

**APPENDIX G: PUBLIC AND AGENCY COMMENTS AND
RESPONSE SUMMARY**

Reviewer	#	Date	Comment	Preparer's Response
FEMA	1/1	7/6/17	We would request that the community floodplain administrator be contacted for the review and possible permit requirements for this project. If federally funded, we would request project to be in compliance with EO11988 & 11990	A copy of EA #543 was sent on 7/7/17 to Mike Metcalf, Plaquemines Parish Floodplain Manager. A follow up phone call was made on 8/16/17 with his secretary which she confirmed he had received EA # 543 and had no questions or comments.
NMFS	1/4	7/17/17	The draft EA provides an up-to-date quantification of mitigation needs to offset impacts associated with the construction of various levee reaches in Plaquemines Parish. The draft EA also identifies the proposed projects chosen to provide compensatory mitigation to offset impacts to a variety of aquatic habitats.	Concur
NMFS	2/4	7/17/17	Based on our review of the draft EA, we concur with the determination summarized in the July 13, 2017, transmittal letter and at various locations in the draft EA that the compensatory mitigation would offset impacts to EFH. Given this determination, NMFS concurs the construction of the levee reaches, with the implementation of the mitigation alternatives described in the draft EA, would not result in a significant adverse impact to EFH. This fulfills the coordination requirements developed between NMFS and USACE on the fulfillment of EFH coordination requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) for civil works projects. Additional coordination under provisions of the MSFCMA is not required unless the project is significantly revised.	Concur

Reviewer	#	Date	Comment	Preparer's Response
NMFS	3/4	7/17/17	It is acknowledged that USACE will continue to coordinate with NMFS regarding finalization of the WVA for the Coleman mitigation site and monitoring results in determination of project success and need for adaptive management actions.	As explained in Section 1.1, additional data resulted in a downward adjustment of the mitigation potential for brackish marsh mitigation. CEMVN will reformulate a plan to mitigate for impacts to intermediate, brackish, and saline marsh, which will be distributed for public review and comment in a supplemental environmental document. In doing so, USACE will continue to coordinate with NMFS.
NMFS	4/4	7/17/17	NMFS has reviewed the draft EA and finds the resources potentially affected have been adequately described and impacts sufficiently evaluated. As such, we have no recommended revisions to the draft EA.	Thank you for your review and comment.
NPS	1/1	7/18/17	We appreciate the opportunity to work with you on the project, and the effort ya'll put into examining alternatives on park lands. Let us know if we can assist you in the future.	Thank you for your review and comment.
LDWF	1/8	7/20/17	LDWF Ecological studies has reviewed and concurs with the USACE's findings in EA #43 and has no further comments concerning the NOV project at this time.	Thank you for your review and comment.

Reviewer	#	Date	Comment	Preparer's Response
LDWF	2/8	7/20/17	Our database indicates the presence of bird nesting colonies within one mile of this proposed project. Please be aware that entry into or disturbance of active breeding colonies is prohibited by the LDWF. In addition, LDWF prohibits work within a certain radius of active nesting colony.	<p>Concur, there is potential for nesting of wading/water birds to utilize the habitats in the new Right of Way areas, and the Coleman brackish marsh mitigation site that was proposed in draft EA #543. However, the brackish marsh mitigation is being reformulated in a Supplemental EA, at which time additional consultation with LDWF will occur specific to the alternatives that are developed.</p> <p>There are existing bald eagle nests north of the NOV-NF-W-05a.1 reach and potential for more nests to occur closer to the project site. Construction will include careful design of project features, timing of construction, and the implementation of best management practices to avoid adverse impacts to protected birds and their nests.</p> <p>No known colonies exist within 1,000 feet of existing ROW for NOV 09 and NOV-NF-W-05a.1 reaches. However, a qualified biologist would inspect the proposed worksites for the presence of undocumented nests during the nesting seasons (i.e., February 15 through Sept 1 for colonial nesting birds and October through May for bald Eagles) prior to construction. To minimize disturbance to nesting birds all activity occurring within 1,000 feet of a rookery or 660 feet of an eagle nest would be restricted to the non-nesting period. During nesting season the no-work distances would be implemented and coordinated with USFWS and LDWF.</p>

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LDWF	3/8	7/20/17	<p>Nesting colonies can move from year to year and no current information is available on the status of these colonies. If work for the proposed project will commence during the nesting season conduct a field visit to the worksite to look for evidence of nesting colonies. This field should take place no more than two weeks before the project begins. If no nesting colonies are found within 650 feet (2000 feet for Brown Pelicans) of the proposed project, no further consultation with LDWF will be necessary. If active nesting colonies are found within these distances, further consultation with LDWF will be required. In addition, colonies should be surveyed by a qualified biologist to document species present and the extent of colonies. Provide LDWF with a survey report with the following: qualifications of survey personnel, survey methodology (date, site characteristic, size of survey area, species of birds present, activity, number nests present, vegetation and photographs, topographic maps and Arcview shapefiles projected in UTM NAD83 Zone 15 to illustrate location of colony.</p>	<p>Concur, a field visit to the Coleman site occurred on July 14, 2017 with the interagency team made up of representatives from USFWS, NMFS, LDNR, EPA, and USACE and no nesting colonies for wading/water birds were observed. However, the brackish marsh mitigation is being reformulated in a Supplemental EA, at which time additional consultation with LDWF will occur specific to the alternatives that are developed.</p>

Reviewer	#	Date	Comment	Preparer's Response
LDWF	4/8	7/20/17	To minimize disturbance to colonial nesting birds, the following restrictions on activity should be observed: -For colonies containing nesting wading birds, all project activity occurring within 100 feet of an active nesting colony should be restricted to the non-nesting period (September 1 through February 15). -For colonies containing nesting gulls, terns, or Black Skimmers, all project activity occurring within 650 feet (2000 feet for Brown Pelicans) of an active nesting colony should be restricted to non-nesting period (September 16 through April 1).	Concur, through careful design of project features, timing of construction and the implementation of best management practices, adverse impacts to protected birds and their nests are currently being avoided. No known colonies exist within 1,000 feet of existing ROW for NOV 09 and NOV-NF-W-05a.1 reaches.
LDWF	5/8	7/20/17	The Louisiana Natural Heritage Program (LNHP) indicates that a Live Oak Forest is located within the proposed project area. This community provides habitat for many unique species of plants, and acts as a migratory staging/stopover site for Neotropical migratory birds. We advise you to take the necessary measures to avoid any impacts to this ecological community. If you have any questions or need additional information please contact Chris Reid.	USACE contacted Chris Reid via phone and email on 7/23/17 and discussed and shared maps of the proposed mitigation projects. His emailed response was that the "construction of the Coleman Brackish Marsh will not impact Live Oak Natural Levee Forest. There is an occurrence of Live Oak Natural Levee Forest just west of the Defelice Brackish Marsh." However, new data requires that CEMVN reformulate the plan for brackish marsh mitigation in a Supplemental EA, at which time additional consultation with LDWF will occur specific to the alternatives that are developed.
LDWF	6/8	7/20/17	No other impacts to rare, threatened or endangered species or critical habitats are anticipated from the proposed project. No state or federal parks, wildlife refuges, wildlife management areas or scenic rivers are known at the specified site or within ¼ mile of the proposed project.	Concur.

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LDWF	7/8	7/20/17	The LNHP reports summarize the existing information known at the time of the request regarding the location in question. LNHP reports should not be considered final statements on the biological elements or areas being considered, nor should they be substituted for on-site surveys required for environmental assessments. If at any time LNHP tracked species are encountered within the project area, please contact our biologist at 225-765-2643.	Concur.
LDWF	8/8	7/20/17	The LDWF submits these recommendations to the USACE in accordance with provisions of the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq). Please do not hesitate to contact Habitat Section Biologist Chris Davis at 225-765-2642 should you need further assistance.	Thank you for your review and comment.

Reviewer	#	Date	Comment	Preparer's Response
USDA-NRCS	1/2	7/24/17, 8/16/17	My agency received the EA for the above referenced project. Based on some of the maps that were enclosed on the CD it appears that some of the project area, in particular NOV 05a, NOV-09 and NOV-NF-W-05A will impact prime farmland. Is it possible for you to send me a copy of the shapefile of the project area??	Shapefiles were sent and the following response was emailed: There are prime farmland soils in some of the levee areas but none is under cultivation or currently being used for other agricultural purposes. Due to these areas being under the existing levee and other existing impacts, the determination was made that prime and unique farmlands would not be impacted and not further discussed in Environmental Assessment #543. Attached are the shapefiles you requested. Additionally, the impacts to NOV 05a, NOV-09 and NOV-NF-W-05A in regards to prime and unique farmlands were originally disclosed in the 2010, "Final Supplemental Environmental Impact Statement, New Orleans to Venice, Federal Hurricane Protection Levee" (NOV SEIS); the 2011 "Final Environmental Impact Statement, New Orleans to Venice, Hurricane Risk Reduction Project: Incorporation of Non-Federal Levees from Oakville to St. Jude, Plaquemines Parish, Louisiana" (NFL FEIS); and the 2016, "Supplemental Environmental Assessment #537, New Orleans to Venice Hurricane Risk Reduction Project: Changes to the Non-Federal Levees Project, Oakville to St. Jude, Plaquemines Parish, Louisiana" (SEA 537). If you would like to discuss this further please give me a call.

Reviewer	#	Date	Comment	Preparer's Response
USDA-NRCS	2/2	7/24/17, 8/16/17	I apologize for not following up on this email. I assume that back in 2010 and 2011 the person before me would have gone through the FPPA process for this project, so I will not worry about it. For FPPA, the land being converted does not have to be currently used for cropland or was previously in cropland. It can be forestland, pastureland, or other land, but not water or urban built-up land. The purpose of FPPA is to try and protect our most productive farmland, it is not a regulatory act but more of a reporting mechanism for conversion of our prime, unique, and state-wide or local important lands. So, any projects being completed by your agency where prime, unique or important farmland is being irreversibly converted to non-agricultural use will need to follow FPPA requirements. If you have any questions please let me know. If you have any upcoming projects in Louisiana where potential conversion of prime farmland is possible and want to go over the process please let me know!	Full Compliance was achieved for the Farmland Protection Policy Act and documented in the NFL FEIS (Appendix D reference NRCS coordination letters dated April 5 and 18, 2011, the NOV SEIS (Appendix B reference NRCS coordination letter April 5, 2011) and SEA 537 coordination in September 2014 and July 2015. In effort to follow up with Mr. Mouton for EA 543, USACE emailed him to see if he had further questions, he was also thanked for his review and comments. Currently no further coordination is required.
PPG	1/13	7/28/2017, 8/10/2017	The subject Bank is the only mitigation bank that meets the criteria for use in mitigating for brackish and saline wetland impacts in connection with this project.	The screening criteria for the NFL NOV projects require all potential mitigation projects be located in the Barataria Basin watershed. Subject Bank is not in this watershed. Please note that the plan for brackish marsh mitigation is being reformulated in a Supplemental EA for the reasons provided in Section 1.1.
PPG	2/13	7/28/2017, 8/10/2017	33 CFR section 332.3 establishes a preference for mitigation banks and explains in detail why such a preference exists.	33 CFR section 332.3 establishes a preference for utilizing mitigation banks to accomplish the compensatory mitigation required for District of the Army (DA) permits when the considerations enumerated in 332.3(b)(2) are applicable. It also states that those same considerations may be used to override that preference where appropriate. NFL NOV is a Civil Works project being constructed by the Corps, not a DA permit.

Reviewer	#	Date	Comment	Preparer's Response
PPG	3/13	7/28/2017, 8/10/2017	WRDA 1986, section 906, paragraph (i)(4) specifically provides a preference for mitigation banks in the circumstance where the non-federal sponsor so requests, as is the case here.	<p>Section 906 of WRDA 1986, as amended, (33 CFR § 2283(i)(4)) states that preference may be given to banks if the non-Federal sponsor requests, so long as the use of credits from a bank has been approved by the agency.</p> <p>The screening criteria for the NFL NOV Mitigation required that alternatives exist within the Barataria Basin watershed and be able to mitigate 100% of the mitigation requirement for that habitat. Banks within the Barataria Basin watershed offered sufficient credits to meet CEMVN's need for 4 of the 5 habitat types. No banks existed within the Barataria Basin for brackish marsh, so the non-federal sponsor's preference did not factor into the evaluation of alternatives for that habitat.</p> <p>Please note that the plan for brackish marsh mitigation is being reformulated in a Supplemental EA for the reasons provided in Section 1.1.</p>
PPG	4/13	7/28/2017, 8/10/2017	WRDA 2007 (a) contains the same preference language as that in 33 CFR 332.	<p>Section 2036(a) of WRDA 2007 does not contain the same preference language as that in 33 CFR 332.</p> <p>Please note that the plan to mitigate for brackish marsh mitigation is being reformulated in a Supplemental EA for the reasons provided in Section 1.1.</p>

Reviewer	#	Date	Comment	Preparer's Response
PPG	5/13	7/28/2017, 8/10/2017	WRDA 2016, section 1163(l) clearly still encourages the use of mitigation banks	<p>Mitigation banks were found to be a reasonable alternative for 4 out of the 5 habitat types requiring mitigation because sufficient in-kind credits existed in the Barataria Basin watershed.</p> <p>Please note that the plan to mitigate for brackish marsh mitigation is being reformulated in a Supplemental EA for the reasons provided in Section 1.1.</p>
PPG	6/13	7/28/2017, 8/10/2017	By law and regulation, the District's civil works projects are bound by the mitigation standards and policies applicable to its Regulatory program.	<p>CEMVN's compensatory mitigation planning complied with the standards and policies expressed in 33 CFR 332. (See in particular subsection 332.3(c), which emphasizes the importance of utilizing a watershed approach to mitigation planning, and enumerates factors to consider when determining the location and scale of the watershed; and subsection 332.4, which defines the 12 components required of a mitigation plan.)</p> <p>Section 906 of WRDA 1986, as amended, (33 CFR § 2283), states that "The Secretary shall ensure that the mitigation plan for each water resource project complies with, <u>at a minimum</u>, the mitigation standards and policies established pursuant to the regulatory programs administered by the Secretary." This language leaves CEMVN the discretion to scale a watershed to suit the needs of the Civil Works project. In this instance, CEMVN determined that a smaller watershed (Barataria Basin watershed) than that which is utilized by the Regulatory program to mitigate for tidally-influenced marsh impacts (Deltaic Plain) would best serve the needs of the projects.</p>
PPG	7/13	7/28/2017, 8/10/2017	WRDA 1986, section 906 (d)(3)(A) fully supports preferential use of mitigation banks.	See previous response.

Reviewer	#	Date	Comment	Preparer's Response
PPG	8/13	7/28/2017, 8/10/2017	The District has failed to adhere to the plain language and intent of the dispute resolution procedures of its Project Partnership Agreement (PPA) with Plaquemines Parish and the Coastal protection and Restoration Authority Board of Louisiana, joint non-federal project sponsors.	Only the Chairman of the Coastal Protection Restoration Authority Board (CPRAB), the other NFS for these projects, has the ability to invoke Article VI, Issue Resolution and Dispute Avoidance, in the PPA and he has not done so.
PPG	9/13	7/28/2017, 8/10/2017	Purchasing the existing mitigation bank credits also eliminates the future O&M cost burden of maintaining a Corps-constructed mitigation project and eliminates the very real risk that a Corps-construction mitigation project and eliminates the very real risk that a Corps-constructed saline brackish marsh might fail and obligate the Parish to substantial marsh restoration costs.	The plan for brackish marsh mitigation is being reformulated in a Supplemental EA for the reasons provided in Section 1.1. As a general matter, if a Corps-constructed mitigation project fails to meet its intermediate and/or long-term ecological success criteria, the USACE would consult with other agencies and the NFS to determine the appropriate management or remedial actions required to achieve ecological success. If structural changes are deemed necessary to achieve ecological success, the USACE would implement appropriate adaptive management measures in accordance with the contingency plan and subject to cost-sharing requirements, availability of funding, and current budgetary and other guidance.
PPG	10/13	7/28/2017, 8/10/2017	The New Orleans District, in electing to construct a new mitigation project not within a designated high impact area has once again ignored the preference to locate the mitigation projects in jointly approved "high priority coastal restoration areas."	Please see appendix B, table B-3 for an evaluation of all potential projects and their consistency with watershed plans, including the 2012 Louisiana State Master Plan (the 2017 version was not approved at the time of evaluation). The Coleman project is in an area identified in both the 2012 and 2017 Master Plan as important to build and maintain land and reduce risk to the community. Notwithstanding the information provided above, please note that the plan to for brackish marsh mitigation is being reformulated in a Supplemental EA for the reasons provided in Section 1.1.

Reviewer	#	Date	Comment	Preparer's Response
PPG	11/13	7/28/2017, 8/10/2017	The District arbitrarily restricted mitigation options, including mitigation banks, to only those sites physically located within a narrowly defined basin without explanation.	The Corps has the discretion to define the location and the scale of the watershed. CEMVN utilized existing law and guidance, including those factors identified in 33 CFR 332.3(c), to determine the appropriate watershed for the impacts incurred by these projects. Additional information about the how the watershed was defined can be found in section 2.2.1, Mitigation Formulation Requirements.
PPG	12/13	7/28/2017, 8/10/2017	The currently selected NFL NOV mitigation project for brackish saline wetland impacts, The Coleman Brackish Marsh Project, may not work as intended due to the Mid Barataria Sediment Diversion Project.	Currently, the Mid-Barataria Sediment Diversion Project (Diversion) has not been permitted for construction. As such, the diversion is not part of the NFL NOV Mitigation's future without project conditions (FWOP). However, please note that the plan to for brackish marsh mitigation is being reformulated in a Supplemental EA for the reasons provided in Section 1.1.
PPG	13/13	8/10/2017	If the Memorandum of Agreement between the District and PPG were finalized for the relocation of the NFL NOV internal drainage ditches necessary for the levee improvements covered in EA 537, PPG and the District together would be required to utilize commercial mitigation bank credits.	Disagree. Mitigation for the relocation of the drainage canals is being undertaken by the Corps on PPG's behalf and has been included in the Civil Works mitigation plan. Even if PPG were constructing and mitigating on its own behalf, the amount and method of mitigation required would depend on a variety of factors identified in 33 CFR 332 and assessed by CEMVN Regulatory branch at the time that the permit issued. Moreover, as a general matter, there are other means of accomplishing compensatory mitigation — which are also identified in 33 CFR 332 — that are available to DA permittees,
Jason Kaliszeski	1/4	8/7/17	As a resident of Plaquemines Parish and a landowner in Jesuit Bend adjacent to the New Orleans to Venice levee, I am encouraged to see proposed mitigation projects within the Barataria Basin. Mitigation projects in close proximity to the new levee will only enhance and support its longevity.	Thank you for your review and comment.

Reviewer	#	Date	Comment	Preparer's Response
Jason Kaliszeski	2/4	8/7/17	Unfortunately, I see only three proposed projects that meet that criteria and that I support. These projects are the Jesuit Bend, Delfelice, and Coleman sites. These three sites would provide protection for the new levee and rebuild marsh in the area where marsh was lost due to new levee construction, whereas the other sites would only satisfy the mitigation requirements.	USACE initially investigated approximately 300 projects for the mitigation, but through screening measures came down to a final array of 10 construction projects and mitigation bank and in lieu fee program to provide compensatory mitigation. All of these projects are within the Barataria Basin where the wetland and BLH impacts occurred as result of the construction of the NFL NOV.
Jason Kaliszeski	3/4	8/7/17	I am also in support of purchasing available credits from the current mitigation bank in Jesuit Bend which is adjacent to the NOV levee over constructing the proposed projects outside of the parish. Purchasing credits from private mitigation banks would benefit the NOV levee for the reasons stated above. In addition, purchasing credits from private mitigation banks would encourage future projects to be built.	Thank you for your review and comment.
Jason Kaliszeski	4/4	8/7/17	As far as the other six proposed sites, I am against there locations 100%. These sites will do nothing to replenish the marsh near the NOV levee and will do nothing to aid in its longevity.	CEMVN agrees that proximity to impacts is an important consideration when determining the location of compensatory mitigation. Please note that all of these projects are within the Barataria Basin watershed and 8 digit HUC where the wetland and BLH impacts occurred.

Reviewer	#	Date	Comment	Preparer's Response
Chef Menteur Wetland Mitigation Bank	1/3	8/9/17	The Water Resources Development Act (WRDA) of 2016 supports the WRDA 1986 and 2007 hierarchical preference for the use of available mitigation bank credits (like those available from the Chef Bank) and clarifies that the service area of approved bank(s) should determine the geography in which the Corps should seek credits, not a basin or smaller subset of that service area.	<p>Section 1163 of the WIIN Act removed the hierarchical preference for mitigation banks that was previously stated in Section 2036(c) of WRDA 2007.</p> <p>Section 1163 states that mitigation credits should be considered a “reasonable alternative” for mitigation if the impacts occur within a bank’s service area. Nothing in the Act makes the purchase of credits compulsory, nor does it limit the Corps’ discretion to define the watershed of impact for a project. Specifically, Section 1163(c)(3) specifies that the Act does not alter the requirement that a project comply with Section 906 of WRDA 1986, nor shall it be construed to limit alternatives or to require the use of banks.</p> <p>The plan for brackish marsh mitigation is being reformulated in a Supplemental EA for the reasons provided in Section 1.1.</p>
Chef Menteur Wetland Mitigation Bank	2/3	8/9/17	Both of the NFL NOV non-federal sponsors, Plaquemines Parish Government and the Louisiana Coastal Protection and Restoration Authority, have requested that the Chef Bank credits be considered.	<p>LCPRA has not, to CEMVN’s knowledge, requested that Chef Menteur Mitigation Bank credits be considered. CEMVN is aware of PPG’s objections to certain components of the measures evaluated in EA #543.</p> <p>Please note that the plan to mitigate for brackish marsh mitigation is being reformulated in a Supplemental EA for the reasons provided in Section 1.1.</p>
Chef Menteur Wetland Mitigation Bank	3/3	8/9/17	The proposed Corps-constructed brackish and saline marsh mitigation projects have high uncertainty of success and do not contribute to advancement of the Louisiana Coastal Master Plan.	<p>Disagree. The Coleman brackish marsh site that was evaluated and proposed in draft EA #543 is located in an area identified in both the 2012 and 2017 Master Plan as important to build and maintain land and reduce risk to the community.</p> <p>However, the plan for brackish marsh mitigation is being reformulated in a supplemental EA for the reasons provided in Section 1.1.</p>

Reviewer	#	Date	Comment	Preparer's Response
Restoration Systems	1/2	8/10/17	We agree with the Corps' decision that credits from mitigation banks (and if sufficient credits are not available, the Louisiana Department of Natural Resources In Lieu Fee ("ILF") Program) are the preferred alternative to compensate for unavoidable impacts to fresh marsh (including wet pasture).	The tentatively selected project for fresh marsh is the purchase of ILF credits in combination with the purchase of mitigation bank credits. The number of credits purchased from either the ILF program or the fresh marsh banks existing within the Barataria Basin watershed would depend on credit availability and cost.
Restoration Systems	2/2	8/10/17	To the extent that the Corps considers using the ILF Program as a mitigation option for the NFL NOV levees, the Corps may only look to the ILF Program if credits from mitigation banks, including JBMB, are not available in the watershed.	Disagree. CEMVN would select which credits to purchase based on credit availability and cost. The preference hierarchy mentioned in your letter is stated in 33 CFR section 332., which sets forth the mitigation preference hierarchy for DA permits granted under the regulatory jurisdiction of the Corps. NFL NOV is a Civil Works project, not a DA permit.
LDNR-OCM	1/6	8/11/17	Please see attached comments from the OCM Mitigation Team concerning the EA. Will you please address these?	A response was emailed to LDNR on 8/17/17 after coordinating with USFWS.

LDNR-OCM	2/6	8/11/17	<p>The OCM Mitigation Section submits the following comments on the Draft EA#543: New Right of Way and Mitigation for New Orleans to Venice Hurricane Risk Reduction Project.</p> <p>1. For clarification, it is stated on page 16 of the EA that “Measures that did not meet any one of the following criteria were eliminated from further consideration”, however one of the measures states, “In kind replacement of impact AAHUs by habitat type (exception: BLH-Dry can be mitigated as BLH-Wet, wet pasture and intermediate marsh can be mitigated as fresh marsh; and saline marsh can be mitigated as brackish marsh)” but in Figure 1 on page 4, the note under Figure 1 states, “Note: Intermediate Marsh impacts are combined with Brackish Marsh impacts for total AAHUs.” According to this statement, intermediate marsh impacts are being mitigated for under brackish marsh habitat and not mitigated as fresh or intermediate marsh as previously stated in the document. In addition on page 473, Table 2 it states that “the Brackish Marsh (includes Intermediate Marsh and Saline Marsh) impacts”. Why not mitigate intermediate marsh impacts with the fresh marsh habitat? If a mitigation site is selected, both proposed fresh marsh projects are located in the Barataria Basin which is the basin where the impacts occurred and it is “In kind” mitigation in contrast to going to a brackish habitat project (Coleman or Defelice). Further explanation for the rationale for not including intermediate marsh impacts with fresh marsh should be provided.</p>	<p>Please reference Section 2.2, Page 12 of EA 543 which states: “Additionally, since the brackish marsh mitigation projects are located in areas where salinities fluctuate to such an extent that the sites could support both intermediate and brackish marsh species, and since the intermediate marsh impacts were so small (1.4 acres), the brackish marsh mitigation projects were designed to mitigate for all intermediate, brackish, and saline marsh impacts.”</p> <p>To further clarify: the impacts to intermediate marsh were captured in the brackish WVA. Marsh habitats exhibit a range of salinities that can overlap among the outer ranges of the salinity designations for each type of marsh. (See Section 2.2) These designations, as well as the salinity levels of their location, were taken into account during plan formulation.</p> <p>The area assessed was similar to brackish marsh habitat. Sea level rise, subsidence, erosion, and saltwater intrusion indicate that the area will likely transition to brackish marsh in the future; therefore, the small amount of intermediate marsh impacts (1.4 acres) will be mitigated as brackish marsh.</p>
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Reviewer	#	Date	Comment	Preparer's Response
LDNR-OCM	3/6	8/11/17	<p>2. On page 39, under Section 2.5.6.1 it states that the total area of the Coleman brackish marsh project is approximately 230 acres but the acreage in Table B-9 states 207 acres. In addition the WVA was run on 277 acres which gives 148.88 AAHU of credit. For consistency, which "estimated" acreage is correct?</p>	<p>The acreage was adjusted as new data became available to direct the planning process. Prior to the AEP, the impacts assessed from the NFL NOV projects were adjusted to include the new ROW impacts. The WVA analysis for brackish marsh was refined throughout the project. A 10% buffer, as described in EA #543, was included to accommodate slight future design modifications.</p> <p>As new data about the Coleman site and construction has become available, the assumptions and data input into the WVA has changed the acreage necessary to meet 100% of CEMVN's need for that habitat. Please note that the plan for brackish marsh mitigation will be reformulated in a Supplemental EA, and the alternatives evaluated will meet 100% of the need for this habitat.</p>

Reviewer	#	Date	Comment	Preparer's Response
LDNR-OCM	4/6	8/11/17	<p>3. Based on the information provided in: Table 1: Total Impacts for NFL NOV levee projects; Table 2: Summary for the Mitigation Project alternatives and Components; and Table B-9: Three SLR Scenario Analysis, it appears that the mitigation options proposed will offset the impacts and will be sufficient however, there are some concerns on utilizing the ILF Program (see comment provided below):</p> <ul style="list-style-type: none"> • It is stated in the EA that the LDNR ILF Program is an option for mitigation. Please be reminded that the ILF Program is required to maintain mitigation projects for 20 years and not 50 years. • When referencing the ILF Program as a mitigation option, it is stated in the EA on page 16 under section 2.2.3 that, "Additionally, since when credits are purchased there is no certainty which project will actually be built with those funds, the assumption is that because numerous projects will be built within the plain, over time impacts to a particular watershed in that plain will eventually be mitigated in that watershed." The ILF Program cannot guarantee this statement with certainty and should a project eventually be constructed "over time", temporal lag would have to be considered and assessed. 	<p>Acknowledged. The assumptions for the Fresh Marsh ILF were very conservative and take into account the time lag and other factors for the ILF fresh marsh project but would provide appropriate mitigation for credits available. If you have further questions about the ILF WVA, the actual WVA, and assumptions can be downloaded here: https://www.fws.gov/GISdownloads/R4/Louisiana%20ESO/Walter/ILF%20Deltaic/Fresh/.</p> <p>As proposed, CEMVN would purchase all remaining available ILF fresh marsh credits. However, there are not enough ILF credits available for all of the fresh marsh mitigation needed for EA #543, so CEMVN proposes to purchase the remaining ILF credits as well as credits from a mitigation bank located in Barataria Basin watershed.</p>
LDNR-OCM	5/6	8/11/17	4. It is stated in the EA document that mitigation banks are an option for mitigation. The mitigation bank selected must be an OCM approved mitigation bank.	Acknowledged.

Reviewer	#	Date	Comment	Preparer's Response
LDNR-OCM	6/6	8/11/17	5. OCM recommends that if there are mitigation banks available in the basin where impacts occurred with the appropriate amount of credits corresponding to the habitat being impacted, mitigation should be offset by credit purchases from those banks.	Acknowledged.
LDEQ	1/10	8/10/17	Please take any necessary steps to obtain and/or update all necessary approvals and environmental permits regarding this proposed project.	All approvals and environmental permits associated with these projects have been included in the Final EA #543.
LDEQ	2/10	8/10/17	If your project results in a discharge to waters of the state, submittal of a Louisiana Pollutant Discharge Elimination System (LPDES) application may be necessary.	A LPDES stormwater general permit for construction activity will be applied for prior to all construction.
LDEQ	3/10	8/10/17	All precautions should be observed to control nonpoint source pollution from construction activities. LDEQ has storm water general permits for construction areas equal to or greater than one acre. It is recommended that you contact the LDEQ Water Permits Division at (225) 219-9371 to determine if your proposed project requires a permit.	Acknowledged. The purchase of mitigation credits would not result in discharge to an existing wastewater treatment system.
LDEQ	4/10	8/10/17	If the project results in a discharge of wastewater to an existing wastewater treatment system, that wastewater treatment system may need to modify its LPDES permit before accepting the additional wastewater.	The purchase of mitigation credits would not result in a discharge to an existing wastewater treatment system.

Reviewer	#	Date	Comment	Preparer's Response
LDEQ	5/10	8/10/17	If your project will include a sanitary wastewater treatment facility, a Sewage Sludge and Biosolids Use or Disposal Permit is required. Additional information may be obtained on the LDEQ website at http://www.deq.louisiana.gov/portal/tabid/2296/Default.aspx < http://www.deq.louisiana.gov/portal/tabid/2296/Default.aspx > or by contacting the LDEQ Water Permits Division at (225) 219-9371.	The purchase of mitigation credits would not include sanitary wastewater treatment facilities.
LDEQ	6/10	8/10/17	If any of the proposed work is located in wetlands or other areas subject to the jurisdiction of the U.S. Army Corps of Engineers, you should contact the Corps directly regarding permitting issues. If a Corps permit is required, part of the application process may involve a water quality certification from LDEQ.	Concur. All wetland impacts have been evaluated by USACE and water quality certifications have been obtained from LDEQ.
LDEQ	7/10	8/10/17	All precautions should be observed to protect the groundwater of the region.	No effects on groundwater would occur from the purchase of mitigation credits.
LDEQ	8/10	8/10/17	Please be advised that water softeners generate wastewaters that may require special limitations depending on local water quality considerations. Therefore if your water system improvements include water softeners, you are advised to contact the LDEQ Water Permits to determine if special water quality-based limitations will be necessary.	No water system improvements, including water softeners, are included with the purchase of mitigation credits.

Reviewer	#	Date	Comment	Preparer's Response
LDEQ	9/10	8/10/17	Any renovation or remodeling must comply with LAC 33:III.Chapter 28, Lead-Based Paint Activities; LAC 33:III.Chapter 27, Asbestos-Containing Materials in Schools and State Buildings (includes all training and accreditation); and LAC 33:III.5151, Emission Standard for Asbestos for any renovations or demolitions.	No such renovations or remodeling are included with the purchase of mitigation credits.
LDEQ	10/10	8/10/17	If any solid or hazardous wastes, or soils and/or groundwater contaminated with hazardous constituents are encountered during the project, notification to LDEQ's Single-Point-of-Contact (SPOC) at (225) 219-3640 is required. Additionally, precautions should be taken to protect workers from these hazardous constituents.	If any solid or hazardous wastes, or soils and/or groundwater contaminated with hazardous constituents are encountered, the contractor(s) will provide appropriate notification to the LDEQ and other agencies, as required. Construction contractors would be required to implement all applicable necessary best management practices to protect the environment and a Health and Safety Plan to protect the health and safety of employees. Additionally, CEMVN would have construction site inspectors at construction locations at all times to ensure compliance with all applicable rules, regulations, and contract specifications.
USEPA	1/2	8/31/17	EPA recommends USACE provide consistent identification of anticipated project/alternative sources of air pollution, and greater detail to explain instances of variance from the language in Section 5.3.8.1.	<p>Section 5.3.8.1, No Action/Direct Impacts refers to the No Action Alternative whereby no work outside of the project right of way would occur while the work within the right of way would continue and air emissions, including fugitive dust particles, would continue from the equipment utilized at the current project.</p> <p>Sections 4.2.2.8.1, 4.2.2.8.2, 4.2.3.8.1, 4.2.3.8.2, 4.2.4.8.1, 4.2.4.8.2, 4.2.5.8.1, 4.2.5.8.2 refer to construction that will take place over water. There will be no disturbance of dry soil, therefore, there likely will be no fugitive dust emissions from these project areas.</p> <p>Section 4.2.1.8.2 would include construction on dry land and the possibility of fugitive dust emissions would exist, however, the project construction area is located in a remote, lightly populated area. Any fugitive dust emissions are not expected to impact the populated areas.</p>

Reviewer	#	Date	Comment	Preparer's Response
USEPA	2/2	8/31/17	Because of the air quality concerns of the significant population center within the project area, EPA recommends that best management practices be implemented in order to reduce potential short-term air quality impacts associated with construction activities. Furthermore, construction and waste disposal activities should be conducted in accordance with applicable local, state and federal statutes and regulations.	The USACE will implement best management practices during construction of the project to minimize impacts to the air quality of the New Orleans Metropolitan area. All local, state, and federal statutes and regulations will be followed during project construction.



FEMA

FEDERAL EMERGENCY MANAGEMENT AGENCY
REGION VI
MITIGATION DIVISION

RE: Environmental Assessment #543 “New Right of Way and Mitigation for the New Orleans to Venice Hurricane Risk Reduction Project: Incorporation of Non-Federal Levees from Oakville to St. Jude and New Orleans to Venice Federal Hurricane Protection Levee, Plaquemines Parish, Louisiana”

NOTICE REVIEW/ENVIRONMENTAL CONSULTATION

We have no comments to offer. We offer the following comments:

WE WOULD REQUEST THAT THE COMMUNITY FLOODPLAIN ADMINISTRATOR BE CONTACTED FOR THE REVIEW AND POSSIBLE PERMIT REQUIREMENTS FOR THIS PROJECT. IF FEDERALLY FUNDED, WE WOULD REQUEST PROJECT TO BE IN COMPLIANCE WITH EO11988 & EO 11990.

Mike Metcalf
Plaquemines Parish Floodplain Manager
333 F. Edward Herbert Boulevard, Building 100
Belle Chasse, LA 70037
mmetcalf@plaqueminesparish.com
504-934-6195

REVIEWER:

Charla Marchuk, CFM
Floodplain Management and Insurance Branch
Mitigation Division
(940) 898- 5561

DATE: July 6, 2017



UNITED STATES DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NATIONAL MARINE FISHERIES SERVICE

Southeast Regional Office

263 13th Avenue South

St. Petersburg, Florida 33701-5505

<http://sero.nmfs.noaa.gov>

July 17, 2017

F/SER46/RH;jk

225/389-0508

Ms. Laura Lee Wilkinson
USACE
CEMVN-PDN-UDP
7400 Leake Avenue
New Orleans, Louisiana 70118

Dear Ms. Wilkinson:

NOAA's National Marine Fisheries Service (NMFS) has reviewed the draft Environmental Assessment (EA) #543 entitled "New Right of Way and Mitigation for the New Orleans to Venice Hurricane Risk Reduction Project: Incorporation of Non-Federal Levees from Oakville to St. Jude and New Orleans to Venice Federal Hurricane Protection Levee, Plaquemines Parish, Louisiana." The draft EA provides an up-to-date quantification of mitigation needs to offset impacts associated with the construction of various levee reaches in Plaquemines Parish. The draft EA also identifies the proposed projects chosen to provide compensatory mitigation to offset impacts to a variety of aquatic habitats.

Staff of the NMFS' Southeast Regional Office, Habitat Conservation Division (HCD) have worked closely with the New Orleans District (NOD) and state and federal natural resource agencies for several years in an effort to develop acceptable mitigation alternatives to offset impacts to aquatic habitats associated with the construction of these levee reaches. Based on our review of the draft EA, we concur with the determination summarized in the July 13, 2017, transmittal letter and at various locations in the draft EA that the compensatory mitigation would offset impacts to essential fish habitat (EFH). Given this determination, NMFS concurs the construction of the levee reaches, with the implementation of the mitigation alternatives described in the draft EA, would not result in a significant adverse impact to EFH. This fulfills the coordination requirements developed between NMFS and the NOD on the fulfillment of EFH coordination requirements of the Magnuson-Stevens Fishery Conservation and Management Act for civil works projects. Additional coordination under provisions of the Magnuson-Stevens Fishery Conservation and Management Act is not required unless the project is significantly revised.

It is acknowledged the NOD will continue to coordinate with HCD regarding the finalization of the Wetland Value Assessment for the Coleman mitigation site. The HCD staff also expect to review mitigation project monitoring results to assist in the determination of project success and the need for adaptive management actions.

Additionally, the NMFS has reviewed the draft EA and finds the resources potentially affected have been adequately described and impacts sufficiently evaluated. As such, we have no recommended revisions to the draft EA.



We appreciate the continued coordination with staff of the NOD on the selection of compensatory mitigation for these levee construction projects.

Sincerely,



Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division

c:
FWS, Lafayette, Walther
EPA, Gutierrez
LDNR, Cole
F/SER46, Swafford
F/SER4, Dale
F/SER, Silverman
Files

From: [Pate, Dusty](#)
To: [Wilkinson Wolfson, Laura L CIV USARMY CEMVN \(US\)](#)
Cc: [Jami Hammond](#); Guy_Hughes@nps.gov
Subject: Re: [Non-DoD Source] Re: FW: [EXTERNAL] Fwd: NOV-NFL Mitigation Agency Workshops (UNCLASSIFIED)
Date: Tuesday, July 18, 2017 4:26:59 PM

Hey Laura Lee,

Sorry for the delay getting back with you; I was just about to go on vacation when you wrote.

We appreciate the opportunity to work with you on the project, and the effort y'all put into examining alternatives on park lands. Let us know if we can assist you in the future.

Thanks,

Dusty

On Thu, Jul 6, 2017 at 3:34 PM, Wilkinson Wolfson, Laura L CIV USARMY CEMVN (US) <Laura.L.Wilkinson@usace.army.mil <<mailto:Laura.L.Wilkinson@usace.army.mil>> > wrote:

Greetings,

Our nolaenvironmental website is transitioning to the corps website, so here is the link to download EA #543 Blocked<http://www.mvn.usace.army.mil/projects/NOV/> <Blocked<http://www.mvn.usace.army.mil/projects/NOV/>> . Public review and comment ends on August 10, 2017. If you want a hard copy, please email me your mailing address.

Thanks,
Laura Lee Wilkinson
Biologist
CEMVN PDN-UDP
504-862-1212

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

From: Pate, Dusty [mailto:haigler_pate@nps.gov <mailto:haigler_pate@nps.gov>]
Sent: Wednesday, May 03, 2017 3:10 PM
To: Wilkinson Wolfson, Laura L CIV USARMY CEMVN (US) <Laura.L.Wilkinson@usace.army.mil <<mailto:Laura.L.Wilkinson@usace.army.mil>> >
Subject: Re: [Non-DoD Source] Re: FW: [EXTERNAL] Fwd: NOV-NFL Mitigation Agency Workshops (UNCLASSIFIED)

Thanks for the clarification! :)

On Wed, May 3, 2017 at 8:42 AM, Wilkinson Wolfson, Laura L CIV USARMY CEMVN (US) <Laura.L.Wilkinson@usace.army.mil <<mailto:Laura.L.Wilkinson@usace.army.mil>> >
<<mailto:Laura.L.Wilkinson@usace.army.mil> > > > wrote:

_____ [All reviews and comments are welcome, but specifically b/c our proposed action is not on national park land you don't need to review prior to the EA going out for public review.](#)

_____ [Thanks,](#)

_____ LL

_____ -----Original Message-----

_____ From: Pate, Dusty [mailto:haigler_pate@nps.gov <mailto:haigler_pate@nps.gov> <mailto:haigler_pate@nps.gov> > >]



JOHN BEL EDWARDS
GOVERNOR

State of Louisiana
DEPARTMENT OF WILDLIFE AND FISHERIES

JACK MONTOUCET
SECRETARY

July 20, 2017

Attn: Marshall K. Harper, Chief
Planning, Programs, and Project Management Division
Environmental Planning and Compliance Branch
United States Army Corps of Engineers
7400 Leake Avenue
New Orleans, LA 70118

RE: *Application Number: EA #543*
Applicant: U.S. Army Corps of Engineers-New Orleans District
Notice Date: June 27, 2017

Dear Mr. Harper:

The professional staff of the Louisiana Department of Wildlife and Fisheries (LDWF) has reviewed the above referenced Public Notice. Based upon this review, the following has been determined:

LDWF Ecological studies has reviewed and concurs with the Corps' findings in Environmental Assessment #543 and has no further comment concerning the New Orleans to Venice Hurricane Risk Reduction Project at this time.

Our database indicates the presence of bird nesting colonies within one mile of this proposed project. **Please be aware that entry into or disturbance of active breeding colonies is prohibited by the Louisiana Department of Wildlife and Fisheries (LDWF). In addition, LDWF prohibits work within a certain radius of an active nesting colony.**

Nesting colonies can move from year to year and no current information is available on the status of these colonies. If work for the proposed project will commence during the nesting season, conduct a field visit to the worksite to look for evidence of nesting colonies. This field visit should take place no more than two weeks before the project begins. If no nesting colonies are found within 650 feet (2000 feet for Brown Pelicans) of the proposed project, no further consultation with LDWF will be necessary. If active nesting colonies are found within the previously stated distances of the proposed project, further consultation with LDWF will be required. In addition, colonies should be surveyed by a qualified biologist to document species present and the extent of colonies. Provide LDWF with a survey report which is to include the following information:

1. qualifications of survey personnel;
2. survey methodology including dates, site characteristics, and size of survey area;

July 20, 2017

3. species of birds present, activity, estimates of number of nests present, and general vegetation type including digital photographs representing the site; and
4. topographic maps and ArcView shapefiles projected in UTM NAD83 Zone 15 to illustrate the location and extent of the colony.

Please mail survey reports on CD to: Louisiana Natural Heritage Program
La. Dept. of Wildlife & Fisheries
P.O. Box 98000
Baton Rouge, LA 70898-9000

To minimize disturbance to colonial nesting birds, the following restrictions on activity should be observed:

- For colonies containing nesting wading birds (i.e., herons, egrets, night-herons, ibis, Roseate Spoonbills, Anhingas, or cormorants), all project activity occurring within 1000 feet of an active nesting colony should be restricted to the non-nesting period (i.e., September 1 through February 15).
- For colonies containing nesting gulls, terns, or Black Skimmers, all project activity occurring within 650 feet (2000 feet for Brown Pelicans) of an active nesting colony should be restricted to the non-nesting period (i.e., September 16 through April 1).

The Louisiana Natural Heritage Program database indicates that a Live Oak Forest is located within the proposed project area. This community is considered critically imperiled in Louisiana with an S1 state rank. This community provides habitat for many unique species of plants, and acts as a migratory staging/stopover site for Neo-tropical migratory birds. We advise you to take the necessary measures to avoid any impacts to this ecological community. If you have any questions or need additional information, please contact Chris Reid at 225-765-2820.

No other impacts to rare, threatened or endangered species or critical habitats are anticipated from the proposed project. No state or federal parks, wildlife refuges, wildlife management areas or scenic rivers are known at the specified site or within ¼ mile of the proposed project.

The Louisiana Natural Heritage Program (LNHP) reports summarize the existing information known at the time of the request regarding the location in question. LNHP reports should not be considered final statements on the biological elements or areas being considered, nor should they be substituted for on-site surveys required for environmental assessments. If at any time LNHP tracked species are encountered within the project area, please contact our biologist at 225-765-2643.

The Louisiana Department of Wildlife and Fisheries submits these recommendations to the U.S. Army Corps of Engineers in accordance with provisions of the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.). Please do not hesitate to contact Habitat Section biologist Chris Davis at 225-765-2642 should you need further assistance.

Sincerely,



Kyle F. Balkum
Biologist Director

cd/zc

From: [Mouton, Mitchell - NRCS, ALEXANDRIA, LA](#)
To: [Wilkinson Wolfson, Laura L CIV USARMY CEMVN \(US\)](#)
Cc: [Williams, Eric M CIV USARMY CEMVN \(US\)](#)
Subject: [Non-DoD Source] RE: New ROW and Mitigation for New Orleans to Venice Hurricane Risk Reduction Project: Non-Federal Levees from Oakville to St. Jude and NO to Venice Federal Hurricane Protection Levee, Plaquemines Parish, LA
Date: Wednesday, August 16, 2017 3:16:55 PM

Laura,

I apologize for not following up on this email. I assume that back in 2010 and 2011 the person before me would have gone through the FPPA process for this project, so I will not worry about it. For FPPA, the land being converted does not have to be currently used for cropland or was previously in cropland. It can be forestland, pastureland, or other land, but not water or urban built-up land. The purpose of FPPA is to try and protect our most productive farmland, it is not a regulatory act but more of a reporting mechanism for conversion of our prime, unique, and state-wide or local important lands. So, any projects being completed by your agency where prime, unique or important farmland is being irreversibly converted to non-agricultural use will need to follow FPPA requirements. If you have any questions please let me know. If you have any upcoming projects in Louisiana where potential conversion of prime farmland is possible and want to go over the process please let me know!

Best Regards,

Mitchell Mouton
Assistant State Soil Scientist
USDA-NRCS Soils Section
3737 Government Street
Work (318) 473-7789
Work Cell (337) 412-9304
Email: mitchell.mouton@la.usda.gov

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

From: Wilkinson Wolfson, Laura L CIV USARMY CEMVN (US) [<mailto:Laura.L.Wilkinson@usace.army.mil>]
Sent: Wednesday, August 16, 2017 1:51 PM
To: Mouton, Mitchell - NRCS, ALEXANDRIA, LA <mitchell.mouton@la.usda.gov>
Cc: Williams, Eric M CIV USARMY CEMVN (US) <Eric.M.Williams@usace.army.mil>
Subject: RE: New ROW and Mitigation for New Orleans to Venice Hurricane Risk Reduction Project: Non-Federal Levees from Oakville to St. Jude and NO to Venice Federal Hurricane Protection Levee, Plaquemines Parish, LA

Greetings Mr. Mitchell,

I am just following up to see if you had any further questions about this project. Our public review period ended August 10, 2017.

Sincerely,
Laura Lee Wilkinson
Biologist
CEMVN-PDN-UDP

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

From: Wilkinson Wolfson, Laura L CIV USARMY CEMVN (US)
Sent: Wednesday, July 26, 2017 3:12 PM
To: 'Mouton, Mitchell - NRCS, ALEXANDRIA, LA' <mitchell.mouton@la.usda.gov>
Cc: Williams, Eric M CIV USARMY CEMVN (US) <Eric.M.Williams@usace.army.mil>
Subject: RE: New ROW and Mitigation for New Orleans to Venice Hurricane Risk Reduction Project: Non-Federal Levees from Oakville to St. Jude and NO to Venice Federal Hurricane Protection Levee, Plaquemines Parish, LA

Greetings Mr. Mitchell,

There are prime farmland soils in some of the levee areas but none is under cultivation or currently being used for other agricultural purposes. Due to these areas being under the existing levee and other existing impacts, the determination was made that prime and unique farmlands would not be impacted and not further discussed in Environmental Assessment #543. Attached are the shapefiles you requested. Additionally, the impacts to NOV 05a, NOV-09 and NOV-NF-W-05A in regards to prime and unique farmlands were originally disclosed in the 2010, "Final Supplemental Environmental Impact Statement, New Orleans to Venice, Federal Hurricane Protection Levee"; the 2011 "Final Environmental Impact Statement, New Orleans to Venice, Hurricane Risk Reduction Project: Incorporation of Non-Federal Levees from Oakville to St. Jude, Plaquemines Parish, Louisiana"; and the 2016, "Supplemental Environmental Assessment #537, New Orleans to Venice Hurricane Risk Reduction Project: Changes to the Non-Federal Levees Project, Oakville to St. Jude, Plaquemines Parish, Louisiana". If you would like to discuss this further please give me a call.

Sincerely,

Laura Lee Wilkinson

Biologist

CEMVN PDN-UDP

504-862-1212

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

From: Mouton, Mitchell - NRCS, ALEXANDRIA, LA [<mailto:mitchell.mouton@la.usda.gov>]

Sent: Monday, July 24, 2017 10:27 AM

To: Wilkinson Wolfson, Laura L CIV USARMY CEMVN (US) <Laura.L.Wilkinson@usace.army.mil>

Subject: [Non-DoD Source] New ROW and Mitigation for New Orleans to Venice Hurricane Risk Reduction Project: Non-Federal Levees from Oakville to St. Jude and NO to Venice Federal Hurricane Protection Levee, Plaquemines Parish, LA

Ms. Wilkinson,

My agency received the EA for the above referenced project. Based on some of the maps that were enclosed on the CD it appears that some of the project area, in particular NOV 05a, NOV-09 and NOV-NF-W-05A will impact prime farmland. Is it possible for you to send me a copy of the shapefile of the project area??

Thanks!

Mitchell Mouton

Assistant State Soil Scientist

USDA-NRCS Soils Section

3737 Government Street

Work (318) 473-7789

Work Cell (337) 412-9304

Email: mitchell.mouton@la.usda.gov

From: [Jason Kaliszeski](#)
To: [Wilkinson Wolfson, Laura L CIV USARMY CEMVN \(US\)](#)
Subject: [Non-DoD Source] USACE's proposed action in EA #543 resident comment
Date: Monday, August 07, 2017 7:22:43 PM

As a resident of Plaquemines Parish and a landowner in Jesuit Bend adjacent to the New Orleans to Venice levee, I am encouraged to see proposed mitigation projects within the Barataria Basin. Mitigation projects in close proximity to the new levee will only enhance and support its longevity.

Unfortunately, I see only three proposed projects that meet that criteria and that I support. These projects are the Jesuit Bend, Delfelice, and Coleman sites. These three sites would provide protection for the new levee and rebuild marsh in the area where marsh was lost due to new levee construction, where as the other sites would only satisfy the mitigation requirements.

I am also in support of purchasing available credits from the current mitigation bank in Jesuit Bend which is adjacent to the NOV levee over constructing the proposed projects outside of the parish. Purchasing credits from private mitigation banks would benefit the NOV levee for the reasons stated above. In addition, purchasing credits from private mitigation banks would encourage future projects to be built.

As far as the other six proposed sites, I am against there locations 100%. These sites will do nothing to replenish the marsh near the NOV levee and will do nothing to aid in its longevity.

Thank you for your time. Please feel free to contact me if you have any questions or would like me to clarify my comments.

Sincerely,

Jason Kaliszeski

900 Jason Drive

Belle Chasse, LA 70037

504-235-8155

Plaquemines Parish Government

Directors

Administration
Operations - Stanley Wallace
Public Service - Michael Jiles

PARISH PRESIDENT

Amos Cormier

8056 Hwy. 23, Suite 200
Belle Chasse, Louisiana 70037
(504) 297-5589
Fax (504) 297-5599
eMail: acormier@ppgov.net

Council Members

District 1 - John L. Barthelemy Jr.
District 2 - William "Beau" Black
District 3 - Kirk M. Lepine
District 4 - Irvin Juneau Jr.
District 5 - Benedict "Benny" Rousselle
District 6 - Charlie Burt
District 7 - Audrey Trufant-Salvant
District 8 - Jeff E. Edgcombe
District 9 - Nicole Williams

Ms. Laura Lee Wilkinson
U.S. Army Corps of Engineers
Regional Planning and Environmental Division South
PDN-CEP
7400 Leake Ave.
New Orleans, Louisiana 70118-3651
Laura.L.Wilkinson@usace.army.mil

Re: Comments regarding Draft Environmental Assessment No. 543, "New Right of Way and Mitigation For the New Orleans to Venice Hurricane Risk Reduction Project: Incorporation of Non-Federal Levees From Oakville to St. Jude and New Orleans to Venice Hurricane Protection Levee, Plaquemines Parish, Louisiana"

Dear Ms. Wilkinson:

Plaquemines Parish Government (PPG), along with the Louisiana Coastal Protection and Restoration Authority (CPRA), serve as non-federal sponsors in partnership with the U.S. Army Corps of Engineers' New Orleans District (District) for the New Orleans to Venice Non-Federal Levee improvements effort in Plaquemines Parish. Construction of the levee improvements will result in adverse impacts to wetland habitats along the project Right of Way, which in turn results in the need to provide adequate compensatory mitigation for habitat values lost from the construction.

As non-federal sponsor, PPG participated both in the generation of potential project sites and options and the evaluation of the alternatives identified as possible means of providing the required compensatory mitigation. During this process, several options were identified within each impacted habitat type, including an option to provide mitigation through the purchase of credits of the appropriate type and number from a commercial mitigation bank. Mitigation banks provide a relatively straightforward and risk-free option for compensatory mitigation and are the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency preferred option nationwide for providing mitigation for impacts resulting from regulatory permit issuance.

Plaquemines Parish Government

Directors

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Operations - Stanley Wallace
Public Service - Michael Jiles

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In July of 2017, the Project Delivery Team (PDT) completed work on Draft Environmental Assessment (EA) No. 543 (EA543), which addressed the mitigation analysis and selection evaluation, and recommended a favored option for mitigation in each habitat type. In all habitat types other than Brackish/Saline Marsh, commercial mitigation banks represented the preferred option for providing compensatory mitigation. However, in the Brackish/Saline Marsh habitat category, the mitigation banking option was removed through the District's internal alternative evaluation process without input from the local sponsors and was no longer considered among the potential options. Although this option had been considered a viable option until then the explanation that was given at the time was that impacts from the NOV/NFL project must be mitigated within the Barataria Basin; and since no operating mitigation bank with available Brackish Marsh credits was physically located within that basin, the option was foreclosed from evaluation. Consequently, EA543 was released for public consideration without including a mitigation banking option for Brackish/Saline marsh impacts. The preferred option is the only constructed mitigation project in the mitigation suite.

It is the position of PPG that the interpretation of the law and policies requiring the removal of the mitigation bank option are being misapplied here, and that 1) the mitigation bank option should have remained in the suite through the entire evaluation process, should not have been unilaterally eliminated by the District, and should be a viable option today in EA543; and 2) in the brackish/saline marsh habitats, like all other impacted habitats, commercial mitigation credits present the most logical, risk-free, and effective means of providing mitigation for the NOV/NFL impacts and should be reflected as the preferred option for these impacts.

In support of PPG's position regarding Brackish/Saline Marsh mitigation, the analysis below addresses how PPG believes the elimination of the commercial banking option is the result of misapplied policy and is inconsistent with statutes and guidance governing this project. Following is an analysis of the New Orleans District's justification for choosing to construct new mitigation sites, in lieu of evaluating and using mitigation bank credits, to mitigate for brackish and saline wetlands impacted by the NOV-NFL project. That justification is set forth on pages 14 and 15 in the recently released EA543 in Section 2.2.1 Mitigation Formulation Requirements. The local sponsor, PPG, for compelling financial reasons, and consistent with applicable law, regulation, and policy, has requested in writing that the District use mitigation credits from a fully compliant mitigation bank in order to mitigate for the brackish and saline wetland impacts. The District, through its Regulatory office, has determined that the "service area" of the nearest brackish/saline marsh mitigation bank, Chef Menteur Pass Wetland Mitigation Bank covers both

Plaquemines Parish Government

Directors

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the Barataria Watershed and the Barataria Basin. The District has approved, for Regulatory program purposes, credits from mitigation banks whose "service areas" include the Barataria Watershed and Basin as mitigation for permit impacts within the Barataria Basin. The subject Bank is the only mitigation bank that meets the criteria for use in mitigating for brackish and saline wetland impacts in connection with this project. There are five types of wetlands impacted by this project, and only mitigation for the brackish and saline wetland impacts are at issue here.

Analysis

The District's position as presented incorrectly interprets applicable law and fails to address applicable regulation and policy. Applicable law, regulation, and policy fully support PPG's request to use the Bank as mitigation for the NOV-NFL Project. Applicable law, regulation and policy indicate a strong preference for mitigation banks over the development of new mitigation sites. In particular, 33 CFR section 332.3 establishes a preference for mitigation banks and explains in detail why such a preference exists. 33 CFR section 332, not mentioned by the District, is made applicable to this matter pursuant to WRDA 1986, section 906, paragraph (d)(3)(A). WRDA 1986, section 906, paragraph (i)(4) specifically provides a preference for mitigation banks in the circumstance where the non-federal sponsor so requests, as is the case here. 33 CFR section 332.3 establishes a hierarchical preference for use of mitigation banks. This hierarchical preference, discussed in formulating the "Mitigation Rule", was adopted in paragraphs (b) and (g) of the final rule.

Further, while the "preference" language for mitigation banks contained in Section (c) of WRDA 2007 was replaced in WRDA 2016, section 2036 (a) of WRDA 2007 remains in effect. That provision contains the same mitigation bank "preference" language as that in 33 CFR 332. Also, the language of WRDA 2016, section 1163 (1) clearly still encourages use of mitigation banks in directing that Secretarial guidance be developed "that provides for the consideration in water resources development feasibility studies of the entire amount of potential in-kind credits available at mitigation banks approved by the Secretary ... with an approved service area that includes the location of the projected impacts of the water resources development project." Subparagraph (2) of section 1163 similarly indicates a positive intention with respect to use of mitigation banks.

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Finally, contrary to the District's assertion, there is no conflict between WRDA 2016, section 1163 in regard to "watershed approach" and "service area". Pursuant to law, regulation, and policy, the concepts of "watershed approach" and "service area" coexist and overlap. The "watershed approach" relates to what and where mitigation is required. "Service area" relates to the acceptability of a particular mitigation bank's use as a mitigation vehicle. Nothing in law, regulation, or policy affects the acceptability of a mitigation bank based upon the idea that its "service area" is broader than the affected "watershed". So long as a mitigation bank's "service area" covers an impacted watershed, use of that bank is approved for use. The District has determined for Regulatory purposes that the Chef Bank's "service area" covers both the Barataria Watershed and the Barataria Basin. The District, in fact, has authorized the purchase of Chef Bank mitigation credits for mitigation purposes in its Regulatory program for numerous permit actions. By law and regulation, the District's Civil Works projects are bound by the mitigation standards and policies applicable to its Regulatory program. To the extent that the District is relying on subparagraph (3) of WRDA 2016, section 1163, as creating a conflict with section 906 of WRDA 1986, the District is misreading the statute. That provision in WRDA 2016 simply expresses neutrality in terms of the continuing applicability of other relevant law, regulation, and policy in connection with mitigation banks. In any case, the District assertion that WRDA 1986, section 906 "trumps" WRDA 2016 doesn't help the District's refusal to use a mitigation bank in this case. As discussed above, WRDA 1986, section 906 fully supports preferential use of mitigation banks.

Statutory Framework

The relevant law is contained in section 906 of WRDA 1986, section 2036 of WRDA 2007, and section 1163 of WRDA 2016.

Section 906 of WRDA 1986 (33 U.S.Code 2283), addressing "Mitigation for Fish and Wildlife and Wetlands Losses" states the following:

Paragraph (d) (2) – "Selection and design of mitigation projects: The Secretary shall select and design mitigation projects using a watershed approach ..."

Paragraph (d)(3)(A) – "The Secretary shall ensure that the mitigation plan for each water resource project complies with, at a minimum, the mitigation standards and policies established pursuant to the regulatory programs administered by the Secretary."

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Subparagraph "(i)(4) Preference – At the request of the non-federal project sponsor, preference may be given, to the maximum extent practicable, to mitigate an environmental impact through the use of a mitigation bank..."

The following provisions also bear on the issue at hand.

Subparagraph (B)(iv) speaks to third party mitigation arrangements.

Subparagraph (j) – reflects an affirmative consent aspect of the non-federal interest in regard to mitigation.

Section 2036 of WRDA 2007 states the following:

Paragraph (3)(A) contains the same language as WRDA 1986 regarding compliance, for mitigation purposes, with the Corps' regulatory program standards and policies.

Paragraph (3)(b)(iv) refers to "watershed".

Section 1163 of WRDA 2016 states the following:

"(c) MITIGATION BANKS AND IN-LIEU FEE ARRANGEMENTS.— (1) IN GENERAL.—Not later than 180 days after the date of enactment of the Water Resources Development Act of 2016, the Secretary shall issue implementation guidance that provides for the consideration in water resources development feasibility studies of the entire amount of potential in-kind credits available at mitigation banks approved by the Secretary and in-lieu fee programs with an approved service area that includes the location of the projected impacts of the water resources development project."

"...(2) REQUIREMENTS.—All potential mitigation bank and in-lieu fee credits that meet the criteria under paragraph (1) shall be considered a reasonable alternative for planning purposes if—

(A) the applicable mitigation bank—

(i) has an approved mitigation banking instrument; and

(ii) has completed a functional analysis of the potential credits using the approved Corps of Engineers certified habitat assessment model specific to the region; and

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(B) the Secretary determines that the use of such banks or in-lieu fee programs provide reasonable assurance that the statutory (and regulatory) mitigation requirements for a water resources development project are met, including monitoring or demonstrating mitigation success.”

“(3) EFFECT.—Nothing in this subsection—

(A) modifies or alters any requirement for a water resources development project to comply with applicable laws or regulations, including section 906 of the Water Resources Development Act of 1986 ([33 U.S.C. 2283](#)); or

(B) shall be construed as to limit mitigation alternatives or require the use of mitigation banks or in-lieu fee programs.”

Regulatory Framework (Emphasis added)

73 Federal Register (2008 Mitigation Rule at 33 CFR Part 332) p19595 -

“Since a mitigation bank must have an approved mitigation plan and other assurances in place before any of its credits can be used to offset permitted impacts, **this rule establishes a preference for the use of mitigation bank credits**, which reduces some of the risks and uncertainties associated with compensatory mitigation.” (This is one of several references to “preference” for mitigation banks in developing the “Mitigation Rule” which preference is incorporated in the final “Rule”.)

As mandated and made applicable by the statutory framework, the regulatory provisions in 33 CFR 332.3 “General compensatory mitigation requirements”, sets forth the mitigation standards and policies established pursuant to the regulatory programs administered by the Secretary, as follows:

“... (b)Type and location of compensatory mitigation.

(1) ...In general, the required compensatory mitigation should be located within the same watershed as the impact site...

(2)Mitigation bank credits. When permitted impacts are located within the service area of an approved mitigation bank...compensatory mitigation requirements may be met by securing those credits from the sponsor. Since an approved instrument (including an approved mitigation plan and appropriate real estate and financial assurances) for a mitigation bank is required to be in place before its credits can begin to be used to

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compensate for authorized impacts, **use of a mitigation bank can help reduce risk and uncertainty**, as well as temporal loss of resource functions and services. Mitigation bank credits are not released for debiting until specific milestones associated with the mitigation bank site's protection and development are achieved, **thus use of mitigation bank credits can also help reduce risk that mitigation will not be fully successful...**For these reasons, the district engineer **should** give **preference** to the use of mitigation bank when these considerations are applicable...

(c) Watershed approach to compensatory mitigation.

(1) The district engineer must use a watershed approach to establish compensatory mitigation requirements in DA permits to the extent appropriate and practicable...The ultimate goal of a watershed approach is to maintain and improve the quality and quantity of aquatic resources within watersheds through strategic selection of compensatory mitigation sites.”

“... (g) Use of mitigation banks and in-lieu fee programs. Mitigation banks and in-lieu fee programs may be used to compensate for impacts to aquatic resources authorized by general permits and individual permits, including after-the-fact permits, **in accordance with the preference hierarchy in paragraph (b)** of this section.”

Policy Framework (Emphasis added)

HQUSACE guidance implementing section 2036 (a) of WRDA 2007, issued on August 31, 2009, provides in paragraph 5, as follows:

“Policy. ...Mitigation planning will continue to be accomplished in a watershed context.”

HQUSACE guidance implementing section 2036 (c) of WRDA 2007, issued on November 6, 2008, provides in paragraph 4, as follows:

“Policy. Use of Mitigation Banks in Civil Works Projects: The purchase of credits from mitigation banks...shall be considered first...”

In addition to the detailed statutory and policy issues outlined above, PPG feels that there are other guiding principles that must be taken into consideration before final issuance of EA543,

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and that altogether should speak to a compelling case for the District to opt for the use of commercial mitigation credits to satisfy the mitigation requirement in the brackish marsh habitat.

In summary:

Statute, regulation, and policy, establish a strong **preference and priority** for use of mitigation banks in mitigating for wetland impacts in connection with civil works projects. The New Orleans District Commander has selected a preferred permittee-responsible mitigation site (Corps wetland construction) in disregard of the plain language and intent of law, Administration policy and regulations.

- Statute, regulation, and policy, establish a strong **preference and priority** for use of mitigation banks in mitigating for wetlands impacts in connection with Civil Works projects.
- By statute and regulation, mitigation for wetlands impacts in connection with civil works projects are governed by standards and policies established in connection with the Army's Regulatory program.
- **Preference** for mitigation banks is based upon clearly enumerated benefits, including, likelihood of success and risk avoidance to the Government and the local sponsor.
- Statute and regulation call for mitigation to be implemented using a watershed approach.
- Statute and regulation also provide that use of mitigation banks, the "service areas" of which include an impacted watershed, meet the requirement to mitigate on a watershed basis.
- Contrary to MVN's position, not only is use of a mitigation bank legal in this case, it should be **preferred** and given **priority**.
- The strong **preference** and the **priority** for use of mitigation banks, provided for in statute and regulation, creates a heavy burden on the District to overcome in not using a mitigation bank. The District has not met this heavy burden.
- The Mitigation Bank option meets all statutory and regulatory requirements - including watershed and "service area"- is cost competitive when analyzed correctly, supports mitigation in a federal and state preferred high value area, has sufficient credits available, is fully financially guaranteed, immediately completes project mitigation for brackish/saline wetlands impacts, would lower Parish and federal project costs and would accelerate project completion.

There are other considerations beyond the above summarization that speak to the reasonableness and advantages supporting a decision to include the purchase of brackish marsh mitigation credits as a preferred alternative for unavoidable wetland impacts.

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- 1) Project Partnership Agreement and Dispute Resolution Procedures.** The District has failed to adhere to the plain language and intent of the dispute resolution procedures of its Project Partnership Agreement (PPA) with PPG and the CPRA, joint non-federal project sponsors. The District did not advise the PPG timely that it had changed the analysis to which they had agreed, did not respond to PPG requests to reconsider its decision, did not provide the PPG with any written or clear verbal explanation why they changed their analysis and decision, and did not implement the dispute resolution procedures in the PPA when the Parish President was clear that he did not agree with the District's decision.
- 2) O&M High Risk and loss of \$7M.** Under the executed PPA, the local Sponsor is fully responsible for the completed project O&M including its mitigation features, and with the high risk associated with constructed mitigation evidenced by the Lake Pontchartrain and Vicinity Project mitigation compared to no risk with the purchase of mitigation bank credits, this will create an undue financial burden on PPG that is completely unnecessary

PPG had purchased over \$7 million worth of wetland mitigation credits for the unconstructed and withdrawn Reach B2 project in Plaquemines in the same area as the NOV-NFL levee projects. The District's regulatory staff approved the use and purchase of these credits to satisfy the credit obligation because it was located within the bank's approved service area. PPG has a fiduciary responsibility to use the existing \$7 million mitigation bank credits. Purchasing existing mitigation bank credits also eliminates the future O&M cost burden of maintaining a Corps-constructed mitigation project and eliminates the very real risk that a Corps-constructed saline brackish marsh might fail and obligate PPG to substantial marsh restoration costs.

- 3) Louisiana Coastal Restoration Master Plan.** The New Orleans District, in electing to construct a new mitigation project not within a designated high impact area has once again ignored the State of Louisiana's Coastal Restoration Master Plan, which clearly specifies a federal and State preference to locate mitigation projects in jointly approved "high priority coastal restoration areas". The District has executed more than \$250 million of environmental restoration to mitigate for wetland habitat impacts for HSRRS without executing any of its mitigation projects in these high priority areas. Congressman Graves expressed his serious concern during a House Transportation and Infrastructure, Water Resources and Environment Subcommittee oversight hearing held on July 19, 2017 that the Corps is not creating the substantial synergistic and cumulative environmental benefits that would accrue by using mitigation sites within these high priority sites identified in the Coastal Restoration Master Plan. In the instance of the NOV-NFL project the District has the opportunity to utilize credits for the NOV-NFL mitigation from a fully compliant private investment mitigation bank

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constructed in one of these high priority coastal restoration areas, but instead has chosen another site not in a high priority area. Given that the existing, approved mitigation bank provides greater environmental and resiliency benefits at equal or less cost, delivers and transfers all future risk to the mitigation banker, the District's choice in this case simply makes no sense.

- 4) **District Environmental Assessment for Mitigation.** The New Orleans District's identification and evaluation of mitigation options during the development of the project's Environmental Assessment (EA) is contrary to Administration Policy. Successive Administrations have developed law and policy to provide that Mitigation Bank credits are the *preferred* solution to compensate for unavoidable wetland impacts for both Regulatory and Civil Works. They have promulgated these policies because mitigation banking has a number of advantages over permittee-responsible mitigation. The District arbitrarily restricted mitigation options, including mitigation banks, to only those sites physically located within a narrowly defined basin without explanation. The District Commander, through his Regulatory Program, has already approved multiple permits to mitigate using bank credits from the brackish saline wetland bank located outside the basin, with those permits impacting wetlands located in Barataria Basin.
- 5) **Sustainability of Corps Constructed Wetland Mitigation.** The currently selected NOV/NFL mitigation project for brackish saline wetland impacts, The Coleman Brackish Marsh Project, may not work as intended. The District's project EA states that "*The project site would be located close to the proposed Mid Barataria sediment diversion site. The sediment diversion could potentially create a habitat shift from brackish to more fresh marsh*". Again, why would the Corps construct a mitigation project with High Risk when there is a preferred bank credit option preferred by law, regulation, and guidance available without O&M risk to the local sponsor?

Interestingly, when EA537 was issued to support the 404(B)(1) Certification of the project, internal ditch relocations required by the NOV/NFL layout were considered separate and apart from the overall project, again over the objections of PPG. Therefore, PPG was required to apply to the District's Regulatory Division for a permit for the project with mitigation to be provided through the purchase of credits at a commercial mitigation bank, as this would be the preferred option to mitigate the impacts if those project impacts were in the service area of an approved mitigation bank. This caused a long and complicated process to draft a Memorandum of Agreement between the District and PPG in order to satisfy the District's own Regulatory Division that mitigation will occur within the hierarchy mandated by the mitigation regulations in Title 33. To date, the language of the Memorandum has not been finalized. Had those impacts

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included brackish marsh, PPG and the District together would be required to utilize commercial credits because the only brackish marsh mitigation bank has this project footprint within its service area.

PPG has been clear that as a Non-Federal Sponsor of the NOV/NFL Levee Improvements Project, its preferred option for providing mitigation for the impacted habitats from the project is the purchase of suitable credits from a commercial mitigation bank whose service area covers the area in which the impacts from the project are to occur. It is our position that the Draft EA No. 543 must be revised to include consideration of the purchase of credits from a commercial mitigation bank for Brackish and Saline Marsh impacts, and that commercial brackish and saline marsh credits should be found preferable to the other considered options for providing appropriate mitigation.

Respectfully,



Hon. Amos Cormier, III
Plaquemines Parish President

cc.

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PLAQUEMINES PARISH COMPELLING CASE FOR THE PURCHASE OF MITIGATION BANK CREDITS FOR NOV-NFL BRACKISH SALINE WETLAND IMPACTS

1) **Law, Policy, Regulation.** Statute, regulation, and policy, establish a strong **preference and priority** for use of mitigation banks in mitigating for wetland impacts in connection with civil works projects. The New Orleans District Commander has selected a preferred permittee-responsible mitigation site (Corps wetland construction) in disregard of the plain language and intent of law, Administration policy and regulations. Supporting analysis of law, regulation, and guidance is attached, Attachment 1. In summary:

- Statute, regulation, and policy, establish a strong **preference and priority** for use of mitigation banks in mitigating for wetlands impacts in connection with Civil Works projects.
- By statute and regulation, mitigation for wetlands impacts in connection with civil works projects are governed by standards and policies established in connection with the Army's Regulatory program.
- **Preference** for mitigation banks is based upon clearly enumerated benefits, including, likelihood of success and risk avoidance to the Government and the local sponsor.
- Statute and regulation call for mitigation to be implemented using a watershed approach.
- Statute and regulation also provide that use of mitigation banks, the "service areas" of which include an impacted watershed, meet the requirement to mitigate on a watershed basis.
- Contrary to MVN's position, not only is use of a mitigation bank legal in this case, it should be **preferred** and given **priority**.
- The strong **preference** and the **priority** for use of mitigation banks, provided for in statute and regulation, creates a heavy burden on the District to overcome in not using a mitigation bank.
- The District has not met this heavy burden.
- The Mitigation Bank option meets all statutory and regulatory requirements - including watershed and "service area"- is cost competitive when analyzed correctly, supports mitigation in a federal and state preferred high value area, has sufficient credits available, is fully financially guaranteed, immediately completes project mitigation for brackish/saline wetlands impacts, would lower the Parish and federal project cost and would accelerate project completion.

2) **Project Partnership Agreement and Dispute Resolution Procedures.** The District has failed to adhere to the plain language and intent of the dispute resolution procedures of its Project Partnership Agreement (PPA) with Plaquemines Parish and the Coastal Protection and Restoration Authority Board of Louisiana, joint non-federal project sponsors. The District did not advise the Parish that it had changed the analysis to which they had agreed, did not respond to Parish requests to reconsider its decision, did not provide the Parish with any written or clear verbal explanation why they changed their analysis and decision, and did

not implement the dispute resolution procedures in the PPA when the Parish President was clear that he did not agree with the District's decision.

- 3) **O&M High Risk and loss of \$7M.** Under the executed PPA, the local Sponsor is fully responsible for the completed project O&M including its mitigation features, and with the high risk associated with constructed mitigation evidenced by the Lake Pontchartrain and Vicinity Project mitigation compared to no risk with the purchase of mitigation bank credits, this will create an undue financial burden on the Parish that is completely unnecessary

The Parish had purchased over \$7 million worth of wetland mitigation credits for the failed Reach B2 project in Plaquemines in the same area as the NOV-NFL levee projects. The District's regulatory staff approved the use and purchase of these credits to satisfy the credit obligation because it was located within the bank's approved service area. As I have explained, the Parish has a fiduciary responsibility to use the existing \$7 million mitigation bank credits. Purchasing existing mitigation bank credits also eliminates the future O&M cost burden of maintaining a Corps-constructed mitigation project and eliminates the very real risk that a Corps-constructed saline brackish marsh might fail and obligate the Parish to substantial marsh restoration costs.

- 4) **Louisiana Coastal Restoration Plan.** The New Orleans District, in electing to construct a new mitigation project not within a designated high impact area has once again ignored the State of Louisiana's Coastal Restoration Plan, which clearly specifies a federal and State preference to locate mitigation projects in jointly approved "high priority coastal restoration areas". The Corps has executed more than \$250 million of environmental restoration to mitigate for wetland habitat impacts for HSRRS without executing any of its mitigation projects in these high priority areas. Congressman Graves expressed his serious concern during a House Transportation and Infrastructure, Water Resources and Environment Subcommittee oversight hearing held on July 19, 2017 that the Corps is not creating the substantial synergistic and cumulative environmental benefits that would accrue by using mitigation sites within these high priority sites identified in the Coastal Restoration Plan. In the instance of the NOV-NFL project the Corps has the opportunity to utilize credits for the NOV-NFL mitigation from a fully compliant private investment mitigation bank constructed in one of these high priority coastal restoration areas, but instead has chosen another site not in a high priority area. Given that the existing, approved mitigation bank provides greater environmental and resiliency benefits at equal or less cost, delivers and transfers all future risk to the mitigation banker, the Corps' choice in this case simply makes no sense.

- 5) **District Environmental Assessment for Mitigation.** The New Orleans District's identification and evaluation of mitigation options during the development of the project's Environmental Assessment (EA) is contrary to Administration Policy. Successive Administrations have developed law and policy to provide that Mitigation Bank credits are

the *preferred* solution to compensate for unavoidable wetland impacts for both Regulatory and Civil Works. They have promulgated these policies because mitigation banking has a number of advantages over permittee-responsible mitigation. The District arbitrarily restricted mitigation options, including mitigation banks, to only those sites physically located within a narrowly defined basin without explanation. The District Commander, through his Regulatory Program, has already approved multiple permits to mitigate using bank credits from the brackish saline wetland bank located outside the basin, with those permits impacting wetlands located in Barataria Basin.

- 6) Sustainability of Corps Constructed Wetland Mitigation.** The currently selected NOV/NFL mitigation project for brackish saline wetland impacts, The Coleman Brackish Marsh Project, may not work as intended. The District's project EA states that "*The project site would be located close to the proposed Mid Barataria sediment diversion site. The sediment diversion could potentially create a habitat shift from brackish to more fresh marsh*". Again, why would the Corps construct a mitigation project with High Risk when there is a preferred bank credit option preferred by law, regulation, and guidance available without O&M risk to the local sponsor?

Attachment 1: NOV-NFL Projects – Analysis of New Orleans District's Draft Environmental Assessment (EA) #543, Section 2.2.1 Mitigation Formulation Requirements, pages 14 and 15

Attachment 1: Analysis based on Law, Regulation, and Guidance of New Orleans District's Draft Environmental Assessment (EA) #543, Section 2.2.1 Mitigation Formulation Requirements for NOV-NFL Projects

Background

Following is an analysis of the New Orleans District's justification for choosing to construct new mitigation sites, in lieu of using mitigation bank credits, to mitigate for brackish and saline wetlands impacted by the NOV-NFL project. That justification is set forth on pages 14 and 15 in the recently released Draft Environmental Assessment (EA) #543 in Section 2.2.1 Mitigation Formulation Requirements. The local sponsor, Plaquemines Parish, for compelling financial reasons, and consistent with applicable law, regulation, and policy, has requested that the District use mitigation credits from a fully compliant mitigation bank, in order to mitigate for the brackish and saline wetlands impacted by this project. The District, through its Regulatory office, has determined that the "service area" of the Bank covers both the Barataria Watershed and the Barataria Basin. The District has approved, for Regulatory program purposes, credits from mitigation banks whose "service areas" include the Barataria Watershed and Basin as mitigation for permit impacts within the Barataria Basin. The subject Bank is the only mitigation bank that meets the criteria for use in mitigating for brackish and saline wetland impacts in connection with this project. There are five types of wetlands impacted by this project, and only mitigation for the brackish and saline wetland impacts are at issue here.

Analysis

The District's position as presented incorrectly interprets applicable law and fails to address applicable regulation and policy. Applicable law, regulation, and policy fully support Plaquemines Parish's request to use the Bank as mitigation for the NOV-NFL Project. Applicable law, regulation and policy indicate a strong preference for mitigation banks over the development of new mitigation sites. In particular, 33 CFR section 332.3 establishes a preference for mitigation banks and explains in detail why such a preference exists. 33 CFR section 332, not mentioned by the District, is made applicable to this matter pursuant to WRDA 1986, section 906, paragraph (d)(3)(A). WRDA 1986, section 906, paragraph (i)(4) specifically provides a preference for mitigation banks in the circumstance where the non-federal sponsor so requests, as is the case here. 33 CFR section 332.3 establishes a hierarchical preference for use of mitigation banks. This hierarchical preference, discussed in formulating the "Mitigation Rule", was adopted in paragraphs (b) and (g) of the final rule.

Further, while the "preference" language for mitigation banks contained in WRDA 2007 (c) was replaced in WRDA 2016, section 1163 of WRDA 2007 (a) remains in effect. That provision contains the same mitigation bank "preference" language as that in 33 CFR 332. Also, the language of WRDA 2016, section 1163 (1) clearly still encourages use of mitigation banks in directing that Secretarial guidance be developed "that provides for the consideration in water

resources development feasibility studies of the entire amount of potential in-kind credits available at mitigation banks approved by the Secretary ... with an approved service area that includes the location of the projected impacts of the water resources development project.” Subparagraph (2) of section 1163 similarly indicates a positive intention with respect to use of mitigation banks.

Finally, contrary to the District’s assertion, there is no conflict between WRDA 2016, section 1163 in regard to “watershed approach” and “service area”. Pursuant to law, regulation and policy, the concepts of “watershed approach” and “service area” coexist and overlap. The “watershed approach” relates to what and where mitigation is required. “Service area” relates to the acceptability of a particular mitigation bank’s use as a mitigation vehicle. Nothing in law, regulation, or policy affects the acceptability of a mitigation bank based upon the idea that its “service area” is broader than the affected “watershed”. So long as a mitigation bank’s “service area” covers an impacted watershed, use of that bank is sanctioned for use. The District has determined for Regulatory purposes that the Chef Bank’s “service area” covers both the Barataria Watershed and the Barataria Basin. The District, in fact, has utilized Chef Bank mitigation credits for mitigation purposes in its Regulatory program. By law and regulation, the District’s civil works projects are bound by the mitigation standards and policies applicable to its Regulatory program. To the extent that the District is relying on subparagraph (3) of WRDA 2016, section 1163, as creating a conflict with section 906 of WRDA 1986, the District is misreading the statute. That provision in WRDA 2016 simply expresses neutrality in terms of the continuing applicability of other relevant law, regulation, and policy in connection with mitigation banks. In any case, the District assertion that WRDA 1986, section 906 “trumps” WRDA 2016 doesn’t help the District’s refusal to use a mitigation bank in this case. As discussed above, WRDA 1986, section 906 fully supports preferential use of mitigation banks.

Statutory Framework (Emphasis added)

The relevant law is contained in section 906 of WRDA 1986, section 2036 of WRDA 2007, and section 1163 of WRDA 2016.

Section 906 of WRDA 1986 (33 U.S.Code 2283), addressing “Mitigation for Fish and Wildlife and Wetlands Losses” states the following:

Paragraph (d) (2) – “Selection and design of mitigation projects: The Secretary shall select and design mitigation projects using a watershed approach ...”

Paragraph (d)(3)(A) – “The Secretary shall ensure that the mitigation plan for each water resource project complies with, at a minimum, the mitigation standards and policies established pursuant to the regulatory programs administered by the Secretary.”

Subparagraph “(i)(4) Preference – At the request of the non-federal project sponsor, preference may be given, to the maximum extent practicable, to mitigate an environmental impact through the use of a mitigation bank...”

The following provisions also bear on the issue at hand.

Subparagraph (B)(iv) speaks to third party mitigation arrangements.

Subparagraph (j) – reflects an affirmative consent aspect of the non-federal interest in regard to mitigation.

Section 2036 of WRDA 2007 states the following:

Paragraph (3)(A) contains the same language as WRDA 1986 regarding compliance, for mitigation purposes, with the Corps’ regulatory program standards and policies.

Paragraph (3)(b)(iv) refers to “ watershed”.

Section 1163 of WRDA 2016 states the following:

“(c) MITIGATION BANKS AND IN-LIEU FEE ARRANGEMENTS.— (1) IN GENERAL.— Not later than 180 days after the date of enactment of the Water Resources Development Act of 2016, the Secretary shall issue implementation guidance that provides for the consideration in water resources development feasibility studies of the entire amount of potential in-kind credits available at mitigation banks approved by the Secretary and in-lieu fee programs with an approved service area that includes the location of the projected impacts of the water resources development project.”

“(2) REQUIREMENTS.—All potential mitigation bank and in-lieu fee credits that meet the criteria under paragraph (1) shall be considered a reasonable alternative for planning purposes if—

(A) the applicable mitigation bank—

(i) has an approved mitigation banking instrument; and

(ii) has completed a functional analysis of the potential credits using the approved Corps of Engineers certified habitat assessment model specific to the region; and

(B) the Secretary determines that the use of such banks or in-lieu fee programs provide reasonable assurance that the statutory (and regulatory) mitigation requirements for a water resources development project are met, including monitoring or demonstrating mitigation success.”

“(3) EFFECT.—Nothing in this subsection—

(A) modifies or alters any requirement for a water resources development project to comply with applicable laws or regulations, including section 906 of the Water Resources Development Act of 1986 (33 U.S.C. 2283); or

(B) shall be construed as to limit mitigation alternatives or require the use of mitigation banks or in-lieu fee programs.”

Regulatory Framework (Emphasis added)

73 Federal Register (2008 Mitigation Rule at 33 CFR Part 332) p19595 -

“Since a mitigation bank must have an approved mitigation plan and other assurances in place before any of its credits can be used to offset permitted impacts, **this rule establishes a preference for the use of mitigation bank credits**, which reduces some of the risks and uncertainties associated with compensatory mitigation.” (This is one of several references to “preference” for mitigation banks in developing the “Mitigation Rule” which preference is incorporated in the final “Rule”.)

As mandated and made applicable by the statutory framework, the regulatory provisions in 33 CFR 332.3 “General compensatory mitigation requirements”, sets forth the mitigation standards and policies established pursuant to the regulatory programs administered by the Secretary, as follows:

“... (b)Type and location of compensatory mitigation.

(1) ...In general, the required compensatory mitigation should be located within the same watershed as the impact site...

(2)Mitigation bank credits. When permitted impacts are located within the service area of an approved mitigation bank...compensatory mitigation requirements may be met by securing those credits from the sponsor. Since an approved instrument (including an approved mitigation plan and appropriate real estate and financial assurances) for a mitigation bank is required to be in place before its credits can begin to be used to compensate for authorized impacts, **use of a mitigation bank can help reduce risk and uncertainty**, as well as temporal loss of resource functions and services. Mitigation bank credits are not released for debiting until specific milestones associated with the mitigation bank site's protection and development are achieved, **thus use of mitigation bank credits can also help reduce risk that mitigation will not be fully successful...**For these reasons, the district engineer **should** give **preference** to the use of mitigation bank when these considerations are applicable...

(c) Watershed approach to compensatory mitigation.

(1) The district engineer must use a watershed approach to establish compensatory mitigation requirements in DA permits to the extent appropriate and practicable...The ultimate goal of a watershed approach is to maintain and improve the quality and quantity of aquatic resources within watersheds through strategic selection of compensatory mitigation sites.”

“(g) Use of mitigation banks and in-lieu fee programs. Mitigation banks and in-lieu fee programs may be used to compensate for impacts to aquatic resources authorized by general permits and individual permits, including after-the-fact permits, **in accordance with the preference hierarchy in paragraph (b)** of this section.”

Policy Framework (Emphasis added)

HQUSACE guidance implementing section 2036 (a) of WRDA 2007, issued on August 31, 2009, provides in paragraph 5, as follows:

“Policy. ...Mitigation planning will continue to be accomplished in a watershed context.”

HQUSACE guidance implementing section 2036 (c) of WRDA 2007, issued on November 6, 2008, provides in paragraph 4, as follows:

“Policy. Use of Mitigation Banks in Civil Works Projects: The purchase of credits from mitigation banks...shall be considered first...”

From: [Carol Crapanzano](#)
To: [Wilkinson Wolfson, Laura L CIV USARMY CEMVN \(US\)](#)
Cc: [Kelley Templet](#); [Sara Krupa](#); [Frank Cole](#); [Meden, Daniel C CIV USARMY CEMVN \(US\)](#)
Subject: [Non-DoD Source] OCM comments on the draft EA#543
Date: Friday, August 11, 2017 3:26:24 PM
Attachments: [OCM Mitigation Section comments on the Draft EA#543.docx](#)

Hello Laura Lee

Please see attached comments from the OCM Mitigation Team concerning the EA. Will you please address these?

Thanks and have a great weekend

Carol

CONFIDENTIALITY NOTICE

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The OCM Mitigation Section submits the following comments on the Draft EA#543: New Right of Way and Mitigation for New Orleans to Venice Hurricane Risk Reduction Project.

1. For clarification, it is stated on page 16 of the EA that “*Measures that did not meet any one of the following criteria were eliminated from further consideration*”, however one of the measures states, “*In kind replacement of impact AAHUs by habitat type (exception: BLH-Dry can be mitigated as BLH-Wet, wet pasture and intermediate marsh can be mitigated as fresh marsh; and saline marsh can be mitigated as brackish marsh)*” but in Figure 1 on page 4, the note under Figure 1 states, “*Note: Intermediate Marsh impacts are combined with Brackish Marsh impacts for total AAHUs.*” According to this statement, intermediate marsh impacts are being mitigated for under brackish marsh habitat and not mitigated as fresh or intermediate marsh as previously stated in the document. In addition on page 473, Table 2 it states that “the Brackish Marsh (includes **Intermediate** Marsh and Saline Marsh) impacts”. Why not mitigate intermediate marsh impacts with the fresh marsh habitat? If a mitigation site is selected, both proposed fresh marsh projects are located in the Barataria Basin which is the basin where the impacts occurred and it is “In kind” mitigation in contrast to going to a brackish habitat project (Coleman or Defelice). Further explanation for the rationale for not including intermediate marsh impacts with fresh marsh should be provided.

2. On page 39, under Section 2.5.6.1 it states that the total area of the Coleman brackish marsh project is approximately 230 acres but the acreage in Table B-9 states 207 acres. In addition the WVA was run on 277 acres which gives 148.88 AAHU of credit. For consistency, which “estimated” acreage is correct?

3. Based on the information provided in: Table 1: Total Impacts for NFL NOV levee projects; Table 2: Summary for the Mitigation Project alternatives and Components; and Table B-9: Three SLR Scenario Analysis, it appears that the mitigation options proposed will offset the impacts and will be sufficient however, there are some concerns on utilizing the ILF Program (see comment provided below):

- It is stated in the EA that the LDNR ILF Program is an option for mitigation. Please be reminded that the ILF Program is required to maintain mitigation projects for 20 years and not 50 years.
- When referencing the ILF Program as a mitigation option, it is stated in the EA on page 16 under section 2.2.3 that, “*Additionally, since when credits are purchased there is no certainty which project will actually be built with those funds, the assumption is that because numerous projects will be built within the plain, over time impacts to a particular watershed in that plain will eventually be mitigated in that watershed.*” The ILF Program cannot guarantee this statement with certainty and should a project eventually be constructed “over time”, temporal lag would have to be considered and assessed.

4. It is stated in the EA document that mitigation banks are an option for mitigation. The mitigation bank selected must be an OCM approved mitigation bank.

5. OCM recommends that if there are mitigation banks available in the basin where impacts occurred with the appropriate amount of credits corresponding to the habitat being impacted, mitigation should be offset by credit purchases from those banks.



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August 9, 2017

Ms. Laura Lee Wilkinson
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Laura.L.Wilkinson@usace.army.mil

Re: Draft Environmental Assessment EA #543 titled “New Right of Way and Mitigation for New Orleans to Venice Hurricane Risk Reduction Project: Incorporation of Non-Federal Levees from Oakville to St. Jude and New Orleans to Venice (NFL NOV) Federal Hurricane Protection Levee, Plaquemines Parish, Louisiana”

Dear Ms. Wilkinson:

Thank you for the opportunity to comment on the above referenced draft Environmental Assessment (EA) that was released on June 27, 2017 and is available for public comment through August 10, 2017. Ecosystem Investment Partners is the owner and manager of the Chef Menteur Pass Wetland Mitigation Bank (Chef Bank), the only Corps-approved brackish marsh mitigation bank with an approved service area that includes all of the areas where the NFL NOV wetland impacts are to occur.

Our comments to this draft EA stem from a concern that the New Orleans District of the U.S. Army Corps of Engineers has improperly eliminated the Chef Bank from the sources of potential compensatory mitigation available to the Corps for brackish and saline marsh mitigation. This elimination is in direct contradiction to at least three major considerations that the District is obligated to acknowledge and adhere to:

1. The Water Resources Development Act (WRDA) of 2016 supports the WRDA 1986 and 2007 hierarchical preference for the use of available mitigation bank credits (like those available from the Chef Bank) and clarifies that the *service area of approved bank(s)*

should determine the geography in which the Corps should seek credits, not a basin or smaller subset of that service area.

2. Both of the NOV NFL non-federal sponsors, Plaquemines Parish Government and the Louisiana Coastal Protection and Restoration Authority, have requested that the Chef Bank credits be considered. These requests must be acknowledged and discussed under the Project Partnership Agreement (PPA) the Corps has entered into with these sponsors.
3. The proposed Corps-constructed brackish and saline marsh mitigation projects have high uncertainty of success and do not contribute to advancement of the Louisiana Coastal Master Plan.

For these reasons (which are discussed in more detail in the attached analysis), we request that the Corps amend the draft EA to include the Chef Bank mitigation credits as a potential source of compensatory mitigation for brackish and saline marsh impacts so that there is an opportunity to properly address the three issues above while providing the United States with the most cost-effective and environmentally preferable mitigation options available.

We appreciate your consideration in this matter.

Sincerely,



Nicholas Dilks
Managing Partner

CC: Amos Cormier, President, Plaquemine Parish Government
Johnny Bradberry, Executive Assistant to the Governor for Coastal Activities
Senator Bill Cassidy
Senator John N. Kennedy
Representative Steve Scalise
Representative Garret Graves

1) **Law, Policy, Regulation requires the District to first consider the use of mitigation bank credits when the proposed impacts are within the service area of an approved mitigation bank.**

Statute, regulation, and policy, establish a strong **preference and priority** for use of mitigation banks in mitigating for wetland impacts in connection with civil works projects. The New Orleans District Commander has selected a preferred permittee-responsible mitigation site (Corps wetland construction) in disregard of the plain language and intent of law, Administration policy and regulations. In summary:

- By statute and regulation, mitigation for wetlands impacts in connection with civil works projects are governed by standards and policies established in connection with the Army's Regulatory program.
- **Preference** for mitigation banks is based upon clearly enumerated benefits, including, likelihood of success and risk avoidance to the Government and the local sponsor.
- Statute and regulation provide that use of mitigation banks, the "service areas" of which include an impacted watershed, meet the requirement to mitigate on a watershed basis.
- Contrary to MVN's position, not only is use of a mitigation bank legal in this case, it should be **preferred** and given **priority**.
- The strong **preference** and the **priority** for use of mitigation banks, provided for in statute and regulation, creates a heavy burden on the District to overcome in not using a mitigation bank.
- The District has not met this heavy burden.
- The Mitigation Bank option meets all statutory and regulatory requirements - including watershed and "service area"- is cost competitive when analyzed correctly, supports mitigation in a federal and state preferred high value area, has sufficient credits available, is fully financially guaranteed, immediately completes project mitigation for brackish/saline wetlands impacts, would lower the Parish and federal project cost and would accelerate project completion.

The justification for choosing to construct new mitigation sites, in lieu of using mitigation bank credits, to mitigate for brackish and saline wetlands impacted by the NOV-NFL project is set forth on pages 14 and 15 in the Draft Environmental Assessment (EA) #543 in Section 2.2.1 Mitigation Formulation Requirements. The District, through its Regulatory office, has determined that the "service area" of the Chef Bank covers both the Barataria Watershed and the Barataria Basin and is only mitigation bank that meets the criteria for use in mitigating for brackish and saline wetland impacts in connection with the NOV NFL project.

The District's position as presented incorrectly interprets applicable law and fails to address applicable regulation and policy. 33 CFR section 332.3 establishes a preference

for mitigation banks and explains in detail why such a preference exists. 33 CFR section 332, not mentioned by the District, is made applicable to this matter pursuant to WRDA 1986, section 906, paragraph (d)(3)(A). WRDA 1986, section 906, paragraph (i)(4) specifically provides a preference for mitigation banks in the circumstance where the non-federal sponsor so requests, as is the case here. 33 CFR section 332.3 establishes a hierarchical preference for use of mitigation banks. This hierarchical preference, discussed in formulating the “Mitigation Rule”, was adopted in paragraphs (b) and (g) of the final rule.

Further, while the “preference” language for mitigation banks contained in WRDA 2007 (c) was replaced in WRDA 2016, section 1163 of WRDA 2007 (a) remains in effect. That provision contains the same mitigation bank “preference” language as that in 33 CFR 332. Also, the language of WRDA 2016, section 1163 (1) clearly still encourages use of mitigation banks in directing that Secretarial guidance be developed, *“that provides for the consideration in water resources development feasibility studies of the entire amount of potential in-kind credits available at mitigation banks approved by the Secretary ... with an approved service area that includes the location of the projected impacts of the water resources development project.”* Subparagraph (2) of section 1163 similarly indicates a positive intention with respect to use of mitigation banks.

Contrary to statement made to Plaquemines parish and EIP by the Corps, there is no conflict between WRDA 2016, section 1163 in regard to “watershed approach” and “service area”. Pursuant to law, regulation and policy, the concepts of “watershed approach” and “service area” coexist and overlap. The “watershed approach” relates to what and where mitigation is required. “Service area” relates to the acceptability of a particular mitigation bank’s use as a mitigation vehicle. Nothing in law, regulation, or policy affects the acceptability of a mitigation bank based upon the idea that its “service area” is broader than the affected “watershed”. So long as a mitigation bank’s “service area” covers an impacted watershed, use of that bank is sanctioned for use.

The District has determined for Regulatory purposes that the Chef Bank’s “service area” covers both the Baratavia Watershed and the Baratavia Basin. The District, in fact, has utilized Chef Bank mitigation credits for mitigation purposes in its Regulatory program. By law and regulation, the District’s civil works projects are bound by the mitigation standards and policies applicable to its Regulatory program.

- 2) **Project Partnership Agreement and Dispute Resolution Procedures.** The local sponsor, Plaquemines Parish, for compelling financial reasons, and consistent with applicable law, regulation, and policy, has requested that the District use mitigation credits from a fully compliant mitigation bank, in order to mitigate for the brackish and saline wetlands impacted by this project. In refusing to do so, the District has failed to adhere to the plain language

and intent of the dispute resolution procedures of its Project Partnership Agreement (PPA) with Plaquemines Parish and the Coastal Protection and Restoration Authority Board of Louisiana, joint non-federal project sponsors. In completing the draft EA, the District did not advise the Parish that it had changed previous analyses that included the Chef Bank credits to which they had agreed, did not respond to Parish requests to reconsider its decision, did not provide the Parish with any written or clear verbal explanation why they changed their analysis and decision, and did not implement the dispute resolution procedures in the PPA when the Parish President was clear that he did not agree with the District's decision.

The failure to cooperate with the non-federal sponsor in this situation has significant, real and lasting consequences to the Plaquemines Parish community. Under the executed PPA, the local Sponsor (Plaquemines Parish) is fully responsible for the completed project O&M including its mitigation features, and with the high risk associated with constructed mitigation (evidenced by recent complications with the Corps-constructed Lake Pontchartrain and Vicinity Project brackish marsh mitigation projects) compared to no risk with the purchase of mitigation bank credits, this will create an undue financial burden on the Parish that is completely unnecessary. Purchasing existing mitigation bank credits eliminates the future O&M cost burden of maintaining a Corps-constructed mitigation project and eliminates the very real risk that a Corps-constructed saline brackish marsh might fail and obligate the Parish to substantial marsh restoration costs.

- 3) **Louisiana Coastal Restoration Plan.** The New Orleans District, in electing to construct a new mitigation project not within a designated high impact area has once again ignored the State of Louisiana's Coastal Restoration Plan, which clearly specifies a federal and State preference to locate mitigation projects in jointly approved "high priority coastal restoration areas". The Corps has executed more than \$250 million of environmental restoration to mitigate for wetland habitat impacts for HSRRS without executing *any* of its mitigation projects in these high priority areas. Congressman Graves expressed his serious concern during a House Transportation and Infrastructure, Water Resources and Environment Subcommittee oversight hearing held on July 19, 2017 that the Corps is not creating the substantial synergistic and cumulative environmental benefits that would accrue by using mitigation sites within these high priority sites identified in the Coastal Restoration Plan.

In the instance of the NOV-NFL project the Corps has the opportunity to utilize credits for the NOV-NFL mitigation from a fully compliant mitigation bank constructed in one of these high priority coastal restoration areas, but instead has chosen another site not in a high priority area. Given that the existing, approved mitigation bank provides greater environmental and resiliency benefits at equal or less cost, delivers and transfers all future risk to the mitigation banker, the Corps' choice in this case simply makes no sense.

The currently selected NOV/NFL mitigation project for brackish saline wetland impacts, the Coleman Brackish Marsh Project, may not work as intended. The District's project EA states that, "*The project site would be located close to the proposed Mid Barataria sediment diversion site. The sediment diversion could potentially create a habitat shift from brackish to more fresh marsh*". Again, why would the Corps construct a mitigation project with High Risk when there is a preferred bank credit option preferred by law, regulation, and guidance available without O&M risk to the local sponsor?



August 10, 2017

Via Electronic Mail

Ms. Laura L. Wilkinson
U.S. Army Corps of Engineers
Regional Planning and Environmental Division South, PDN-CEP
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New Orleans, LA 70118-3651
Email: Laura.L.Wilkinson@usace.army.mil

Re: Restoration Systems, LLC – Comments on Draft Environmental Assessment #543 – New Right of Way and Mitigation for the New Orleans to Venice Hurricane Risk Reduction Project

Dear Ms. Wilkinson:

I am writing on behalf of Restoration Systems, LLC in response to the draft Environmental Assessment #543 to evaluate the potential impacts associated with the proposed modifications to the right of way (“ROW”) for the approved New Orleans to Venice Non-Federal Levees (“NFL”) and the New Orleans to Venice (“NOV”) Federal Hurricane Protection Levee projects. We appreciate the U.S. Army Corps of Engineers’ (the “Corps”) evaluation of compensatory mitigation options for the new ROW for the NFL/NOV levees. We agree with the Corps’ decision that credits from mitigation banks (and if sufficient credits are not available, the Louisiana Department of Natural Resources In Lieu Fee (“ILF”) Program) are the preferred alternative to compensate for unavoidable impacts to fresh marsh (including wet pasture).

Restoration Systems owns the Jesuit Bend Mitigation Bank (“JBMB”), a fully approved, successfully constructed mitigation bank located in Plaquemines Parish with available credits (total AAHUs from mitigation banking instrument: 110.83 with 55.41 released). For Phase I of Jesuit Bend Mitigation Bank, approximately 1.3 million cubic yards of sediment was dredged from a permitted Mississippi River borrow site (a renewable and sustainable sediment source) and hydraulically pumped and distributed at a target construction elevation of 0.8 feet, which is needed to sustain a healthy marsh environment. This dredged material contains a significant quantity of sand, which is ideal for marsh restoration because it results in limited settlement. The Year 1 bank monitoring report confirmed the elevation and vegetative success of the site. The habitat restoration credits will be monitored over a seven-year period, under long-term management for fifty (50) years, and protected forever by a conservation servitude held by the Mississippi River Trust.

JBMB has available credits that meet the entire mitigation requirement to compensate for unavoidable impacts to fresh marsh. As documented by the Corps, credits from JBMB

performed better than the Corps constructed projects for several of the factors considered by the Corps, including risk and reliability, environmental, and time. Mitigation banks, including JBMB, involve less risk and are more reliable than Corps constructed projects. JBMB is already constructed and the mitigation bank has been approved and has available credits. The Corps constructed project (Cataouatche Ponds) is only proposed, and there is no guarantee that the project will actually be constructed or that mitigation will be completed in a timely manner. JBMB also provides superior ecological benefits. By dredging over one million cubic yards of sediment from a Mississippi River borrow site and hydraulically pumping the dredged material to the mitigation bank site, JBMB has created fresh marsh within an open water area. Converting open water to fresh marsh provides greater ecological lift than other types of restoration efforts, such as reversion of existing agriculture/pasture lands to the previously existing habitat by breaching of crop levees, plugging ditches and canals, and/or planting of wetland species.

The location of JBMB is also ideal for a compensatory mitigation for the new ROW for the NFL/NOV levees. Not only is JBMB within the watershed, it is “on-site.” The Corps sought and Restoration Systems granted an easement for the NFL/NOV levees. Thus, not only does JBMB provide significant ecological benefits, it will also provide protection for the NFL/NOV levee itself. As further evidence of the ideal location of JBMB, the Corps has also proposed mitigation sites immediately adjacent to the bank property at Jesuit Bend.

With respect to cost effectiveness and other cost considerations, JBMB performs favorably to the other alternatives. After considering the advantages of JBMB (risk, reliability, timing, and environmental benefits), JBMB is clearly the most favorable alternative for compensatory mitigation for the new ROW for the NFL/NOV levees.

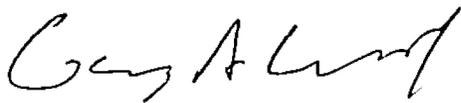
To the extent that the Corps considers using the ILF Program as a mitigation option for the NFL/NOV levees, the Corps may only look to the ILF Program if credits from mitigation banks, including JBMB, are not available in the watershed. As discussed above, JBMB has available credits that exceed the entire mitigation requirement to compensate for unavoidable impacts to fresh marsh, and the ILF Program will be unnecessary.

We appreciate the Corps evaluation of compensatory mitigation options for the new ROW for the NFL/NOV levees and fully support the Corps preferred alternative of using mitigation bank credits (and if sufficient credits are not available, the ILF Program) to compensate for unavoidable impacts to fresh marsh. As expressed in recent congressional hearings, we urge the Corps to expedite this process and issue the final Environmental Assessment and Finding of No Significant Impact as soon as possible and thereafter issue a Request for Proposals.

We appreciate the opportunity to provide comments and look forward to working with the Corps to provide compensatory mitigation for the new ROW for the NFL/NOV levees.

Sincerely,

RESTORATION SYSTEMS, LLC

A handwritten signature in black ink, appearing to read "George Howard". The signature is fluid and cursive, with the first name "George" being the most prominent part.

George Howard, CEO

cc: US Rep. Garrett Graves
LA Rep. Chris Leopold
Steve Cochran, EDF
Scott Eustis, GRN

August 10, 2017

Ms. Laura Lee Wilkinson
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RE: 170703/0815

New Right of Way & Mitigation for the
New Orleans to Venice Hurricane Risk
Reduction Project & Draft FONSI
US ACE Funding
Plaquemines Parish

Dear Ms. Wilkinson:

The Department of Environmental Quality (LDEQ), Business and Community Outreach Division has received your request for comments on the above referenced project.

After reviewing your request, the Department has no objections based on the information provided in your submittal. However, for your information, the following general comments have been included. Please be advised that if you should encounter a problem during the implementation of this project, you should immediately notify LDEQ's Single-Point-of-contact (SPOC) at (225) 219-3640.

- * Please take any necessary steps to obtain and/or update all necessary approvals and environmental permits regarding this proposed project.
- * If your project results in a discharge to waters of the state, submittal of a Louisiana Pollutant Discharge Elimination System (LPDES) application may be necessary.
- * If the project results in a discharge of wastewater to an existing wastewater treatment system, that wastewater treatment system may need to modify its LPDES permit before accepting the additional wastewater.
- * All precautions should be observed to control nonpoint source pollution from construction activities. LDEQ has stormwater general permits for construction areas equal to or greater than one acre. It is recommended that you contact the LDEQ Water Permits Division at (225) 219-9371 to determine if your proposed project requires a permit.
- * If your project will include a sanitary wastewater treatment facility, a Sewage Sludge and Biosolids Use or Disposal Permit is required. An application or Notice of Intent will be required if the sludge management practice includes preparing biosolids for land application or preparing sewage sludge to be hauled to a landfill. Additional information may be obtained on the LDEQ website at

Blocked<http://www.deq.louisiana.gov/portal/tabid/2296/Default.aspx>
<Blocked<http://www.deq.louisiana.gov/portal/tabid/2296/Default.aspx>> or by contacting the LDEQ
Water Permits Division at (225) 219- 9371.

* If any of the proposed work is located in wetlands or other areas subject to the jurisdiction of the U.S. Army Corps of Engineers, you should contact the Corps directly regarding permitting issues. If a Corps permit is required, part of the application process may involve a water quality certification from LDEQ.

* All precautions should be observed to protect the groundwater of the region.

* Please be advised that water softeners generate wastewaters that may require special limitations depending on local water quality considerations. Therefore if your water system improvements include water softeners, you are advised to contact the LDEQ Water Permits to determine if special water quality-based limitations will be necessary.

* Any renovation or remodeling must comply with LAC 33:III.Chapter 28, Lead-Based Paint Activities; LAC 33:III.Chapter 27, Asbestos-Containing Materials in Schools and State Buildings (includes all training and accreditation); and LAC 33:III.5151, Emission Standard for Asbestos for any renovations or demolitions.

* If any solid or hazardous wastes, or soils and/or groundwater contaminated with hazardous constituents are encountered during the project, notification to LDEQ's Single-Point-of-Contact (SPOC) at (225) 219-3640 is required. Additionally, precautions should be taken to protect workers from these hazardous constituents.

Currently, Plaquemines Parish is classified as attainment with the National Ambient Air Quality Standards and has no general conformity determination obligations.

Please send all future requests to my attention. If you have any questions, please feel free to contact me at (225) 219-3954 or by email at linda.hardy@la.gov <<mailto:linda.hardy@la.gov>> .

Sincerely,

Linda M. Hardy
Environmental Manager
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 6

**1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733**

August 28, 2017

Ms. Laura Lee Wilkinson
U.S. Army Corps of Engineers
Regional Planning and Environment
Division South (CEMVN-PDN-UDP)
New Orleans Environmental Branch
7400 Leake Avenue
New Orleans, LA 70118

RE: Draft Environmental Assessment (Draft EA) #543 for New Orleans to Venice Hurricane Risk Reduction Project in Plaquemines Parish, Louisiana

Dear Ms. Wilkinson,

In accordance with our responsibilities under Section 309 of the Clean Air Act (CAA), the National Environmental Policy Act (NEPA), and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, the U.S. Environmental Protection Agency (EPA) Region 6 office in Dallas, Texas, has completed its review of the Draft EA prepared by the U.S. Army Corps of Engineers (USACE).

The proposed project evaluates the impacts associated with utilizing new right-of-way necessary for construction of the New Orleans to Venice Non-Federal Levees and the New Orleans to Venice Federal Hurricane Protection Levee projects. Based on our review of the Draft EA, EPA offers the following enclosed comments for your consideration.

Thank you for the opportunity to comment on the Draft EA. If you have any questions or concerns, please contact Kimeka Price at (214)665-7438 or via email at price.kimeka@epa.gov for assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Houston", is written over a horizontal line.

Robert Houston, Chief
Special Projects Section

**DETAILED COMMENTS
ON THE
DRAFT ENVIRONMENTAL ASSESSMENT
FOR THE
U.S. ARMY CORPS OF ENGINEERS
NEW ORLEANS TO VENICE HURRICANE RISK REDUCTION PROJECT
IN
PLAQUEMINES, PARISH, LA**

Air Quality

On page 181, Section 5.3.8.1, No Action/Direct and Indirect Impacts, describes impacts to air quality from the No Action Alternative as temporary increases in air pollution “from three main sources: 1) emissions from transportation of construction materials such as clay fill, concrete and concrete piling, stone, and rocks to project sites; 2) combustible emissions from the engines of construction equipment, workers’ automobiles commuting to work, and trucks shipping miscellaneous supplies to project sites; and 3) fugitive dust when soils are disturbed at the construction site.” However, in Sections 4.2.2.8.1, 4.2.2.8.2, 4.2.3.8.1, 4.2.3.8.2, 4.2.4.8.1, 4.2.4.8.2, 4.2.5.8.1, 4.2.5.8.2, air emissions are described as including “exhaust emissions from operations of various types of non-road construction equipment such as a cutterhead dredge, crewboats, backhoes, tractors, etc. and from vehicles used to access the project area”, yet these sections also claim that “fugitive dust emissions are not anticipated during construction.” This conclusion seems inconsistent with the language in Section 5.3.8.1, in that no explanation is given as to how the non-road construction equipment does not have the potential to disturb soils at the construction site. Further, Section 4.2.1.8.2 (Bayou Segnette BLH Project) describes operation of non-road construction equipment “such as a hydro-ax, skidder, ATV, etc.” resulting in exhaust emissions and fugitive dust due to earth disturbance, yet also states that “(e)mission of fugitive dust near the construction area is not anticipated to be a problem as the site is fairly remote, and the majority of the work is anticipated to be completed by hand.” Further clarification is requested to explain how the “construction area” is distinct from the location of the anticipated operations of non-road construction equipment.

Recommendation:

EPA recommends USACE provide consistent identification of anticipated project/alternative sources of air pollution, and greater detail to explain instances of variance from the language in Section 5.3.8.1.

On page 4-18, Section 4.1.1, Description of the Affected Environment, identifies Plaquemines and Jefferson Parishes as an attainment area of all National Ambient Air Quality Standards (NAAQS). As a result, general conformity regulations do not apply and an applicability analysis is not necessary. However, it should be noted that these parishes are represented by the New Orleans Regional Planning Commission (the Metropolitan Planning Organization for the area), and the New Orleans area is vulnerable to being designated as non-

attainment for ozone in the next few years. Because of this, the New Orleans Regional Planning Commission has applied to and been accepted by EPA into the EPA Ozone Advance program. The Advance program is a collaborative effort between EPA, states and local governments to enact expeditious emission reductions to help near non-attainment areas remain in attainment of the NAAQS. This further reflects the sensitivity of ozone levels in the area, and the need for federally-funded projects in the New Orleans area to consider emissions which contribute to the formation of ozone. For more information on the New Orleans Regional Planning Commission's enrollment in EPA's Ozone Advance program:

https://www.epa.gov/sites/production/files/2015-12/documents/new_orleans_sign_up.pdf and <https://www.epa.gov/advance/advance-participants-louisiana-new-orleans>

Because of the air quality concerns of the significant population center within the project area, EPA recommends that best management practices be implemented in order to reduce potential short-term air quality impacts associated with construction activities. Furthermore, construction and waste disposal activities should be conducted in accordance with applicable local, state and federal statutes and regulations.