Richard Kelley

Colonel Richard Hansen
25 September 2013
Page Two

cc: Bobby Jindal, Governor, State of Louisiana
David Vitter, U.S. Senator, State of Louisiana
Steve Scalise, U.S. Representative, State of Louisiana -- 1st Congressional District
Garret Graves, Chairman, Louisiana Coastal Protection and Restoration Authority

From: [Gambel, Sara L](#)
To: [MVN Environmental](#)
Subject: [EXTERNAL] PIER #36
Date: Wednesday, September 25, 2013 4:25:58 PM

September 25, 2013

Colonel Richard Hansen

Commander, New Orleans District

U.S. Army Corps of Engineers

Post Office Box 60267

New Orleans, Louisiana 70160-0267

mvnenvironmental@usace.army.mil <<mailto:mvnenvironmental@usace.army.mil>>

Re: Comment on Draft Programmatic Individual Environmental Report #36, Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes Louisiana (PIER #36)

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Sincerely,

Sara Gambel

From: [Noel Johnson](#)
To: [MVN Environmental](#)
Subject: [EXTERNAL] Letter
Date: Wednesday, September 25, 2013 4:21:06 PM
Attachments: [las conchas.pdf](#)
[ATT00001.txt](#)

September 25, 2013

Colonel Richard Hansen
Commander, New Orleans District
U.S. Army Corps of Engineers
Post Office Box 60267
New Orleans, Louisiana 70160-0267
mvnenvironmental@usace.army.mil

Re: Comment on Draft Programmatic Individual Environmental Report #36, Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes Louisiana (PIER #36)

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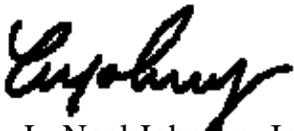
Private landowners purchase property with the expectation of maintaining peaceful ownership of that property absent some government necessity. When it comes to mitigation, however, the necessity requirement is not fulfilled. First, the requirement is self-imposed (and wholly discretionary) and, therefore, not really necessary in the normal expropriation sense. Second, willing landowners, mitigation banks, state projects and other avenues should be utilized -- just as private developers must do under the Corps' rules.

The fact that the government believes it can just take private, unwilling sellers' land to fulfill a self-imposed requirement is, in a word, scary. Americans do not purchase

land just to have it taken upon the whim by the government as has happened in other countries such as Argentina and Russia. This attempted abuse of government power, causes me to re-think my support of coastal and hurricane protection projects.

Americans purchase land with the constitutional right to maintain peaceful possession and ownership of that land absent government necessity. Such a requirement is not met when the government does not seek to obtain mitigation land from willing sellers and/or mitigation banks. The government cannot be allowed to take unwilling, private landowners' land just because it wants it or because it would be good land to have. We, as Americans, have always been free from such misuses and abuses of power.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Noel Johnson, Jr.", written in a cursive style.

L. Noel Johnson, Jr.

From: [Christian Hooper](#)
To: [MVN Environmental](#)
Subject: [EXTERNAL] ownership of property
Date: Wednesday, September 25, 2013 4:15:42 PM

September 25, 2013

Colonel Richard Hansen

Commander, New Orleans District

U.S. Army Corps of Engineers

Post Office Box 60267

New Orleans, Louisiana 70160-0267

mvnenvironmental@usace.army.mil <<mailto:mvnenvironmental@usace.army.mil>>

Re: Comment on Draft Programmatic Individual Environmental Report #36, Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes Louisiana (PIER #36)

Dear Colonel Hansen:

After reviewing PIER #36 for the Lake Pontchartrain and Vicinity Hurricane Storm Damage and Risk Reduction Mitigation, I felt compelled to write and provide a public comment regarding the government's apparent desire to take private land to satisfy the Corps self-imposed mitigation requirement for government projects (a requirement which is wasteful, increases the cost of hurricane protection projects and, if implemented as proposed, would violate the most basic of American freedoms -- and the Constitution).

PIER #36 indicates that the government has intentions of taking private land (which the Corps refers to as the "Fritchie Marsh"), from an unwilling landowner, for use as a potential mitigation project location. Not only is this land many, many miles away from the impacted site, but it is a privately owned property. As a landowner myself, I believe it is my duty to object to this abusive practice of expropriating privately owned land from unwilling land owners for mitigation purposes.

Private landowners purchase property with the expectation of maintaining peaceful ownership of that property absent some government necessity. When it comes to mitigation, however, the necessity requirement is not fulfilled. First, the requirement is self-imposed (and wholly discretionary) and, therefore, not really necessary in the normal expropriation sense. Second, willing landowners, mitigation banks, state projects and other avenues should be utilized -- just as private developers must do under the Corps' rules.

The fact that the government believes it can just take private, unwilling sellers' land to fulfill a self-imposed requirement is, in a word, scary. Americans do not purchase land just to have it taken upon the whim by the government as has happened in other countries such as Argentina and Russia. This attempted abuse of government power, causes me to re-think my support of coastal and hurricane protection projects.

Americans purchase land with the constitutional right to maintain peaceful possession and ownership of that land absent government necessity. Such a requirement is not met when the government does not seek to obtain mitigation land from willing sellers and/or mitigation banks. The government cannot be allowed to take unwilling, private landowners' land just because it wants it or because it would be good land to have. We, as Americans, have always been free from such misuses and abuses of power.

Sincerely,

Christian Hooper

--

Christian Hooper
504 717 7179

826 Adams St
New Orleans, LA 70118

From: [Jara and Jeff Roux](#)
To: [MVN Environmental](#)
Cc: vjstpierre@cox.net; [Gregory Miller](#); [Manina Dubroca](#); [Williams, Jeff MVN](#)
Subject: [EXTERNAL] PIER 36 Comment during the public comment period
Date: Monday, August 12, 2013 5:32:17 PM

I think the basic premise is missing the point. The entire basin needs to be looked at and not selective eastern/south/southeastern areas. Couldn't find Tangipahoa/ Livingston/ and other parishes all the way to Gonzales. Seems Isaac pushed water up to there. Seems we build here/then build there and still can't find the Scarlet Pimpernel. I realize Congress has a say in what goes on from the funding side but this needs to be overcome. We took a tour of the Old Mandeville area and one of the comments "It's nice except for 2/3 days a year" Same went for Madisonville. Laplace has taken a long time to recover after the 2/3 day event (Isaac was a bit longer when it stalled) Predicted—No!!!!

As I said after Katrina we should have had a system like the TVA set up to manage this massive project. Use the water to our benefit.

Jeffrey Roux

10391 River Road

Ama LA 70031



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701

September 24, 2013 F/SER46/PW:jk
225/389-0508

Ms. Joan M Exnicios, Chief
Regional Planning and Environmental Division South
New Orleans District Environmental Branch
U.S. Army Corps of Engineers
Post Office Box 60267
New Orleans, Louisiana 70160-0267

Dear Ms. Exnicios:

NOAA's National Marine Fisheries Service (NMFS) has received your letter dated August 9, 2013, transmitting the draft Programmatic Individual Environmental Report (PIER) #36 titled, "**Lake Pontchartrain and Vicinity Hurricane Storm Damage Risk Reduction System Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes, Louisiana.**" PIER #36 evaluates alternatives for mitigating unavoidable habitat impacts incurred during the construction of the Lake Pontchartrain and Vicinity (LPV) Hurricane Surge Damage Risk Reduction System (HSDRRS).

The PIER identifies the Tentatively Selected Mitigation Plan Alternative (TSMMPA) comprised of various mitigation features. Only the purchase of mitigation bank credits for bottomland hardwoods and swamp impacts are proposed at this time. Other features of the TSMMPA, including marsh mitigation, would be detailed and finalized in future documents tiered off this PIER. NMFS has reviewed the draft PIER and overall finds the document thorough and well prepared. We submit the following general comments:

Plan and Final Scaling

Details and recommendations identified in the November 2012, draft Fish and Wildlife Coordination Act Report are necessary items warranting fulfillment as the mitigation features progress. Final scaling of mitigation should be based upon and accomplished during advanced engineering and design, but prior to release of a supplemental PIER. This is to ensure no net loss of wetlands and corresponding functions by basing mitigation projections on final impact numbers and final design. Furthermore, contingency measures and/or adaptive management are necessary to ensure attainment of no net loss of wetlands.

The PIER adequately addresses wetland impacts and mitigation for forested habitats. Because the PIER introduced marsh impacts and corresponding mitigation which will be covered in supplemental documents, NMFS scrutinized the potential adequacy of the marsh mitigation to satisfy impacts to EFH. NMFS recognizes this consultation does not pertain to the marsh impacts. However, we find it prudent to provide preliminary and early feedback on the marsh mitigation. Preliminarily, the mitigation for the fresh and intermediate marsh as conceptualized



in the TSMMPA likely would compensate for impacts to EFH. This is based upon a potential net gain of over 100 acres of EFH by constructing marsh mitigation for refuge non-tidal wetlands in tidally influenced areas. The Bayou Sauvage alternative may be acceptable in amount for brackish marsh impacts, but a final determination cannot be made at this time. For brackish marsh, the Bayou Sauvage mitigation will warrant reassessment as a matter of routine as do all final features, but also because the alternative was modified by the USACE to place fill material on approximately 100 acres of existing marsh for the purpose of nourishment. Although we do not object to such nourishment, means should be included to avoid adverse overfilling impacts. The concept would have to be re-evaluated based on the final design and resized according to functional impacts to the existing and created marsh.

Given the amount and rate of loss of coastal marshes in Louisiana, NMFS has long supported marsh creation as the preferred form of mitigation for tidal marsh impacts. The marsh creation projects evaluated under the final array of mitigation alternatives are acceptable to NMFS as compensatory mitigation provided final details are based on advanced design through coordination with NMFS and other interested natural resource agencies. Recent inspections of the marsh creation mitigation projects highlights the importance of capturing functionality lags in the initial scaling of mitigation, as well as to reconcile partial success and attain no net loss of wetlands. For example, it may be impracticable or cause more environmental harm than good to grade high elevations down. Further, it may be more cost effective to create more marsh up front to cover performance uncertainties than to fill relatively small amounts of open water which were supposed to have been marsh, but experienced more settlement than expected. Issues with attainment of success criteria are anticipated for marsh creation mitigation due to variability in elevations resulting from soils, contractor performance, and differential settlement of backfilled in situ borrow canals. Therefore, one option is to improve benefit projections using the Wetland Value Assessment (WVA) for final scaling of mitigation by updating model assumptions to make them realistic and accurate to the maximum extent practicable. Potential examples for improvement are:

1. Future with project loss rates should be based upon the final design (i.e., 100% Design Decision Report) settlement curves for initial and long term performance projections.
2. Re-assess the 50% reduction in historic loss rate assumption used to project the future with project loss rate (prior to any adjustments for accretion or sea level rise).
3. Assume a portion or all of the in-situ borrow does not result in marsh.
4. Assume all or a portion of the containment dikes do not get credit as marsh.
5. Re-assess the duration of functionality lags for tidal function for various WVA variables.

Even with potential improved accuracy of assessments, means to fund corrective or contingency actions in the adaptive management phase should be included in the final PIER and future supplemental documents. If funds are insufficient to support corrective actions, these documents should disclose this limitation and environmental risk to the public.

Open Water Borrow Impacts to Water Quality

NMFS has coordinated often with the U.S. Army Corps of Engineers (USACE) on potential impacts to water quality associated with borrow pits in open water. Literature searches conducted by NMFS were provided to the USACE on this matter and a number of existing borrow pits in Lake Pontchartrain have been demonstrated to create hypoxic conditions. The design of the borrow pits includes sequential means developed with natural resource agencies to site and size borrow in an attempt to minimize creating hypoxia. It is suggested those sequential means be identified as best management practices in the Appendix. Even though pits have been designed in an attempt to minimize impacts to water quality, no monitoring is included to demonstrate adverse impacts do not result. To address potential adverse environmental impacts, approaches exist to address hypoxia concerns through design considerations or after-the-fact with monitoring. Modern design capabilities (e.g., modeling) exist to demonstrate up-front risks to water quality are minimized, but those tools can be costly with residual risk. As the literature suggests, potential environmental impacts from open water borrow pits vary by location and estuary. The USACE is encouraged to include water quality monitoring in supplemental and final PIERS to assess if hypoxia develops. Such monitoring would help with the development of potential contingency measures for future designs if not also for corrective action. The USACE's monitoring of water quality for Individual Environmental Report 11 and the Mississippi River-Gulf Outlet Ecosystem Restoration Study was helpful in this regard. It is suggested scopes of work similar to those be included and repeated annually for three years. NMFS is willing to assist the USACE in further scoping a monitoring plan to assess impacts to water quality.

Timeliness

The completion of mitigation to offset remaining HSDRRS impacts to wetlands (e.g., purchasing of credits or construction) should be expedited. Given the time since impacts occurred, and potential real estate acquisition challenges, NMFS has a growing concern over the increasing delay to finalize and construct mitigation. Across the TSMMPA, increasing temporal loss of wetland functions resulting from delayed implementation of mitigation should be assessed and final mitigation increased accordingly. With the fiscal climate and continuing plan evaluations, funding for completion of the mitigation and any needed increases must be safeguarded. Means should be utilized to expedite completion of mitigation. For example, construction of mitigation on National Wildlife Refuge properties should proceed to final design, environmental clearance and construction.

Monitoring

Elevation as an indicator of hydroperiod is of paramount importance to assess mitigation success, especially for marsh mitigation. LIDAR surveys are identified as the type of elevation data to be collected. The implications of its availability and accuracy by marsh and vegetation type should be established with the Project Delivery Team, including the natural resource agencies, for further consideration. Use of LIDAR should not be at the exclusion of conventional elevation survey data if an alternative or check is necessary to meet timing or quality control/quality assurance needs of mitigation performance monitoring.

Section 305(b)(4)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; P.L. 104-297) requires NMFS provide EFH conservation

recommendations for any federal action which may result in adverse impacts to EFH. Therefore, NMFS recommends the following to ensure the conservation of EFH and associated marine fishery resources.

EFH Conservation Recommendations

1. The USACE should comply with the recommendations identified in the November 12, 2012, Fish and Wildlife Coordination Act (i.e., 3 – 6, 11 – 13, 17, and 19, relative to EFH).
2. Mitigation for marsh impacts should be rescaled based on revised impact analyses to be conducted on final designs (i.e., 100% Design Decision Reports). If the amount of mitigation increases, the amount of funds should be adjusted accordingly and represented in the financial assurances.
3. The specific dollar amount and mechanism for financial assurances should be identified.
4. Adaptive management or contingency plans should be developed and included to reconcile mitigation shortfalls from overfilling or underfilling marsh creation mitigation sites.

Consistent with Section 305(b)(4)(B) of the Magnuson-Stevens Act and NMFS' implementing regulation at 50 CFR 600.920(k), your office is required to provide a written response to our EFH conservation recommendations within 30 days of receipt. Your response must include a description of measures to be required to avoid, minimize or offset the adverse impacts of the proposed activity. If your response is inconsistent with our EFH conservation recommendations, you must provide a substantive discussion justifying the reasons for not implementing the recommendations. If it is not possible to provide a substantive response within 30 days, the USACE should provide an interim response to NMFS, to be followed by the detailed response. The detailed response should be provided in a manner to ensure it is received by NMFS at least 10 days prior to the final approval of the action (i.e., signature of the final PIER). Recognizing the EFH consultation is included under alternative arrangements for the National Environmental Policy Act, NMFS will work expeditiously with the USACE to resolve the comments.

The NMFS appreciates close and cooperative coordination by the USACE and your staff on HSDRRS mitigation. If you have questions or wish to discuss our comments, please contact Patrick Williams at (225)389-0508, extension 208 or patrick.williams@noaa.gov. Thank for the opportunity to review and comment on the draft PIER.

Sincerely,



Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division

c:

FWS, Lafayette, Trahan, Walther

EPA, Dallas, Ettinger

LA DNR, Consistency, Haydel

F/SER46, Swafford

F/SER4, Rolfes, Dale

F/SER, Key, Silverman

NOAA PPI, Nunenkamp

Files



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 6

1445 Ross Avenue, Suite 1200

Dallas, TX 75202-2733

September 9, 2013

Ms. Elizabeth Behrens
U.S. Army Corps of Engineers
Regional Planning & Environment Division South
CEMVN-PDN
P.O. Box 60267
New Orleans, LA 70160-0267

Dear Ms. Behrens:

In accordance with our responsibilities under Section 309 of the Clean Air Act (CAA) and the National Environmental Policy Act (NEPA), the Environmental Protection Agency (EPA) has reviewed August 2013, Draft Programmatic Individual Environmental Report (PIER) #36 regarding compensatory mitigation for the Lake Pontchartrain and Vicinity (LPV) portion of the Greater New Orleans Area Hurricane Storm Damage and Risk Reduction System (HSDRRS). The PIER evaluates alternatives for mitigating unavoidable habitat impacts incurred during construction of the LPV HSDRRS and identifies the tentatively selected mitigation plan alternative for mitigating those impacts. Our comments on this PIER are attached for your review and action.

We appreciate the opportunity to provide comments. For NEPA related questions, I can be reached at 214-665-8006, or you may contact Keith Hayden at 214-665-2133 or hayden.keith@epa.gov. For wetlands permitting or wetlands mitigation questions please contact John Ettinger at 504-862-1119 or ettinger.john@epa.gov for assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "Rhonda Smith", written over a horizontal line.

Rhonda Smith
Chief, Office of Planning and Coordination

cc: LDNR, Baton Rouge, LA
LDEQ, Baton Rouge, LA
NMFS, Baton Rouge, LA
USFWS, Lafayette, LA

**DETAILED COMMENTS
ON THE
PROGRAMMATIC INDIVIDUAL
ENVIRONMENTAL REPORT #36
LAKE PONTCHARTRAIN AND VICINITY**

Background: Consistent with applicable law and regulations, the Corps of Engineers (Corps) is considering the use of compensatory mitigation banks for offsetting a subset of the wetland impacts associated with the LPV portion of the Hurricane Storm Damage and Risk Reduction System (HSDRRS). The Corps has identified mitigation banks as the tentatively selected mitigation projects for offsetting non-refuge impacts to bottomland hardwoods and cypress swamp. EPA supports the use of mitigation banks in such instances, if such banks are in full compliance with their mitigation bank instruments.

Comment #1

EPA supports the goal of establishing large, contiguous mitigation tracts, as opposed to numerous small tracts; however, we are not aware of the legal or regulatory basis for disqualifying a mitigation bank because it lacks available credits to fully offset impacts to a certain wetland type.

Recommendation:

- EPA recommends the Corps review the policies it has applied to HSDRRS mitigation decisions to ensure consistency with Clean Water Act (CWA) Section 404 mitigation policies. Specifically, the Corps should review the policy that banks must be able to provide 100% of needed mitigation credits in order to be eligible for use in offsetting HSDRRS impacts. Similarly, the Corps should explain why the Wetland Value Assessment model is used to quantify mitigation for the HSDRRS program, whereas the Modified Charleston Method (MCM) is used in the CWA Section 404 regulatory program.

Comment #2

There is ample experience in the New Orleans District with restoring forested wetlands to provide compensatory mitigation. In most instances, the forested wetland restoration involves some combination of hydrologic restoration (e.g., plugging or backfilling drainage canals), tree planting, and control of nuisance species. We are not aware of any active or completed forested wetland restoration projects in which trees are planted on dredged material, as is being proposed in some of the HSDRRS mitigation options being considered by the Corps. While we would have confidence regarding the success of planting marsh species on dredged material, the planting of woody vegetation on such soils might present unique challenges and risks.

Recommendation:

- In the event that mitigation banks do not remain the preferred option for forested wetland mitigation, EPA recommends the Corps review any available information pertaining to re-establishing forested wetland on dredged material, prior to selecting such an option for offsetting HSDRRS impacts.

Comment #3

When dredged material is used to re-establish or nourish wetlands, there is a risk that the dredged material will settle to elevations which are too high or too low to support the desired wetland vegetation. In either case, additional work could be needed to establish elevations conducive to wetland hydrology and vegetation. In particular, the cost of remobilizing a dredge to augment site elevations can be significant.

Recommendation:

- In cases where dredged material is used to achieve HSDRRS mitigation goals, has the Corps set aside sufficient funds to cover such potential costs? The use of dredged material to re-establish wetlands should contain adequate funding for contingencies.

Comment #4

The Corps concluded that there is little risk of adverse water quality impacts from open-water borrow areas. For example, page 311 of the PIER contains the following statement: "Approximately 155 acres of lake water bottom would be deepened by an average of 12 feet. It is anticipated that anoxic conditions would be avoided with this depth of dredging..."

Recommendation:

- Explain the technical basis for this finding. Describe the monitoring the Corps is performing to determine if this statement is accurate or if adverse water quality conditions develop. Please describe the adaptive management or contingency plans the Corps will enact in case there are adverse water quality effects in open-water borrow areas.

Comment #5

The Corps has identified the Bonnet Carre Spillway as the second-ranked option for offsetting non-refuge bottomland hardwood and swamp impacts. However, the PIER indicates that there is a high risk of seedling mortality associated with opening of the spillway:

"However, as evidenced by past plantings of BLH species in the spillway outfall area, near total mortality of planted BLH seedlings could occur if such a flooding event occurs before seedlings reach this age. Given the relatively high probability of the spillway being open within 4 years or less following completion of the initial plantings proposed in the mitigation features, the adaptive management plan for this mitigation project assumes that the canopy and midstory species initially planted will have to be completely re-planted on two separate occasions." (Appendix K, 4. Adaptive Management Plan)

Recommendation:

- The PIER should more clearly describe why the Bonnet Carre Spillway is a second-ranked option, despite this known risk of seedling mortality.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

646 Cajundome Blvd.

Suite 400

Lafayette, Louisiana 70506



September 25, 2013

Colonel Richard L. Hansen
District Commander
U.S. Army Corps of Engineers
Attention: Ms. Elizabeth Behrens, CEMVN-PDN
Post Office Box 60267
New Orleans, Louisiana 70160-0267

Dear Colonel Hansen:

Please reference the U.S. Army Corps of Engineers' (Corps) draft Programmatic Individual Environmental Report # 36 (PIER #36) titled "Lake Pontchartrain and Vicinity Hurricane Storm Damage Risk Reduction System Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes, Louisiana." The draft PIER #36 was transmitted via an August 9, 2013, letter from Ms. Elizabeth Behrens, of your Environmental Planning Branch.

PIER #36 is being prepared under the approval of the Council on Environmental Quality (CEQ) that will partially fulfill the Corps compliance with the National Environmental Policy Act (NEPA) of 1969 (83 Stat. 852, as amended; 42 U.S.C. 4321- 4347). Individual Environmental Reports are CEQ-approved alternative arrangements for compliance with NEPA that would allow expedited implementation of improved hurricane protection measures. Work proposed in PIER #36 is being conducted under the authority of Public Law 109-234, Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Supplemental 4). That law authorized the Corps to upgrade two existing hurricane protection projects (i.e., Westbank and Vicinity of New Orleans and Lake Pontchartrain and Vicinity) in the Greater New Orleans area in southeast Louisiana.

The Fish and Wildlife Service (Service) submits the following comments in accordance with provisions of the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.), the Migratory Bird Treaty Act (MBTA) (40 Stat. 755, as amended; 16 U.S.C. 703 et seq.), the National Environmental Policy Act (NEPA) of 1969 (83 Stat. 852, as amended; 42 U.S.C. 4321 et seq.), and the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.).

PIER #36 evaluates alternatives for mitigating impacts resulting from the improved hurricane protection measures and identifies the tentatively selected mitigation plan alternative. Under this PIER, only the purchase of mitigation bank credits for swamp and bottomland hardwood general impacts are recommended for implementation at this time. The other mitigation features of the plan will be addressed in subsequent NEPA documents, or Tiered Individual Environmental Reports (TIERs). The Tentatively Selected Mitigation Plan Alternative includes the following mitigation projects and currently proposed benefit acres:

Off-Refuge Mitigation

- Bottomland Hardwood (BLH) Mitigation Bank (purchase of credits),
- Swamp Mitigation Bank (purchase of credits),
- “Milton Island Intermediate Marsh (IM) Restoration” project (115 acres),

Off-Refuge and On-Refuge Mitigation

- “Bayou Sauvage Brackish Marsh Restoration” project [located on Bayou Sauvage National Wildlife Refuge (NWR); 302 acres],

On-Refuge Mitigation

- “Bayou Sauvage Refuge BLH and IM Restoration” project (located on Bayou Sauvage NWR; 155.3 acres BLH/142.9 acres IM); and,
- “Fritchie Refuge BLH Enhancement” project (private lands to be acquired/transferred for on-refuge mitigation; 51 acres).

The draft PIER #36 also fully evaluates the mitigation plan for the Bonnet Carré bottomland hardwood and swamp alternatives. Those mitigation alternatives would be implemented should costs or credit availability not support the tentatively-selected mitigation bank alternative.

General Comments

The draft PIER #36 is well written and well organized. It provides an adequate description of fish and wildlife resources in the study area, the purpose and need for the proposed action, and the potential impacts associated with each alternative location. The Service has provided comments throughout the planning process regarding our support for the tentatively-selected plan, timing of mitigation relative to impacts, and recommendations for implementing on-refuge and off-refuge mitigation on Service lands. Comments and recommendations provided in planning aid letters dated September 13, 2012; February 25, 2013; May 14, 2013; and the draft Fish and Wildlife Coordination Act Report dated November 21, 2013, still remain valid and are incorporated herein by reference.

While we are generally in support of the Tentatively Selected Mitigation Plan alternative, we are concerned that using the mitigation bank alternative could have negative repercussions. The Corps has the opportunity and resources to construct a “permittee-responsible”

mitigation project. By going to a mitigation bank, the Corps could exhaust credits available in any one mitigation bank thus creating a hardship on an individual landowner/permittee. Mitigation banks provide a cost savings and feasible mitigation alternative for the individual landowner. A mitigation bank serves the individual landowner who does not have the resources to construct a mitigation project or whose project typically does not require the amount of mitigation that warrants a self-mitigation project. We recommend that the Corps consider the availability of credits at a bank and within a hydrologic unit when evaluating the mitigation bank alternative to avoid exhausting credits available for individual landowners/permittee.

The Corp proposes to conduct BLH enhancement work on private lands as mitigation for impacts to BLH-wet habitats at Bayou Sauvage NWR. It is our understanding that the lands in question would be appropriated by condemnation from an unwilling seller. While we would certainly desire to see the lands in question purchased and made a part of Big Branch Marsh NWR, it is the policy of the Service to acquire lands from willing sellers only. It is not the policy of the Service to acquire lands through condemnation. While the lands in question would be appropriated through condemnation by the Corps and then transferred to the Service, the net effect would be the same, which is casting the Service in the role of beneficiary of the condemnation process.

It is the position of the Service at this time that any lands acquired through the condemnation process (excluding those condemned for unclear title) will not be accepted by donation, transfer, sale, or other means to become part of a national wildlife refuge. Based on this position the Service would not consider any such action or work performed following such action as meeting the necessary mitigation requirements for impacts to refuge lands. We strongly encourage the Corps to seek alternatives within refuge lands to fulfill the necessary mitigation requirements. The Service has proposed and still supports the fulfillment of mitigating on-refuge BLH-wet impacts (flood side) with protected side alternative locations. Such locations for the restoration of BLH have been identified within the boundaries of Bayou Sauvage NWR, and have been provided to the Corps on previous occasions.

Additional NEPA analysis will investigate design alternatives of the alternative features. It is important that the Service and other natural resource agencies (i.e., the National Marine Fisheries Service (NMFS), the Louisiana Department of Wildlife and Fisheries, the Environmental Protection Agency, and the Louisiana Department of Natural Resources) are involved in the analysis of these alternative designs and construction processes. Accordingly, in order to provide feedback regarding potential impacts to natural resources and to provide measures of avoiding and minimizing those impacts, the Service and the other natural resource agencies should be provided opportunities to review and comment on engineering and design reports and plans and specification documents. At that time more detailed Wetland Value Assessments can be conducted by the Service on the proposed mitigation projects, and resizing efforts can be finalized.

The forthcoming NEPA analyses for the Programmatic Features will include a biological

assessment and ESA Section 7 consultation for projects impacting Gulf sturgeon critical habitat. We further recommend that species that may occur also be included in the biological assessment (i.e., West Indian manatee; and Kemp's ridley, loggerhead, and green sea turtles). The Service recommends that the Corps coordinate with the NMFS, who is responsible for consultations with the Corps regarding impacts to the Gulf sturgeon, and its designated critical habitat, in estuarine and marine waters in Louisiana [March 19, 2003, Federal Register (Volume 68, No. 53)], and all species of sea turtles in estuarine waters. Please contact the NMFS Regional Office in St. Petersburg, Florida, for information concerning those species and critical habitat. Ms. Cathy Tortorici (727/209-5953) is the contact for information regarding Gulf sturgeon and its designated critical habitat, and Mr. Eric Hawk (727/824-5312) is the contact for information regarding sea turtles. Should the proposed project directly or indirectly affect those species under the jurisdiction of the NMFS, further consultation with that office will be necessary. Should plans change significantly, or work not implemented within one year following coordination with the Service and NMFS, we recommend that the Corps reinitiate coordination with each office to ensure that the proposed project would not adversely affect any Federally listed threatened or endangered species or their habitat.

With regards to the Bonne Carré Dry- BLH, Wet-BLH, and Swamp Restoration projects, the Corps has made a "no effect" determination for project impacts on West Indian manatee, Gulf sturgeon, pallid sturgeon, and sea turtles. Because these species may occur in either one of the alternative borrow areas, we cannot concur with the "no effect" determination at this time. A "no effect" determination is the appropriate conclusion when the proposed action will not affect listed species or critical habitat. A "may affect," but "not likely to adversely affect" determination is an appropriate conclusion when effects on listed species are expected to be discountable, or insignificant, or completely beneficial. In order to ensure compliance with the ESA, we recommend that the Corps re-examine the projects to determine whether they may affect those species listed above and provide a basis for that determination.

Specific Comments

Section 2.1 Mitigation Measure Development and Screening Criteria, Intermediate Marsh , page 2-1 – The last sentence references brackish marsh and should be revised accordingly.

Section 2.1 Mitigation Measure Development and Screening Criteria, Bottomland Hardwoods, page 2-1 – It should be noted that "dry" bottomland hardwoods are typically a product of altered hydrology resulting from being located within a leveed system.

Section 2.5, Tentatively Selected Mitigation Plan Alternative, Table 2-3, Summary of changes to TSMP designs, page 2-41 and 2-42 – To be consistent with the other project descriptions we recommend including borrow information for the Bayou Sauvage Refuge BLH-Wet/Intermediate Marsh Restoration project and indicate that no fill or grading will be required for the "Fritchie Refuge BLH-Wet Enhancement" project.

Section 3.2.1.2.3, Mitigation for Impacts to Non-Refuge Intermediate Marsh, Caernarvon – Terrebonne Basin is inadvertently referenced in this section and should be revised to the Breton Sound Basin.

Section 3.2.3.4.2, Fisheries, Aquatic Resources and Water Quality, Bayou Sauvage, page 3-47 – Unlike the Bayou Des Mats project, the Bayou Sauvage intermediate marshes are currently within a managed unit and aquatic organism ingress and egress is dependent on the water control structures constructed under the Coastal Wetlands Planning, Protection, and Restoration Act, Bayou Sauvage National Wildlife Refuge Hydrologic Restoration, Phase 1 (PO-16) project. Please revise accordingly.

Section 6.2.2.3, Cumulative Impacts, Threatened and Endangered Species, page 6-2 – While extensive areas of Lakes Pontchartrain and Borgne are designated Gulf sturgeon critical habitat, habitat that provides the primary constituent elements necessary for Gulf sturgeon to survive and reproduce may be further limited within that designated area. Please revise accordingly.

Appendix D: Mitigation of Impacts to Open Water Habitats, Section 2.1, Page D-3 – Impacts to species protected by the ESA cannot be mitigated under Section 7 of the ESA. If the Service determines that an impact to a particular habitat does not require mitigation under the Fish and Wildlife Coordination Act, it should be understood that we have considered the value of the habitat to all fish and wildlife resources including federally-listed threatened and endangered species and designated critical habitat, and decided that those impacts would not require mitigation. Our Consultation under Section 7 of the ESA will result in concurrence with a Corps' determination of “no effect”, “not likely to adversely affect”, or “adversely affect” in terms of listed species for alternative features. We recommend removing actions that would adversely affect threatened or endangered species and federally designated critical habitat as an example.

Appendix D: Mitigation of Impacts to Open Water Habitats, Section 3, Page D-4 – The Service classifies submerged aquatic vegetation habitat as a Resource Category 2 habitat and, therefore, it should have “in-kind” mitigation. However, we acknowledge the fact that “in-kind” mitigation may be very difficult and somewhat unpredictable compared to marsh mitigation. Therefore, we would accept “out-of-kind” mitigation, that being marsh creation or similar aquatic habitat restoration. Section 3 should be revised to include a Resource Category 2 description.

Appendix I: LPV & WBV HSDRRS Mitigation: Wetland Value Assessment (WVA) Model Assumptions and Related Guidance – The Service has worked with the Corps and other natural resource agencies to develop these assumptions and accepts them for use with the LPV and WBV mitigation. These assumptions may be used as a template for future civil works projects; however, for future projects coordination with the natural resource agencies will be necessary to develop area and project specific assumptions.

Appendix J: General Mitigation Guidelines – Distances within the document are expressed in feet or meters; either standard or both should be presented.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Planting Guidelines for Bottomland Hardwood (BLH) Habitats (page J-1), third sentence – The word “height” should be replaced with the phrase “total length” because height typically refers to the length above the root collar which would not be correct.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Species for Wet Bottomland Hardwood Habitats (BLH-Wet Habitats), first and second paragraphs and last and first sentences, respectively (page J-2) – The minimum number of hard mast, soft mast, and midstory species should be 5, 5, and 4, respectively.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Species for Wet Bottomland Hardwood Habitats (BLH-Wet Habitats), Table 1B (page J-2) – We recommend adding pumpkin ash to this list with a percent composition of 10 to 15, and decreasing the Drummond red maple percentage to 5 to 15.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Species for Wet Bottomland Hardwood Habitats (BLH-Wet Habitats), Table 1C (page J-3) – Saltbush, roughleaf dogwood, and honey locust should be removed from this table based on factors such as likelihood of natural regeneration, value to wildlife, and commercial availability of seedlings.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Species for Dry Bottomland Hardwood Habitats (BLH- Dry Habitats), first paragraph, second sentence, and Tables 2A (page J-3) and 2B (page J-4) – The percentage of hard and soft mast should be 60 and 40, respectively and the percentage of water oak should be reduced to 5.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Species for Dry Bottomland Hardwood Habitats (BLH- Dry Habitats), first paragraph, last sentence, (page J-3) – The number of hard and soft mast species utilized should be 5 for each.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Species for Dry Bottomland Hardwood Habitats (BLH- Dry Habitats), second paragraph, first sentence, (page J-3) – The number of midstory species utilized should be 5.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation

Monitoring, Mitigation Planting Guidelines, Species for Dry Bottomland Hardwood Habitats (Dry-Wet Habitats), Table 2C (page J-4) – Elderberry, roughleaf dogwood, and honey locust should be removed from this table based on factors such as likelihood of natural regeneration, value to wildlife, and commercial availability of seedlings.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Planting Guidelines for Swamp Habitats, third and fourth sentences, (page J-5) – The word “tall” should be replaced with the phrase “total length” because tall typically refers to the length above the root collar which would not be correct.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Planting Guidelines for Swamp Habitats, second paragraph, fourth sentence, (page J-5) – The minimum number of canopy species should be 4.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Planting Guidelines for Swamp Habitats, second paragraph, fifth sentence, (page J-5) – The minimum percentage of bald cypress should be 60 as correctly displayed in Table 3A.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Planting Guidelines for Swamp Habitats, Table 3A, (page J-5) – We recommend adding pumpkin ash to this list with a percent composition of 10 to 15, and removing the Drummond red maple.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Planting Guidelines for Swamp Habitats, Table 3B (page J-6) – Roughleaf dogwood should be removed from this table based on factors such as likelihood of natural regeneration, value to wildlife, and commercial availability of seedlings.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Deviations from Typical Planting Guidelines, fourth paragraph, second to last sentence, (page J-6) – The phrase “and in coordination with the natural resource agencies” should be added to the end of this sentence.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Additional Mitigation Guidelines, Guidelines for Surface Water Management Features and Structures, (page J-10) – The Service recommends that the use of “indicators of reduction in soil” tubes (IRIS) be examined as a means of reducing hydrology monitoring costs. Additional information on this technique can be found in the literature listed below:

Jenkinson, B.J., D.P. Franzmeir, W.C. Lynn. 2002. Soil Hydrology on an End Moraine and a Dissected Till Plain in West-Central Indiana. *Soil Science Society of America Journal*, Volume 66: 1367-1376.

National Technical Committee for Hydric Soils. 2007. *The Hydric Soil Technical Standard. Technical Note 11*. Available URL: ftp://ftpfc.c.egov.usda.gov/NSSC/Hydric_Soils/note11.pdf

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Additional Monitoring Reports, second, third, and fourth bullets (page J-15) and fifth through sixth bullets on page J-22 – The Service agrees with the type of data that should be gathered but does not agree with the proposed techniques used to gather this data. The Service recommends that the data gathering techniques be similar to those utilized by mitigation banks in Louisiana and that finalization of the technique be done in coordination with the Service and other natural resource agencies.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Additional Monitoring Reports, Bottomland Hardwood Mitigation Bullet 7 – 8 (page J-16), and Swamp Mitigation Bullet 8-9 (page J-23) –Where mitigation sites do not involve water control structures manipulating water levels will be difficult. Every effort to achieve appropriate elevations to sustain targeted wetland habitats should be made during the design and construction. For mitigation projects that would not be able to manipulate hydrology water table elevation data would not be necessary. As an alternative we recommend collecting soils data to determine if appropriate hydric soil conditions are being met.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Monitoring Schedule and Responsibilities, sixth paragraph, last sentence, (page J-17) and last sentence of first paragraph of page J-18 – The phrase “and/or vegetative controls of invasive or nuisance species” be added after the words “supplemental plants.”

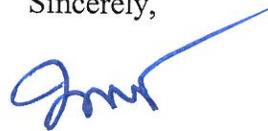
Appendix K: Bonnet Carré , Mitigation Program for General BLH Impacts, and Appendix L: Bonnet Carré , Mitigation Program for General Swamp Impacts – Comments provided for the General Mitigation Guidelines (Appendix J) are applicable to the Bonnet Carré Restoration Projects as well. Please revise accordingly.

Appendix K: Bonnet Carré , Mitigation Program for General BLH Impacts, Initial Planting of Mitigation Features, Table 2-1 and 2-2, page K-4 – The percentage of water oak should be reduced to 5 and saltbush should be deleted from the list of midstory species.

Appendix N: Adaptive Management Plan, 3.0 Monitoring for Project Success, first paragraph, second sentence, (page N-8) – The phrase “and natural resource agencies” should be added behind the words “local sponsor.”

The Service appreciates the opportunity to comment on the draft PIER #36, and we look forward to continuing coordination with the Corps and the other natural resource agencies to develop a feasible hurricane protection project for this region in a timely manner. If your staff has additional questions regarding our comments, please contact Angela Trahan at (337) 291-3137.

Sincerely,



Jeffrey D. Weller
Field Supervisor
Louisiana Ecological Services Office

cc: SE National Wildlife Refuges, Lacombe, LA
National Marine Fisheries Service, Baton Rouge, LA
EPA, Dallas, TX
LA Dept. of Wildlife and Fisheries, Baton Rouge, LA
LA Dept. of Natural Resources, CMD, Baton Rouge, LA
CPRA, Baton Rouge, LA

CEMVN Responses



DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, CORPS OF ENGINEERS
P.O. BOX 60267
NEW ORLEANS, LOUISIANA 70160-0267

December 3, 2013

REPLY TO
ATTENTION OF

Regional Planning and Environment
Division South
Environmental Planning Branch

To whom it may concern:

The U.S. Army Corps of Engineers, New Orleans District (CEMVN) received your comments on the Programmatic Individual Environmental Report #36 (PIER #36) for the Lake Pontchartrain and Vicinity (LPV) Hurricane Storm Damage and Risk Reduction (HSDRRS) Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist and St. Tammany Parishes, Louisiana Project.

CEMVN appreciates your interest in the mitigation project and has responded to your comments in appendix R of the final PIER. If there are any questions concerning our responses please contact Elizabeth Behrens at (504)-862-2025.

Sincerely,

A handwritten signature in black ink that reads "Joan M. Exnicios".

Joan M. Exnicios
Chief, Environmental Planning Branch



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, CORPS OF ENGINEERS
P.O. BOX 60267
NEW ORLEANS, LOUISIANA 70160-0267

December 3, 2013

Regional Planning and Environment
Division South
Environmental Planning Branch

Ms. Virginia M. Fay
Field Supervisor
Assistant Regional Administrator
Habitat Conservation Division
Southeast Regional Office
263 13th Avenue South
St. Petersburg, FL 33701

Dear Ms. Fay:

The U.S. Army Corps of Engineers, New Orleans District (CEMVN) received your agency's comments dated September 24, 2013 on the Programmatic Individual Environmental Report #36 (PIER #36) for the Lake Pontchartrain and Vicinity (LPV) Hurricane Storm Damage and Risk Reduction (HSDRRS) Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist and St. Tammany Parishes, Louisiana Project. Attached are CEMVN's responses to these comments.

CEMVN appreciates the NMFS's comments and looks forward to coordinating with the agency on the upcoming LPV HSDRRS Mitigation TIERs. If there are any questions concerning our responses please contact Elizabeth Behrens at (504)-862-2025.

Sincerely,

A handwritten signature in black ink that reads "Joan M. Exnicios".

Joan M. Exnicios
Chief, Environmental Planning Branch

General Comments

NMFS Comment – Details and recommendations identified in the November 2012, draft Fish and Wildlife Coordination Act Report are necessary items warranting fulfillment as the mitigation features progress. Final scaling of mitigation should be based upon and accomplished during advanced engineering and design, but prior to release of a supplemental PIER. Furthermore, contingency measures and/or adaptive management are necessary to ensure attainment of no net loss of wetlands.

NMFS Comment –The Bayou Sauvage alternative may be acceptable in amount for brackish marsh impacts, but a final determination cannot be made at this time. For brackish marsh, the Bayou Sauvage mitigation will warrant reassessment as a matter of routine as do all final features, but also because the alternative was modified by the USACE to place fill material on approximately 100 acres of existing marsh for the purpose of nourishment. Although we do not object to such nourishment, means should be included to avoid adverse overfilling impacts. The concept would have to be re-evaluated based on the final design and resized according to functional impacts to the existing and created marsh.

NMFS Comment –Recent inspections of the marsh creation mitigation projects highlights the importance of capturing functionality lags in the initial scaling of mitigation, as well as to reconcile partial success and attain no net loss of wetlands. For example, it may be impracticable or cause more environmental harm than good to grade high elevations down. Further, it may be more cost effective to create more marsh up front to cover performance uncertainties than to fill relatively small amounts of open water which were supposed to have been marsh, but experienced more settlement than expected. Issues with attainment of success criteria are anticipated for marsh creation mitigation due to variability in elevations resulting from soils, contractor performance, and differential settlement of backfilled in situ borrow canals. Even with potential improved accuracy of assessments, means to fund corrective or contingency actions in the adaptive management phase should be included in the final PIER and future supplemental documents. If funds are insufficient to support corrective actions, these documents should disclose this limitation and environmental risk to the public.

NMFS Comment –The design of the borrow pits includes sequential means developed with natural resource agencies to site and size borrow in an attempt to minimize creating hypoxia. It is suggested those sequential means be identified as best management practices in the Appendix. Even though pits have been designed in an attempt to minimize impacts to water quality, no monitoring is included to demonstrate adverse impacts do not result. To address potential adverse environmental impacts, approaches exist to address hypoxia concerns through design considerations or after-the-fact with monitoring. Modern design capabilities (e.g., modeling) exist to demonstrate up-front risks to water quality are minimized, but those tools can be costly with residual risk. As the literature suggests, potential environmental impacts from open water borrow pits vary by location and estuary. The USACE is encouraged to include water quality monitoring in supplemental and final PIERs to assess if hypoxia develops.

Such monitoring would help with the development of potential contingency measures for future designs if not also for corrective action. The USACE's monitoring of water quality for Individual Environmental Report 11 and the Mississippi River-Gulf Outlet Ecosystem Restoration Study was helpful in this regard. It is suggested scopes of work similar to those be included and repeated annually for three years.

NMFS Comment – The completion of mitigation to offset remaining HSDRRS impacts to wetlands (e.g., purchasing of credits or construction) should be expedited. Given the time since impacts occurred, and potential real estate acquisition challenges, NMFS has a growing concern over the increasing delay to finalize and construct mitigation. Across the TSMP A, increasing temporal loss of wetland functions resulting from delayed implementation of mitigation should be assessed and final mitigation increased accordingly. With the fiscal climate and continuing plan evaluations, funding for completion of the mitigation and any needed increases must be safeguarded. Means should be utilized to expedite completion of mitigation.

NMFS Comment – Elevation as an indicator of hydroperiod is of paramount importance to assess mitigation success, especially for marsh mitigation. LIDAR surveys are identified as the type of elevation data to be collected. The implications of its availability and accuracy by marsh and vegetation type should be established with the Project Delivery Team, including the natural resource agencies, for further consideration. Use of LIDAR should not be at the exclusion of conventional elevation survey data if an alternative or check is necessary to meet timing or quality control/quality assurance needs of mitigation performance monitoring.

CEMVN Response to all NMFS General Comments – CEMVN appreciates the preliminary and early feedback provided on the HSDRRS marsh mitigation projects and will continue to coordinate closely with NMFS as these projects undergo advanced design and further NEPA compliance.

Specific Comments

NMFS Comment – The USACE should comply with the recommendations identified in the November 12, 2012, Fish and Wildlife Coordination Act (i.e., 3- 6, 11 - 13, 17, and 19, relative to EFH).

CEMVN Response – Concur.

NMFS Comment – Mitigation for marsh impacts should be rescaled based on revised impact analyses to be conducted on final designs (i.e., 100% Design Decision Reports). If the amount of mitigation increases, the amount of funds should be adjusted accordingly and represented in the financial assurances.

CEMVN Response – Mitigation quantities will be based on actual impacts as reflected in as-built drawings. The Corps will mitigate for all marsh impacts and has budgeted sufficient funds for the effort.

NMFS Comment – The specific dollar amount and mechanism for financial assurances should be identified.

CEMVN Response – The LPV Project Partnership Agreement between the CPRA of Louisiana and the Federal Government provides the required financial assurances for this mitigation project. In the event that the non-Federal sponsor fails to perform, the CEMVN has the right to complete, operate, maintain, repair, rehabilitate or replace any project feature, including mitigation features, but such action would not relieve CPRA of its responsibility to meet its obligations and would not preclude the US from pursuing any remedy at law or equity to ensure CPRA's performance.

NMFS Comment – Adaptive management or contingency plans should be developed and included to reconcile mitigation shortfalls from overfilling or underfilling marsh creation mitigation sites.

CEMVN Response – Concur.



DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, CORPS OF ENGINEERS
P.O. BOX 60267
NEW ORLEANS, LOUISIANA 70160-0267

December 3, 2013

REPLY TO
ATTENTION OF

Regional Planning and Environment
Division South
Environmental Planning Branch

Ms. Rhonda Smith
Chief, Office of Planning and Coordination
Region 6
1445 Ross Avenue, Suite 1200
Dallas TX 75202-2733

Dear Ms. Smith:

The U.S. Army Corps of Engineers, New Orleans District (CEMVN) received your agency's comments dated September 9, 2013 on the Programmatic Individual Environmental Report #36 (PIER #36) for the Lake Pontchartrain and Vicinity (LPV) Hurricane Storm Damage and Risk Reduction (HSDRRS) Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist and St. Tammany Parishes, Louisiana Project. Attached are CEMVN's responses to these comments.

CEMVN appreciates the EPA's comments and looks forward to coordinating with the agency on the upcoming LPV HSDRRS Mitigation TIERs. If there are any questions concerning our responses please contact Elizabeth Behrens at (504)-862-2025.

Sincerely,

A handwritten signature in black ink that reads "Joan M. Exnicios".

Joan M. Exnicios
Chief, Environmental Planning Branch

Specific Comments

EPA Comment #1 – EPA supports the goal of establishing large, contiguous mitigation tracts, as opposed to numerous small tracts; however, we are not aware of the legal or regulatory basis for disqualifying a mitigation bank because it lacks available credits to fully offset impacts to a certain wetland type.

Recommendation: EPA recommends the Corps review the policies it has applied to HSDRRS mitigation decisions to ensure consistency with Clean Water Act (CWA) Section 404 mitigation policies. Specifically, the Corps should review the policy that banks must be able to provide 100% of needed mitigation credits in order to be eligible for use in offsetting HSDRRS impacts. Similarly, the Corps should explain why the Wetland Value Assessment model is used to quantify mitigation for the HSDRRS program, whereas the Modified Charleston Method (MCM) is used in the CWA Section 404 regulatory program.

CEMVN Response #1 – Please reference section 2.8 Proposed Action in the PIER that states “If appropriate and cost-effective, the Corps may choose to purchase mitigation bank credits from more than one bank to fulfill the compensatory mitigation requirements for a particular habitat type.” As per EC 1105-2-412, any model used for civil works projects must be certified by the National Ecosystem Restoration Planning Center of Expertise. The modified Charleston method has not gone through the certification process and is not a certified model. As such, it cannot be used for civil works projects.

EPA Comment #2 – There is ample experience in the New Orleans District with restoring forested wetlands to provide compensatory mitigation. In most instances, the forested wetland restoration involves some combination of hydrologic restoration (e.g., plugging or backfilling drainage canals), tree planting, and control of nuisance species. We are not aware of any active or completed forested wetland restoration projects in which trees are planted on dredged material, as is being proposed in some of the HSDRRS mitigation options being considered by the Corps. While we would have confidence regarding the success of planting marsh species on dredged material, the planting of woody vegetation on such soils might present unique challenges and risks.

Recommendation: In the event that mitigation banks do not remain the preferred option for forested wetland mitigation, EPA recommends the Corps review any available information pertaining to re-establishing forested wetland on dredged material, prior to selecting such an option for offsetting HSDRRS impacts.

CEMVN Response #2 – Existing conditions at Bonnet Carre for both the BLH and swamp restoration features are such that leveling of the project areas is anticipated to either leave the areas at the elevations necessary for BLH/swamp establishment or that only minimal additional borrow would be required to reach those elevations. This borrow would be obtained from a site in Lake Pontchartrain adjacent to the floodway

that receives sedimentary deposits whenever the Bonnet Carre is opened to convey Mississippi River water into Lake Ponchartrain. Similar sediments are also deposited within the Bonnet Carre during the floodway's operation and have not prevented forested habitats from thriving within the Bonnet Carre. Since little to no borrow is anticipated to be necessary for these projects and since the same material deposited in the Bonnet Carre during flood events will also be placed in the mitigation areas, confidence is high that successful BLH and swamp establishment will occur at these sites.

EPA Comment #3 – When dredged material is used to re-establish or nourish wetlands, there is a risk that the dredged material will settle to elevations which are too high or too low to support the desired wetland vegetation. In either case, additional work could be needed to establish elevations conducive to wetland hydrology and vegetation. In particular, the cost of remobilizing a dredge to augment site elevations can be significant.

Recommendation: In cases where dredged material is used to achieve HSDRRS mitigation goals, has the Corps set aside sufficient funds to cover such potential costs? The use of dredged material to re-establish wetlands should contain adequate funding for contingencies.

CEMVN Response #3 – The proposed action in PIER 36 is to buy mitigation bank credits for BLH and swamp general impacts or, if credits cannot be obtained for reasons specified in PIER 36, then the Bonnet Carre projects would be constructed for those habitat types. Confidence is high that the required elevations for BLH-Wet and swamp survival will either occur with leveling of the Bonnet Carre sites or would be achieved with the addition of minimal dredged material. The PDT recognizes the uncertainties when using dredged material to achieve wetland elevations at deeper open water sites and is working with the resource agencies to come up with a plan for the programmatic features during TIER completion to ensure the required elevation for each habitat type will be achieved on sufficient acreage to fully mitigate those impacts. Currently, the programmatic features in the PIER have been oversized by using a FWOP condition based on the intermediate SLR scenario to help address this issue.

EPA Comment #4 – The Corps concluded that there is little risk of adverse water quality impacts from open-water borrow areas. For example, page 311 of the PIER contains the following statement: "Approximately 155 acres of lake water bottom would be deepened by an average of 12 feet. It is anticipated that anoxic conditions would be avoided with this depth of dredging..."

Recommendation: Explain the technical basis for this finding. Describe the monitoring the Corps is performing to determine if this statement is accurate or if adverse water quality conditions develop. Please describe the adaptive management or contingency plans the Corps will enact in case there are adverse water quality effects in open-water borrow areas.

CEMVN Response #4 – The proposed borrow plan has been developed with an emphasis of mimicking a natural depression in the lake bottom. A gradual side slope of 1V:3H has been designed for the borrow pits. This gradual slope would facilitate tidal flushing. The depth of the dredge pits would be 10 to 11 feet below the existing mud line of Lake Pontchartrain and Lake Borgne. Water depths in the vicinity of the proposed borrow pits are 8 to 9 feet deep. The proposed borrow depth was developed through an analysis of the existing water quality data in the vicinity of the project areas.

Post construction, maximum water depths would be approximately 20 feet from the surface of the water at the borrow sites. Monitoring of dissolved oxygen levels in a dredged hole along the south shore of Lake Pontchartrain indicated that chronic, low (<2parts per million) dissolved oxygen conditions only occurred at depths of 40ft and greater and infrequently occurred at shallower depths (Flocks and Franze 2001). Depths in the 20-foot range rarely dropped below the critical threshold of 2 parts per million and during certain times of the year, much of the lake experiences low oxygen conditions.

In 2007, the United States Geological Survey (USGS) was contracted to conduct water quality sampling within and in the vicinity of the now deauthorized MRGO navigation channel. To date, three years of sampling data have been collected within and around the deauthorized MRGO navigation channel. From 2008 to 2010, nine locations had monthly water quality monitoring of salinity, dissolved oxygen, and pH. Current trends in the data suggest that hypoxia does not form until approximately 25 feet in depth for this area. Though the MRGO channel does experience hypoxia formation below the 25 foot depth; the USGS data indicates sufficient mixing does occur above this depth. Since Lake Pontchartrain and Lake Borgne water bodies are readily mixed (much more than the MRGO channel), MVN believes that the proposed pit design, combined with the hydrological nature of Lakes would ensure that sufficient mixing of the water column would result to prevent hypoxia formation within the borrow pits.

EPA Comment #5 – The Corps has identified the Bonnet Carre Spillway as the second-ranked option for offsetting non-refuge bottomland hardwood and swamp impacts. However, the PIER indicates that there is a high risk of seedling mortality associated with opening of the spillway:

"However, as evidenced by past plantings of BLH species in the spillway outfall area, near total mortality of planted BLH seedlings could occur if such a flooding event occurs before seedlings reach this age. Given the relatively high probability of the spillway being open within 4 years or less following completion of the initial plantings proposed in the mitigation features, the adaptive management plan for this mitigation project assumes that the canopy and midstory species initially planted will have to be completely re-

planted on two separate occasions." (Appendix K, 4. Adaptive Management Plan)

Recommendation: The PIER should more clearly describe why the Bonnet Carre Spillway is a second-ranked option, despite this known risk of seedling mortality.

EPA CEMVN Response #5 – The risk of seedling mortality from opening of the Bonnet Carre Spillway was considered during the AEP when comparing the different projects mitigating BLH and swamp impacts (PIER 36, Appendix B, table B-2). Although there is some risk that seedlings could be adversely impacted by an opening of the spillway, that risk is relatively limited ($\leq 40\%$) and it is anticipated that within approximately 4 to 5 years following the initial planting of tree seedlings, the planted trees will be able to tolerate openings of the spillway. Replanting of the site if the site is impacted is a very minor component of the overall mitigation project cost and could be overcome to some degree by planting larger trees. Important benefits attributable to the Bonnet Carre are that it is already owned by the public (making it implementable almost a year before any other project), is contiguous with a resource managed area, is located in a Parish where the impacts occurred, and provides a habitat linkage with adjacent forested systems (see table B-3 and B-5).

References:

Flocks, J. and C. Franze. 2001. Dredge pit characterization, *in* S. Penland, A. Beall and J. Waters (eds.), Environmental Atlas of the Lake Pontchartrain Basin. Lake Pontchartrain Basin Foundation, New Orleans, LA, p. 153.



DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, CORPS OF ENGINEERS
P.O. BOX 60267
NEW ORLEANS, LOUISIANA 70160-0267

December 3, 2013

REPLY TO
ATTENTION OF

Regional Planning and Environment
Division South
Environmental Planning Branch

Mr. Jeffrey D. Weller
Field Supervisor
US Fish and Wildlife Service
646 Cajundome Blvd - Suite 400
Lafayette, LA 70506

Dear Mr. Weller:

The U.S. Army Corps of Engineers, New Orleans District (CEMVN) received your agency's comments dated September 25, 2013 on the Programmatic Individual Environmental Report #36 (PIER #36) for the Lake Pontchartrain and Vicinity (LPV) Hurricane Storm Damage and Risk Reduction (HSDRRS) Mitigation, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist and St. Tammany Parishes, Louisiana Project. Attached are CEMVN's responses to these comments.

CEMVN appreciates the USFWS's comments and looks forward to coordinating with the agency on the upcoming LPV HSDRRS Mitigation TIERS. If there are any questions concerning our responses please contact Elizabeth Behrens at (504)-862-2025.

Sincerely,

A handwritten signature in black ink that reads "Joan M. Exnicios". The signature is written in a cursive style.

Joan M. Exnicios
Chief, Environmental Planning Branch

General Comments

USFWS Comment – While we are generally in support of the Tentatively Selected Mitigation Plan alternative, we are concerned that using the mitigation bank alternative could have negative repercussions. The Corps has the opportunity and resources to construct a "permittee-responsible" mitigation project. By going to a mitigation bank, the Corps could exhaust credits available in any one mitigation bank thus creating a hardship on an individual landowner/permittee. Mitigation banks provide a cost savings and feasible mitigation alternative for the individual landowner. A mitigation bank serves the individual landowner who does not have the resources to construct a mitigation project or whose project typically does not require the amount of mitigation that warrants a self-mitigation project. We recommend that the Corps consider the availability of credits at a bank and within a hydrologic unit when evaluating the mitigation bank alternative to avoid exhausting credits available for individual landowners/permittee.

CEMVN Response – We understand and, to a degree, share your concerns. However, the general mitigation bank component of the TSMMPA remains as our recommended plan for reasons discussed in Section 2 of the PIER. It is noted that existing mitigation banks capable of providing credits for mitigating general (e.g. non-refuge) BLH-Wet FS and BLH-Dry PS impacts appear to currently have a substantial number of credits available and the purchase of the necessary credits would not come close to exhausting the availability of such credits in the LPV basin. It is also noted that existing mitigation banks capable of providing credits for mitigating general swamp impacts appear to currently have a significant number of credits available and the purchase of the necessary credits would not exhaust the availability of such credits in the LPV basin. Please keep in mind that WRDA 2007 Section 2036(c) requires that we first consider the use of mitigation banks as mitigation for wetland impacts, which is consistent with the wetland mitigation guidance contained in 33 CFR Section 332.3(b)(1).

USFWS Comment – The Corp proposes to conduct BLH enhancement work on private lands as mitigation for impacts to BLH-wet habitats at Bayou Sauvage NWR. It is our understanding that the lands in question would be appropriated by condemnation from an unwilling seller. While we would certainly desire to see the lands in question purchased and made a part of Big Branch Marsh NWR, it is the policy of the Service to acquire lands from willing sellers only. It is not the policy of the Service to acquire lands through condemnation. While the lands in question would be appropriated through condemnation by the Corps and then transferred to the Service, the net effect would be the same, which is casting the Service in the role of beneficiary of the condemnation process. It is the position of the Service at this time that any lands acquired through the condemnation process (excluding those condemned for unclear title) will not be accepted by donation, transfer, sale or other means to become part of a national wildlife refuge. Based on this position the Service would not consider any such action or work-performed following such action as meeting the necessary mitigation requirements for impacts to refuge lands. We strongly encourage the Corps to seek alternatives within refuge lands to fulfill the necessary mitigation requirements. The Service has proposed and still supports the fulfillment of mitigating on-refuge BLH-wet impacts (flood side)

with protected side alternative locations. Such locations for the restoration of BLH have been identified within the boundaries of Bayou Sauvage NWR, and have been provided to the Corps on previous occasions.

CEMVN Response – Condemnation is a legitimate tool available to the Corps for purposes of implementing projects. However, the Corps is committed to working closely with the USFWS and NWR in achieving a mitigation project that meets the mission of both agencies.

USFWS Comment – Additional NEPA analysis will investigate design alternatives of the alternative features. It is important that the Service and other natural resource agencies (i.e., the National Marine Fisheries Service (NMFS), the Louisiana Department of Wildlife and Fisheries, the Environmental Protection Agency, and the Louisiana Department of Natural Resources) are involved in the analysis of these alternative designs and construction processes. Accordingly, in order to provide feedback regarding potential impacts to natural resources and to provide measures of avoiding and minimizing those impacts, the Service and the other natural resource agencies should be provided opportunities to review and comment on engineering and design reports and plans and specification documents. At that time more detailed Wetland Value Assessments can be conducted by the Service on the proposed mitigation projects, and resizing efforts can be finalized.

CEMVN Response – Additional NEPA analysis concerning the programmatic elements of the TSMFA will be provided in future TIER(s). During the course of preparing the TIER(s) and through the associated PED process, proposed mitigation design features within a particular Corps-constructed mitigation project will likely be adjusted/modified. We will coordinate such adjustments and/or modifications with the Interagency Team (natural resource agencies), the PDT, and the Non-Federal Sponsor. Such coordination will include preparing more detailed and/or updated WVAs for the proposed mitigation features; however, these WVAs will be generated during the preparation of the TIER(s) rather than during preparation of the final project plans and specifications (P&S), since final P&S cannot be completed until after the TIER(s) is approved. The Interagency Team members and the Non-Federal Sponsor will be provided the opportunity to review and comment on the final P&S and associated engineering design reports.

USFWS Comment – The forthcoming NEPA analyses for the Programmatic Features will include a biological assessment and ESA Section 7 consultation for projects impacting Gulf sturgeon critical habitat. We further recommend that species that may occur also be included in the biological assessment (i.e., West Indian manatee; and Kemp's ridley, loggerhead, and green sea turtles). The Service recommends that the Corps coordinate with the NMFS, who is responsible for consultations with the Corps regarding impacts to the Gulf sturgeon, and its designated critical habitat, in estuarine and marine waters in Louisiana [March 19, 2003, Federal Register (Volume 68, No. 53)], and all species of sea turtles in estuarine waters. Please contact the NMFS Regional Office in St. Petersburg, Florida, for information concerning those species and critical habitat. Ms. Cathy Tortorici (727/209-5953) is the contact for information

regarding Gulf sturgeon and its designated critical habitat, and Mr. Eric Hawk (727/824-5312) is the contact for information regarding sea turtles. Should the proposed project directly or indirectly affect those species under the jurisdiction of the NMFS, further consultation with that office will be necessary. Should plans change significantly, or work not implemented within one year following coordination with the Service and NMFS, we recommend that the Corps reinstate coordination with each office to ensure that the proposed project would not adversely affect any Federally listed threatened or endangered species or their habitat.

CEMVN Response – Your recommendations are acknowledged. Appropriate biological assessments will be prepared in conjunction with preparation of the future TIER(s) and appropriate ESA Section 7 consultation will be conducted in conjunction with generation of the TIER(s). If mitigation plans change significantly following completion of the ESA Section 7 consultation process or after approval of the TIER(s), we will reinstate such consultation with USFWS and NMFS. The same course of action will occur if a particular Corps-constructed project is not implemented within one year of completion of the TIER(s) and completion of the initial ESA Section 7 consultation process.

USFWS Comment – With regards to the Bonne Carre Dry-BLH, Wet-BLH, and Swamp Restoration projects, the Corps has made a "no effect" determination for project impacts on West Indian manatee, Gulf sturgeon, pallid sturgeon, and sea turtles. Because these species may occur in either one of the alternative borrow areas, we cannot concur with the "no effect" determination at this time. A "no effect" determination is the appropriate conclusion when the proposed action will not affect listed species or critical habitat. A "may affect," but "not likely to adversely affect" determination is an appropriate conclusion when effects on listed species are expected to be discountable, or insignificant, or completely beneficial. In order to ensure compliance with the ESA, we recommend that the Corps re-examine the projects to determine whether they may affect those species listed above and provide a basis for that determination.

CEMVN Response – Should the Bonnet Carre BLH-Dry and BLH-Wet Restoration Project and/or the Bonnet Carre Swamp Restoration Project ultimately be selected to fulfill the applicable mitigation requirements (refer to Section 2 of PIER), we will re-examine the projects as recommended and will initiate informal ESA Section 7 consultation with USFWS and NMFS.

Specific Comments

Section 2.1 Mitigation Measure Development and Screening Criteria, Intermediate Marsh, page 2-1 – The last sentence references brackish marsh and should be revised accordingly.

CEMVN Response – Concur. Text in Section 2.1 has been revised.

Section 2.1 Mitigation Measure Development and Screening Criteria, Bottomland Hardwoods, page 2-1 – It should be noted that "dry" bottomland hardwoods are typically

a product of altered hydrology resulting from being located within a leveed system.

CEMVN Response – Do not concur. We feel the generic description of dry bottomland hardwoods is adequate as written.

Section 2.5, Tentatively Selected Mitigation Plan Alternative, Table 2-3. Summary of changes to TSMP designs, page 2-41 and 2-42– To be consistent with the other project descriptions we recommend including borrow information for the Bayou Sauvage Refuge BLH-Wet/Intermediate Marsh Restoration project and indicate that no fill or grading will be required for the "Fritchie Refuge BLH-Wet Enhancement" project.

CEMVN Response – Borrow information for the Bayou Sauvage Refuge BLH-Wet/Intermediate Marsh Restoration project has been added. No language has been added for the Fritchie project as the table is only meant to show what the project does require. Project specific details can found under section 2.3 of the PIER.

Section 3.2.1.2.3, Mitigation for Impacts to Non-Refuge Intermediate Marsh, Caernarvon – Terrebonne Basin is inadvertently referenced in this section and should be revised to the Breton Sound Basin.

CEMVN Response – The text in Section 3.2.1.2.3 has been revised.

Section 3.2.3.4.2, Fisheries, Aquatic Resources and Water Quality, Bayou Sauvage, page 3-47 – Unlike the Bayou Des Mats project, the Bayou Sauvage intermediate marshes are currently within a managed unit and aquatic organism ingress and egress is dependent on the water control structures constructed under the Coastal Wetlands Planning, Protection, and Restoration Act, Bayou Sauvage National Wildlife Refuge Hydrologic Restoration, Phase 1 (P0-16) project. Please revise accordingly.

CEMVN Response – We agree with your statement, but do not feel that changes to the text in Section 6.2.2.3 are necessary. As applicable, the future TIER(s) and associated biological assessments will further evaluate potential impacts of Corps-constructed mitigation projects (current programmatic elements of the TSMPA) to Gulf sturgeon and Gulf sturgeon critical habitats. Such evaluations will include an evaluation of whether affected Gulf sturgeon critical habitats provide the primary constituent elements necessary for this species to survive and reproduce and whether such elements are limited by various factors.

Appendix D: Mitigation of Impacts to Open Water Habitats, Section 2.1, Page D-3 – Impacts to species protected by the ESA cannot be mitigated under Section 7 of the ESA. If the Service determines that an impact to a particular habitat does not require mitigation under the Fish and Wildlife Coordination Act, it should be understood that we have considered the value of the habitat to all fish and wildlife resources including federally-listed threatened and endangered species and designated critical habitat, and decided that those impacts would not require mitigation. Our Consultation under Section 7 of the ESA will result in concurrence with a Corps' determination of "no effect", "not

likely to adversely affect", or "adversely affect" in terms of listed species for alternative features. We recommend removing actions that would adversely affect threatened or endangered species and federally designated critical habitat as an example.

CEMVN Response – Comment noted. The design of Corps-constructed projects that are components of the TSMAPA will strive to avoid adverse impacts to threatened species, endangered species, and federally designated critical habitats to the greatest extent practicable. Potential impacts will be addressed further in the applicable TIER(s).

Appendix D: Mitigation of Impacts to Open Water Habitats, Section 3, Page D-4 – The Service classifies submerged aquatic vegetation habitat as a Resource Category 2 habitat and, therefore, it should have "in-kind" mitigation. However, we acknowledge the fact that "inkind" mitigation may be very difficult and somewhat unpredictable compared to marsh mitigation. Therefore, we would accept "out-of-kind" mitigation, that being marsh creation or similar aquatic habitat restoration. Section 3 should be revised to include a Resource Category 2 description.

CEMVN Response – Comment noted. The cited document is draft and the final policy and approach to mitigating impacts to open water habitats will be determined in the applicable TIER(s).

Appendix I: LPV & WBV HSDRRS Mitigation: Wetland Value Assessment (WVA) Model Assumptions and Related Guidance – The Service has worked with the Corps and other natural resource agencies to develop these assumptions and accepts them for use with the LPV and WBV mitigation. These assumptions may be used as a template for future civil works projects; however, for future projects coordination with the natural resource agencies will be necessary to develop area and project specific assumptions.

CEMVN Response – Concur.

Appendix J: General Mitigation Guidelines – Distances within the document are expressed in feet or meters; either standard or both should be presented.

CEMVN Response – Do not concur.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Planting Guidelines for Bottomland Hardwood (BLH) Habitats (page J -1), third sentence – The word "height" should be replaced with the phrase "total length" because height typically refers to the length above the root collar which would not be correct.

CEMVN Response – Do not concur.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Species for Wet Bottomland Hardwood

Habitats (BLH-Wet Habitats), first and second paragraphs and last and first sentences, respectively (page J-2) – The minimum number of hard mast, soft mast, and midstory species should be 5, 5, and 4, respectively.

CEMVN Response – Appendix J contains general draft guidelines. Site-specific planting plans will be developed for Programmatic features of the TSMMPA (Corps-constructed mitigation projects) as part of the applicable TIER(s), in coordination with the Interagency Team, the PDT, and the Non-Federal Sponsor.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Species for Wet Bottomland Hardwood Habitats (BLH-Wet Habitats), Table 1 C (page J-3) – Saltbush, roughleaf dogwood, and honey locust should be removed from this table based on factors such as likelihood of natural regeneration, value to wildlife, and commercial availability of seedlings.

CEMVN Response – Appendix J contains general draft guidelines. Site-specific planting plans will be developed for Programmatic features of the TSMMPA (Corps-constructed mitigation projects) as part of the applicable TIER(s), in coordination with the Interagency Team, the PDT, and the Non-Federal Sponsor.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Species for Dry Bottomland Hardwood Habitats (BLH- Dry Habitats), first paragraph, second sentence, and Tables 2A (page J-3) and 2B (page J-4) – The percentage of hard and soft mast should be 60 and 40, respectively and the percentage of water oak should be reduced to 5.

CEMVN Response – Appendix J contains general draft guidelines. Site-specific planting plans will be developed for Programmatic features of the TSMMPA (Corps-constructed mitigation projects) as part of the applicable TIER(s), in coordination with the Interagency Team, the PDT, and the Non-Federal Sponsor.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Species for Dry Bottomland Hardwood Habitats (BLH- Dry Habitats), first paragraph, last sentence, (page J-3) – The number of hard and soft mast species utilized should be 5 for each.

CEMVN Response – Appendix J contains general draft guidelines. Site-specific planting plans will be developed for Programmatic features of the TSMMPA (Corps-constructed mitigation projects) as part of the applicable TIER(s), in coordination with the Interagency Team, the PDT, and the Non-Federal Sponsor.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Species for Dry Bottomland Hardwood Habitats (BLH- Dry Habitats), second paragraph, first sentence, (page J-3) – The number of midstory species utilized should be 5.

CEMVN Response – Appendix J contains general draft guidelines. Site-specific planting plans will be developed for Programmatic features of the TSMPA (Corps-constructed mitigation projects) as part of the applicable TIER(s), in coordination with the Interagency Team, the PDT, and the Non-Federal Sponsor.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Species for Dry Bottomland Hardwood Habitats (Dry-Wet Habitats), Table 2C (page J-4) – Elderberry, roughleaf dogwood, and honey locust should be removed from this table based on factors such as likelihood of natural regeneration, value to wildlife, and commercial availability of seedlings.

CEMVN Response – Appendix J contains general draft guidelines. Site-specific planting plans will be developed for Programmatic features of the TSMPA (Corps-constructed mitigation projects) as part of the applicable TIER(s), in coordination with the Interagency Team, the PDT, and the Non-Federal Sponsor.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Planting Guidelines for Swamp Habitats, third and fourth sentences, (page J-5) – The word "tall" should be replaced with the phrase "total length" because tall typically refers to the length above the root collar which would not be correct.

CEMVN Response – Do not concur.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Planting Guidelines for Swamp Habitats, second paragraph, fourth sentence, (page J-5) – The minimum number of canopy species should be 4.

CEMVN Response – Appendix J contains general draft guidelines. Site-specific planting plans will be developed for Programmatic features of the TSMPA (Corps-constructed mitigation projects) as part of the applicable TIER(s), in coordination with the Interagency Team, the PDT, and the Non-Federal Sponsor.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Planting Guidelines for Swamp Habitats, second paragraph, fifth sentence, (page J-5) – The minimum percentage of bald cypress should be 60 as correctly displayed in Table 3A.

CEMVN Response – Appendix J contains general draft guidelines. Site-specific planting plans will be developed for Programmatic features of the TSMPA (Corps-constructed mitigation projects) as part of the applicable TIER(s), in coordination with the Interagency Team, the PDT, and the Non-Federal Sponsor.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Planting Guidelines for Swamp Habitats,

Table 3A, (page J-5) – We recommend adding pumpkin ash to this list with a percent composition of 10 to 15, and removing the Drummond red maple.

CEMVN Response – Appendix J contains general draft guidelines. Site-specific planting plans will be developed for Programmatic features of the TSMPA (Corps-constructed mitigation projects) as part of the applicable TIER(s), in coordination with the Interagency Team, the PDT, and the Non-Federal Sponsor.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Planting Guidelines for Swamp Habitats, Table 3B (page J-6) – Roughleaf dogwood should be removed from this table based on factors such as likelihood of natural regeneration, value to wildlife, and commercial availability of seedlings.

CEMVN Response – Appendix J contains general draft guidelines. Site-specific planting plans will be developed for Programmatic features of the TSMPA (Corps-constructed mitigation projects) as part of the applicable TIER(s), in coordination with the Interagency Team, the PDT, and the Non-Federal Sponsor.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Mitigation Planting Guidelines, Deviations from Typical Planting Guidelines, fourth paragraph, second to last sentence, (page J-6) – The phrase "and in coordination with the natural resource agencies" should be added to the end of this sentence.

CEMVN Response – Do not concur.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Additional Mitigation Guidelines, Guidelines for Surface Water Management Features and Structures, (page J-10) – The Service recommends that the use of "indicators of reduction in soil" tubes (IRIS) be examined as a means of reducing hydrology monitoring costs. Additional information on this technique can be found in the literature listed below: Jenkinson, B.J., D.P. Franzmeir, W.C. Lynn. 2002. Soil Hydrology on an End Moraine and a Dissected Till Plain in West-Central Indiana. Soil Science Society of America Journal, Volume 66: 1367-1376. National Technical Committee for Hydric Soils. 2007. The Hydric Soil Technical Standard. Technical Note 11. Available URL: ftp://ftpfc.c.egov.usda.gov/NSSC/Hydric_Soils/notell.pdf.

CEMVN Response – Recommendation noted.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Additional Monitoring Reports, second, third, and fourth bullets (page J -15) and fifth through sixth bullets on page J-22 – The Service agrees with the type of data that should be gathered but does not agree with the proposed techniques used to gather this data. The Service recommends that the data gathering techniques be similar to those utilized by mitigation banks in Louisiana and that finalization of the technique

be done in coordination with the Service and other natural resource agencies.

CEMVN Response – Do not concur. The monitoring methods proposed are scientifically valid. Site-specific mitigation monitoring plans will be developed for programmatic components of the TSMPA and addressed in the TIER(s). The proposed methodologies will be further coordinated with the Interagency Team, the PDT, and the Non-Federal Sponsor during the process of preparing the TIER(s). It is further noted that USFWS has recently accepted the proposed monitoring methodologies addressed in the cited portions of Appendix J.

Appendix J: General Mitigation Guidelines, Mitigation Success Criteria and Mitigation Monitoring, Additional Monitoring Reports, Bottomland Hardwood Mitigation Bullet 7 – 8 (page J-16), and Swamp Mitigation Bullet 8-9 (page J-23) – Where mitigation sites do not involve water control structures manipulating water levels will be difficult. Every effort to achieve appropriate elevations to sustain targeted wetland habitats should be made during the design and construction. For mitigation projects that would not be able to manipulate hydrology water table elevation data would not be necessary. As an alternative we recommend collecting soils data to determine if appropriate hydric soil conditions are being met.

CEMVN Response – Recommendation noted.

Appendix K: Bonnet Carre , Mitigation Program for General BLH Impacts, and Appendix L: Bonnet Carre , Mitigation Program for General Swamp Impacts – Comments provided for the General Mitigation Guidelines (Appendix J) are applicable to the Bonnet Carre Restoration Projects as well. Please revise accordingly.

CEMVN Response – Do not concur. We believe the mitigation programs set forth in Appendices K and L are sufficient as currently written. Should either of these two Corps-constructed mitigation projects need to be implemented, we will coordinate further with the Interagency Team and Non-Federal Sponsor during the development of final project plans and specifications.

Appendix K: Bonnet Carre , Mitigation Program for General BLH Impacts, Initial Planting of Mitigation Features, Table 2-1 and 2-2, page K-4 – The percentage of water oak should be reduced to 5 and saltbush should be deleted from the list of midstory species.

CEMVN Response – Do not concur.

Appendix N: Adaptive Management Plan, 3.0 Monitoring for Project Success, first paragraph, second sentence, (page N-8) – The phrase "and natural resource agencies" should be added behind the words "local sponsor."

CEMVN Response – Concur. Site-specific monitoring plans for other Corps-constructed projects will be provided in the applicable TIER(s). Development of these plans will be coordinated with the Interagency Team, PDT, and Non-Federal Sponsor.

CEMVN appreciates the USFWS's comments and looks forward to coordinating with the agency on upcoming TIERs. If there are any questions concerning our responses please contact Elizabeth Behrens at (504)-862-2025.