



St. Tammany Parish, Louisiana Feasibility Study



Appendix C – Annex K - Scenic Rivers Act

July 2023

BAKER, EVERARD CIV USARMY CEMVN (USA)

From: Bruser, Bonny A CIV USARMY CEMVN (USA)
Sent: Wednesday, May 5, 2021 9:36 AM
To: BAKER, EVERARD CIV USARMY CEMVN (USA)
Cc: Wilkinson Wolfson, Laura L CIV USARMY CEMVN (USA); Bruser, Bonny A CIV USARMY CEMVN (USA)
Subject: RE: TSP for St Tammany and LA Scenic & Wild Rivers

No. If the lawyer reaches out to me, then I will put together a short statement regarding the bases of our legal position to share with him. Our position is based on a few different legal principles – very law intensive.

B. Aven Bruser
Assistant District Counsel/Acting Deputy District Counsel
New Orleans District
U.S. Army Corps of Engineers
7400 Leake Ave, Rm 348
New Orleans, LA 70118
504-862-1326

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From: BAKER, EVERARD CIV USARMY CEMVN (USA) <Everard.Baker@usace.army.mil>
Sent: Wednesday, May 5, 2021 9:09 AM
To: Bruser, Bonny A CIV USARMY CEMVN (USA) <Bonny.A.Bruser@usace.army.mil>
Cc: Wilkinson Wolfson, Laura L CIV USARMY CEMVN (USA) <Laura.L.Wilkinson@usace.army.mil>
Subject: FW: TSP for St Tammany and LA Scenic & Wild Rivers
Importance: High

Please let me know if you'd like for me to set up a meeting with Duncan Kemp to go over our position on the Scenic Rivers permitting issue, or if there is another COA.

Everard Baker
Biologist, USACE New Orleans
(208) 310-2321

From: Chris Davis <rcdavis@wlf.la.gov>
Sent: Wednesday, May 5, 2021 8:35 AM
To: BAKER, EVERARD CIV USARMY CEMVN (USA) <Everard.Baker@usace.army.mil>
Cc: Bruser, Bonny A CIV USARMY CEMVN (USA) <Bonny.A.Bruser@usace.army.mil>; Wilkinson Wolfson, Laura L CIV USARMY CEMVN (USA) <Laura.L.Wilkinson@usace.army.mil>; Behrens, Elizabeth H CIV USARMY CEMVN (USA) <Elizabeth.H.Behrens@usace.army.mil>; Duncan Kemp <DKemp@wlf.la.gov>
Subject: [Non-DoD Source] RE: TSP for St Tammany and LA Scenic & Wild Rivers

Everard,
As we discussed, the alignment crosses Bayou Liberty, a LA state designated Natural and Scenic River. Therefore a permit is required from LDWF. I've included our attorney, Duncan Kemp, on the email should the attorneys wish to discuss the matter with him.

Attached is a permit application that includes an Environmental Assessment, which would need to be completed in order for staff to fully address any impacts to a Scenic River.

Thanks,

Chris Davis

Scenic Rivers Coordinator
Louisiana Department of Wildlife and Fisheries
2000 Quail Drive, Room 432
Baton Rouge, LA 70808
Phone: (225)765-2642 Fax (225)765-2625

From: BAKER, EVERARD CIV USARMY CEMVN (USA) [<mailto:Everard.Baker@usace.army.mil>]
Sent: Wednesday, April 21, 2021 4:05 PM
To: Chris Davis <rcdavis@wlf.la.gov>
Cc: Bruser, Bonny A CIV USARMY CEMVN (USA) <Bonny.A.Bruser@usace.army.mil>; Wilkinson Wolfson, Laura L CIV USARMY CEMVN (USA) <Laura.L.Wilkinson@usace.army.mil>; Behrens, Elizabeth H CIV USARMY CEMVN (USA) <Elizabeth.H.Behrens@usace.army.mil>
Subject: [WARNING: UNSCANNABLE EXTRACTION FAILED][WARNING: UNSCANNABLE EXTRACTION FAILED]RE: TSP for St Tammany and LA Scenic & Wild Rivers

EXTERNAL EMAIL: Please do not click on links or attachments unless you know the content is safe.

Hey Chris,

Thanks for the call this afternoon. I understand the position of the state is that we do need to apply for a permit. My direction from our office of counsel is that we do not, and they've offered to speak with your office or attorneys directly. If I can facilitate that, please let me know.

Please see the attached KMZ files for the levee alignment and different project features, and let me know if you need anything further. Our draft report will be released to the public on 11 June 2021, and the final in June 2022. If you have comments you would like addressed in the draft report, please get them to me as soon as possible. Our PDT meetings are bi-weekly, and I have asked our Project Manager to include your office on the invite.

Everard Baker
Biologist, USACE New Orleans
(208) 310-2321

From: Chris Davis <rcdavis@wlf.la.gov>
Sent: Friday, April 16, 2021 12:48 PM
To: BAKER, EVERARD CIV USARMY CEMVN (USA) <Everard.Baker@usace.army.mil>
Subject: [Non-DoD Source] RE: TSP for St Tammany and LA Scenic & Wild Rivers

Everard,
I'll give you a call Monday afternoon to discuss.
Thanks,

Chris Davis
Scenic Rivers Coordinator

Louisiana Department of Wildlife and Fisheries
2000 Quail Drive, Room 432
Baton Rouge, LA 70808
Phone: (225)765-2642 Fax (225)765-2625

From: BAKER, EVERARD CIV USARMY CEMVN (USA) [<mailto:Everard.Baker@usace.army.mil>]
Sent: Friday, April 16, 2021 10:34 AM
To: Chris Davis <rcdavis@wlf.la.gov>
Cc: Bruser, Bonny A CIV USARMY CEMVN (USA) <Bonny.A.Bruser@usace.army.mil>; Behrens, Elizabeth H CIV USARMY CEMVN (USA) <Elizabeth.H.Behrens@usace.army.mil>; Matthew Weigel <mweigel@wlf.la.gov>; Wilkinson Wolfson, Laura L CIV USARMY CEMVN (USA) <Laura.L.Wilkinson@usace.army.mil>
Subject: RE: TSP for St Tammany and LA Scenic & Wild Rivers

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Good morning, I wanted to touch base on this. Did you want to schedule some time to discuss LA Scenic River permitting for the St Tammany Parish Feasibility Study and the position of the Corps? I'm looking through my records and not seeing any new information from LDWF on this.

Our draft report will be released to the public on June 11, and if there are comments on permitting I can address now, please let me know.

Everard Baker
Biologist, USACE New Orleans
(208) 310-2321

From: Matthew Weigel <mweigel@wlf.la.gov>
Sent: Friday, February 12, 2021 11:46 AM
To: BAKER, EVERARD CIV USARMY CEMVN (USA) <Everard.Baker@usace.army.mil>
Cc: Bruser, Bonny A CIV USARMY CEMVN (US) <Bonny.A.Bruser@usace.army.mil>; Behrens, Elizabeth H CIV USARMY CEMVN (USA) <Elizabeth.H.Behrens@usace.army.mil>; Chris Davis <rcdavis@wlf.la.gov>
Subject: [Non-DoD Source] RE: TSP for St Tammany and LA Scenic & Wild Rivers

Hi Everard,

I must inform you that I've very recently accepted a new position within LDWF, and I will no longer be working as closely with Scenic Rivers, and several other department Programs. I have, however, briefed our Scenic Rivers Coordinator and administrator, and they are discussing the issue.

By this email, I am forwarding the most recent information you have provided below to Chris Davis, Scenic Rivers Coordinator. He, our administrator, or attorney may be in touch regarding the matter.

Chris will be the new POC for this project, since my focus is now shifting to DWH Coastal Restoration and the Louisiana's Watershed Initiative.

Best regards,

Matt Weigel

42371 Phyllis Ann Drive
Hammond, LA 70403
Phone (985) 543-4931



Louisiana Department of
Wildlife & Fisheries

Habitat Section

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From: BAKER, EVERARD CIV USARMY CEMVN (USA) <Everard.Baker@usace.army.mil>
Sent: Friday, February 12, 2021 10:24 AM
To: Matthew Weigel <mweigel@wlf.la.gov>
Cc: Bruser, Bonny A CIV USARMY CEMVN (US) <Bonny.A.Bruser@usace.army.mil>; Behrens, Elizabeth H CIV USARMY CEMVN (USA) <Elizabeth.H.Behrens@usace.army.mil>
Subject: RE: TSP for St Tammany and LA Scenic & Wild Rivers

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Hey Matt,

Just wanted to check in on this. My leadership has mentioned they are hoping to avoid any comments on our draft EIS about the LA Scenic Rivers permitting if we can avoid it. Did your office want to speak with our office of counsel about the issue? I've cc'd Aven Bruser if you want to connect our attorneys with yours to discuss further.

Sincerely,
Everard Baker, MS, MNR
Biologist, Coastal Environmental Planning

Office: (504) 862-1514
Cell: (208) 310-2321
Email: everard.baker@usace.army.mil

US Army Corps of Engineers, New Orleans District
Regional Planning Environmental Division South
7400 Leake Ave
New Orleans, LA 70118

From: Matthew Weigel <mweigel@wlf.la.gov>
Sent: Wednesday, February 3, 2021 1:21 PM
To: BAKER, EVERARD CIV USARMY CEMVN (USA) <Everard.Baker@usace.army.mil>
Subject: [Non-DoD Source] RE: TSP for St Tammany and LA Scenic & Wild Rivers

Thanks for the context. We'll consider it in our deliberations, and if it looks like we're at an impasse, we'll get the attys together.

Best,

Matt Weigel

42371 Phyllis Ann Drive
Hammond, LA 70403
Phone (985) 543-4931



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From: BAKER, EVERARD CIV USARMY CEMVN (USA) <Everard.Baker@usace.army.mil>
Sent: Wednesday, February 03, 2021 1:12 PM
To: Matthew Weigel <mweigel@wlf.la.gov>
Subject: RE: TSP for St Tammany and LA Scenic & Wild Rivers

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Yes, the non-federal sponsor (CPRA) is generally expected to deal with permitting issues like this based on my understanding.

From my office of counsel about the issue:

“We should not apply for a permit - even if the State says it is required. Under what's called "Federal preemption," we, as the Federal government, do not need to submit to the jurisdiction of the State under La. Scenic Rivers Act.

At the same time, we do want to be good partners and work with our sister resource agencies. In terms of your conversations with La. DWF, I would recommend that you defer to Office Counsel on the issue of permits. If pressed, say your understanding from Counsel is that a permit is not required and invite the La. DWF team member or counsel to email or call me on the issue. At the same time, we want to address the State's concerns to the extent possible while still accomplishing project goals - just outside of the permitting context. “

So if you guys think that it is required, then I would respectfully suggest getting your attorneys to coordinate with ours ASAP. Just let me know when!

Let me know if you need more information.

Everard Baker, MS, MNR
Biologist, USACE New Orleans

From: Matthew Weigel <mweigel@wlf.la.gov>
Sent: Wednesday, February 3, 2021 11:02 AM
To: BAKER, EVERARD CIV USARMY CEMVN (USA) <Everard.Baker@usace.army.mil>
Subject: [Non-DoD Source] RE: TSP for St Tammany and LA Scenic & Wild Rivers

Was USACE’s recommendation that the non-fed sponsor deal with permitting for STP? I’m not certain what plan y’all described regarding SR permitting. I want to be sure I represent USACE’s preferred path forward when we discuss internally.

Thanks,

Matt Weigel

42371 Phyllis Ann Drive
Hammond, LA 70403

Phone (985) 543-4931



Louisiana Department of
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From: Matthew Weigel
Sent: Wednesday, February 03, 2021 10:44 AM
To: 'BAKER, EVERARD CIV USARMY CEMVN (USA)' <Everard.Baker@usace.army.mil>
Cc: Behrens, Elizabeth H CIV USARMY CEMVN (USA) <Elizabeth.H.Behrens@usace.army.mil>
Subject: RE: TSP for St Tammany and LA Scenic & Wild Rivers

Hi Everard,

Thanks for the email. If I recall, we discussed some of LDWF/SR program's issues with certain alternatives, whether certain alts are permissible, how alts were developed, improvements that could be made, and how they may conflict with the SR Act (e.g., the Mile Br. alt may not permissible under the SR Act), but we did not settle the SR permitting issue.

We'll discuss with our administrator and attorneys and will get back to you regarding our thoughts on how to best handle the SR permitting and impermissibility issues.

Thanks for coordinating,

Matt Weigel

42371 Phyllis Ann Drive
Hammond, LA 70403
Phone (985) 543-4931



Louisiana Department of
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From: BAKER, EVERARD CIV USARMY CEMVN (USA) <Everard.Baker@usace.army.mil>
Sent: Wednesday, February 03, 2021 10:03 AM
To: Matthew Weigel <mweigel@wlf.la.gov>
Cc: Behrens, Elizabeth H CIV USARMY CEMVN (USA) <Elizabeth.H.Behrens@usace.army.mil>
Subject: TSP for St Tammany and LA Scenic & Wild Rivers

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Hey Matt,

I wanted to touch base and ensure you had the latest project description since you've not been able to come to the PDT meetings, and follow up on our conversation about LA Scenic River permitting. You and I previously had our call, and our

OC and chain discussed. I want to make sure you have a good idea of what we're doing and coordinate because our office of counsel has said we won't seek a permit, but I am unsure if we have further coordination? Did your attorneys want to discuss with our office of counsel? My chain expressed concern about potentially getting comments from LDWF on our draft document when it goes out for review about LA Scenic permitting, and I explained I think you and I addressed your concerns, but I want to be sure.

Sincerely,
Everard Baker, MS, MNR
Biologist, Coastal Environmental Planning

Office: (504) 862-1514

Cell: (208) 310-2321

Email: everard.baker@usace.army.mil

US Army Corps of Engineers, New Orleans District
Regional Planning Environmental Division South
7400 Leake Ave
New Orleans, LA 70118



July 26, 2021

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

RE: *Application Number: DIFR/DEIS St. Tammany Parish Feasibility Study*
Applicant: U.S. Army Corps of Engineers-New Orleans District
Notice Date: June 11, 2021

Dear Mr. Harper:

The professional staff of the Louisiana Department of Wildlife and Fisheries (LDWF) has reviewed the above referenced St. Tammany Parish Feasibility Study, which includes the Draft Integrated Feasibility Report (DIFR) and Draft Environmental Impact Statement (DEIS). Based on that review, LDWF offers the following:

The U.S. Army Corps of Engineers' (USACE) Tentatively Selective Plan (TSP) includes construction and operation of 16.3 miles of hurricane and storm damage risk reduction levee and floodwall sections in Slidell, Bayou Patassat channel improvements in Slidell, Mile Branch channel improvements in Covington, and nonstructural home elevations and flood proofing for approximately 15,800 structures across St. Tammany Parish. Structures proposed within the TSP include five pump stations, four gate complexes, one channel floodgate, and three sluice gates across various waterways.

LDWF is concerned with impacts to wetlands, streams, and other habitats, resulting from TSP implementation. Due to the limited information provided on TSP features and lack of associated detail, LDWF cannot fully understand impacts associated with the TSP at this time. Additional information including cross-sectional and plan view drawings and maps of all TSP features should be provided to resource agencies to convey a better understanding of all project features and aid in those agencies analyses of potential impacts. Information on the impacts to hydrology and operational plans for all water control structures should be developed and provided to resource agencies as well. It is our intent to ensure that hydrology is maintained to the greatest extent practicable and impacts to aquatic habitats are avoided and minimized to the greatest extent practicable.

If constructed, the TSP will directly and permanently impact Bayou Liberty and Mile Branch, both Louisiana designated Scenic Rivers. The TSP may also adversely impact a third Scenic River, the Tchefuncte River. The USACE should coordinate with LDWF Scenic Rivers Program staff during the design phase to ensure that impacts to Scenic Rivers are minimized and avoided to the greatest extent practicable and that any unavoidable impacts are appropriately mitigated.

For all planned impacts to Scenic Rivers, including Bayou Liberty and Mile Branch, a complete Scenic River permit application shall be provided to LDWF.

As stated in prior LDWF comments, the proposed channelization and clearing and snagging of Mile Branch currently outlined in Alternative 8 are prohibited by the Louisiana Scenic Rivers Act. LDWF certainly does not object to flood risk reduction measures to reduce risk to life and/or property. LDWF looks forward to continuing to work with USACE and Parish officials to develop solutions that provide flood risk reduction and maintain natural and free flowing streams.

The DIFR and DEIS should acknowledge and accurately analyze the full and permanent impacts to Mile Branch water quality and habitat resulting from the TSP. The TSP is expected to result in an oversized, deeply incised channel. Widely accepted channel evolution models show that the resulting channel will result in continuing erosion as the stream adjusts to bed lowering and increased contained flows. Remaining, natural floodplain will be disconnected, riparian habitat will be removed (and not replaced), aquatic habitats will be degraded. Higher water temperature and increased turbidity are expected to persist well into the future. Aesthetics will also be impacted. Although residential development is the dominant land use along the stream's riparian corridor, many reaches of the stream remain forested to various degrees and tracts of forested land and woodlots occur adjacent to the stream throughout much of its length.

Due to the Scenic River designation of Mile Branch and the expected impacts of the current TSP, the USACE should provide LDWF hydrological modeling demonstrating justification for the proposed dredging on Mile Branch. The USACE should also provide analysis of less damaging alternatives for addressing flooding along Mile Branch. Alternatives for Mile Branch should include the construction of off-channel detention ponds and channel improvements that incorporate Natural Channel Design and Engineering With Nature principles. When compared to the current plan, Priority 2 or 3 (Rosgen) restoration would result in improved natural functions and ecosystem services, reduced bank erosion, increased aquatic and riparian habitat, reduced water quality impacts, and reduced channel/project maintenance. The social benefit associated with dry detention and floodplain areas that can also serve as parks and public green space would be significant within the city of Covington and should be included in the CBA. The alternatives should also include a nonstructural alternative that analyses home elevations in lieu of the currently proposed channel improvements.

The report's *relevant resources* should include Scenic River's relevance beyond aesthetics. Section 3.2.2.4 should be expanded to more accurately represent the protections afforded by the Louisiana Scenic Rivers Act (The Act). Additionally, The Act was enacted in 1970, not in 1988 as stated in the draft report. To better inform the readers, where appropriate, the report should specifically indicate that Mile Branch is a designated Scenic River. Not all readers may realize that Mile Branch is a tributary of the Tchefuncte and thereby a Scenic River.

Impacts associated with some of the alternatives may have been inaccurately assessed within the report. For example, under Section 5.3.1.6, Wildlife impacts, Alternative 8 is reported to *directly result in the loss of a very small amount, under 1 acre, of forested habitat...due to construction activities*. However, other descriptions entail over 2 miles of bank clearing and grubbing ahead of significant dredging of 20 acres of stream channel, lowering the stream bed elevation by five feet. The impacts associated with these types of activities are fairly well understood and should be included.

The TSP's levee, pump station, and flood gate will permanently impact Bayou Liberty, a Scenic River and recreational destination for many on the Northshore. Levee impacts enumerated within

the report should be amended to show the associated impact to recreation and mitigation should be provided for those impacts.

TSP benefits may be overstated in some sections. For example, under *Wildlife Impacts*, Alternative 8 is reported to *likely stabilize terrestrial habitat that is being lost to erosion*. LDWF is concerned with this assessment. As described above, it is expected that Alt 8 will likely directly impact this habitat. Allowing the area to revegetate naturally (as proposed) will also allow invasive species such as Chinese tallow and Chinese privet to dominate the riparian corridor.

We are pleased to see that the proposed borrow site analysis indicated that no wetlands would be impacted from borrow; however, the borrow site analysis should also account for potential stream impacts. For example, STP-5 borders or contains a small stream that may not have been accounted for.

Rivers and streams should be included in the habitat types requiring mitigation. Coordination with resource agencies should occur to better define and assess impacts to streams not covered under the current analyses. Subsequently, the final report (and CBAs) should be amended to include mitigation for these habitats. The resulting, complete mitigation plan should be provided to LDWF and other resource agencies for review.

Mitigation for impacts should occur prior to or concurrent with construction of the TSP.

The LDWF Wildlife Diversity Program database indicates that the West Indian Manatee (*Trichechus manatus*) may occur in the surrounding waterbodies of the project footprint. The manatee is a large mammal that inhabits both fresh and salt water. Although the manatee is a year round resident of Florida and Central America, the species has been known to migrate to areas along the Atlantic and Gulf coasts during the summer months. The West Indian Manatee is a threatened species protected under the Endangered Species Act of 1973 and the Federal Marine Mammal Protection Act of 1972. In Louisiana, take or harassment of a manatee is a violation of state and federal laws. Critical habitat for the manatee includes beds of submerged aquatic vegetation (e.g., sea-grass beds). Areas with sea-grass beds should be avoided during project activities. Report all manatee sightings to the Louisiana Department of Wildlife and Fisheries at 504-286-4052 or 1-800-442-2511.

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,



Randell S. Myers
Assistant Secretary, Wildlife Division