

6.2.20 Request for Records

June 2, 2020

The Nature Conservancy of Louisiana  
Atchafalaya River Basin Initiative  
Attention: Custodian of Public Records  
P.O. Box 4125  
Baton Rouge, LA 70821

Coastal Protection & Restoration Authority  
c/o CPRA Legal Section  
Attention: Custodian of Public Records  
P.O. Box 44027  
Baton Rouge, LA 70804-4027

In consideration of the ongoing public health crisis, sent **by email only** to lafo@tnc.org; CPRAPublicRecords@la.gov; coastal@la.gov

*Re: Request for Public Records*

Dear Custodians of Public Records,

On behalf of Atchafalaya Basinkeeper and in accordance with the Louisiana Public Records Act, La. Rev. Stat. § 44:1 *et seq.*, Atchafalaya Basinkeeper requests that you produce copies of any and all public records, as described below, in the possession or control of The Nature Conservancy (“TNC”) and/or TNC’s Atchafalaya River Basin Initiative as relates to the organization’s partnership with the Louisiana Department of Natural Resources Atchafalaya Basin Program, and its successor the Coastal Protection and Restoration Authority (“CPRA”), regarding coordinated management in the Atchafalaya Basin, and in particular the proposed East Grand Lake project, also referred to as TNC’s Atchafalaya River Basin Initiative’s Atchafalaya Basin Preserve in the Bayou Sorrel region of the Atchafalaya River Basin (pending Corps’ permit MVN-2016-01163-CM).

Records Subject to the LDNR-TNC Memorandum of Understanding

In December 2015, the secretary of LDNR, the director of LDNR’s Atchafalaya Basin Program, and the State Director of The Nature Conservancy of Louisiana signed a Memorandum of Understanding, attached hereto, “to build upon a framework of cooperation between ABP and TNC . . . regarding the conservation, management and restoration of the Atchafalaya Basin.” *Memorandum of Understanding between the Louisiana Dept. of Natural Resources Atchafalaya Basin Program (ABP) and the Nature Conservancy of Louisiana (TNC)*, at p. 1, Dec. 2015 (hereinafter “MOU”).

The MOU provides:

- “TNC seeks to collaborate with public and private landowners and other stakeholders to promote the conservation of the Atchafalaya Basin with science-driven decision making.”
- “TNC AGREES TO:
  1. . . . contribute pertinent scientific and conservation planning information and documents to ABP for its activities affecting the Atchafalaya Basin for distribution to the public;
  2. To assist ABP in gathering of information related to conservation, restoration and enhancement (where possible) of the natural habitat of the Atchafalaya Basin.

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3. Assist ABP with dissemination of information to the public by supporting public outreach and collaborating on stakeholder involvement and engagement efforts with regard to its programs in the Atchafalaya Basin. . . .
  5. Assist ABP by providing timely and cogent scientific evaluation of proposed projects in the Atchafalaya.”
- “THE PARTIES AGREE TO:
    1. Collaborate . . . on joint development of scientific knowledge with respect to the ecosystems, hydrology, and wildlife habitat of the Atchafalaya Basin.
    2. Promote and advance the cause of policies that under scrutiny of scientific examination demonstrate real or potential improvement to the Atchafalaya Basin.”

The MOU also states that the parties to the agreement “mutually understood and agreed” that “(a)ny records or information furnished to the ABP under this instrument are subject to the Louisiana Public Records Law, La. R.S. 44:1, et seq.” *Id.* at 2.

In its March 23, 2016 written response to ABK’s request to LDNR to be included as an entity in the Memorandum of Understanding the ABP signed with The Nature Conservancy for participation in projects including the East Grand Lake Project, LDNR denied ABK’s request to be included and stated: “It is the goal of the MOU and the TNC Atchafalaya River Basin Initiative to engage stakeholders during the design phases . . . ‘We are working with the state, partners, and stakeholders to develop a decision making process that fully engages stakeholders in designing the future Atchafalaya, **places landowner vision at the forefront**, and promotes science-based decisions.’” *Letter to Dean Wilson, Atchafalaya Basinkeeper, from Don Haydel, former Director of the LDNR Atchafalaya Basin Program*, Mar. 23, 2016. This reference to working with landowners has been raised throughout the course of this project’s development, and this statement from Mr. Haydel clearly indicates the importance of landowner input to the agency and TNC in designing the project. The MOU also indicates the importance of shared information and scientific evaluation between the principal contacts of the instrument.

In consideration of TNC’s partnership with LDNR to propose and implement the East Grand Lake Project in the Atchafalaya, also referred to as the Atchafalaya Basin Preserve, and the mutual agreement between TNC and LDNR and recognition therein that “**(a)ny records or information furnished to the ABP under this instrument are subject to the Louisiana Public Records Law . . .**” (MOU at 2, emphasis added), Atchafalaya Basinkeeper requests access to the following records in the custody or control of TNC and/or CPRA, and subject to the aforementioned MOU:

- **Any additional data collected in regard to the proposed East Grand Lake project not previously disclosed to the requestor, including but not limited to:**
  - o **GPS coordinates (latitude and longitude) for monitoring sites**
  - o **The second half of TNC’s 2019 monitoring program report to CPRA**
- **Sampling Data collected, referenced, and/or consulted in the creation of the following research article: Lauren M. Kong, et al. (2019). Flood Pulse Characteristics and Physicochemical Influences on Harvested *Procambarus clarkia* and *Procambarus zonangulus* Populations in the Atchafalaya River Basin, Louisiana. A project funded by The Nature Conservancy Fellows Program**

**through a grant from Royal Dutch Shell, and for which TNC staff provided statistical advice, field support and technical advice; including but not limited to:**

- **GPS coordinates (latitude and longitude) for field/monitoring sites**
  - **Complete, original data, including all measured parameters at each site, raw figures, locations of each site, and any other relevant and pertinent data collected, used and/or referenced in the creation of the subject research article**
- **Any and all communications records related to the Louisiana Department of Natural Resources, Atchafalaya Basin Program's East Grand Lake project (201006)/TNC's Atchafalaya Basin Preserve in the Bayou Sorrel region in Iberville Parish, including but not limited to:**
- **Any and all records of communications between the Louisiana Department of Natural Resources, Atchafalaya Basin Program, or officials, employees or agents thereof; The Nature Conservancy of Louisiana ("TNC"), or officials, employees or agents thereof; and individual or organizational landowner stakeholders, or officials, employees or agents thereof; pertaining to the East Grand Lake project. In particular, any communications between LDNR Atchafalaya Basin Program current or former staff members April Newman, Charles Reulet, and Don Haydel; TNC employees; and/or landowner stakeholders, or officials, employees or agents thereof.**
- **Any records relating to the status of the aforementioned Memorandum of Understanding between The Nature Conservancy and the Louisiana Department of Natural Resources**

In 2018, the legislature enacted La. R.S. 49:214.8.1, *et seq.*, transferring the responsibilities of the LDNR Atchafalaya Basin Program to the Coastal Protection and Restoration Authority. In light of this transfer of responsibilities of the Atchafalaya Basin Program, including the East Grand Lake project, to CPRA, Basinkeeper requests access to the following records in the custody or control of TNC and/or CPRA:

- **Any records relating to the relationship between The Natural Conservancy and the LDNR Atchafalaya Basin Program's successor, the Coastal Protection and Restoration Authority, including but not limited to a Memorandum of Understanding between TNC and CPRA with respect to any cooperative efforts and interest regarding the conservation, management and restoration of the Atchafalaya Basin**

This request is sent to both TNC and CPRA in an effort to reduce redundancy of search efforts, and to facilitate a coordinated response and disclosure of pertinent, public records with respect to the Atchafalaya Basin Program and the East Grand Lake project in particular.

For the purposes of this request, the term "records" includes all books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and

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papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state.

The purpose of this request is to obtain information and scientific data for public use and dissemination relevant to the proposed East Grand Lake project, and the impacts of this project on the Atchafalaya Basin, as well as cooperative efforts between TNC and state agencies in the management of the Atchafalaya Basin. This information will enable the public to engage in an ongoing discussions regarding the alleged benefits and perceived detriments of the proposed project, and present and future management of the Basin. Atchafalaya Basinkeeper requests a fee waiver for this request because it is a 501(c)(3) nonprofit organization dedicated to the protection and restoration of the Atchafalaya Basin on behalf of its members, including commercial and recreational fishermen and outdoor enthusiasts who worry about the long-term impacts of the project and Basin management. This request is made in the public interest as the information requested would primarily benefit the general public. Atchafalaya Basinkeeper will use this information to educate the public and promote discussion and dissemination of information pertaining to the permitting process, including communications with stakeholders and the development of the EGL project.

The requested information will not be used for the financial or commercial benefit of Atchafalaya Basinkeeper or its members. If our fee waiver request is denied and this request for information cannot be sent free of charge, we request immediate notification of the reasons for denial and an estimate of costs to fulfill the request prior to any copying. Nothing in this letter will constitute a waiver of Atchafalaya Basinkeeper's right to seek administrative or judicial review of any denial of its fee waiver request.

If you intend to deny access to any of the above-mentioned records, we request a written determination within three (3) days of receipt of this request, stating the reasons for your denial. La. Rev. Stat. Ann. § 44:32(D). If an exemption is claimed as to some records, we request that all segregable, non-exempt parts of the documents be provided, and citation to each specific exemption to the Louisiana Public Records Law that you have determined justifies the refusal to produce the records. If it is your contention that any of the requested records are not in your custody or control, we request that you promptly detail in writing the reason for the absence of the record, its location, what person has custody of the record and the time, manner and method in which it was taken from your custody.

If it is your contention that any of the requested documents are exempt from disclosure under the Louisiana Public Records Act based on any claim of privilege or confidentiality, please provide the following: the title of the document as to which the privilege or confidentiality is claimed; the nature of the document (e.g., interoffice memorandum, correspondence, report, etc.); the author or

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sender; the date of the document; the name of each person to whom an original or copy was shown or circulated; the basis upon which confidentiality is claimed; the facts upon which you rely to support the claim of confidentiality and a summary of the subject matter of the document in sufficient detail to permit the court to rule on the propriety of the claim of confidentiality.

If possible, please provide the requested documents in the following format: in PDF format; electronically searchable wherever possible; any data records in native format; and emails including BCC and any other hidden fields; with any other metadata preserved. Thank you for your time and prompt attention to this matter. If you have any questions or concerns regarding this request, please contact Misha Mitchell at (225) 692-1133, or by email at [basinkeeperlegal@gmail.com](mailto:basinkeeperlegal@gmail.com).

Best Regards,



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Misha Mitchell, SBN: 37506  
On behalf of Atchafalaya Basinkeeper  
P.O. Box 410  
Plaquemine, LA 70765  
Phone: (225) 692-1133  
Email: [Basinkeeperlegal@gmail.com](mailto:Basinkeeperlegal@gmail.com)

Cc: Louisiana Department of Natural Resources  
Attn: Charles Reulet  
[Charles.reulet@la.gov](mailto:Charles.reulet@la.gov)

Dean Wilson, Executive Director  
Atchafalaya Basinkeeper  
[Enapay3@aol.com](mailto:Enapay3@aol.com)

**MEMORANDUM of UNDERSTANDING  
BETWEEN  
THE LOUISIANA DEPARTMENT OF NATURAL RESOURCES  
ATCHAFALAYA BASIN PROGRAM (ABP)  
AND  
THE NATURE CONSERVANCY OF LOUISIANA (TNC)**

**I. Purpose.**

The purpose of this memorandum of understanding is to build upon a framework of cooperation between ABP and TNC to extend the reach of the respective parties' resources within areas of overlapping concern and interest regarding the conservation, management and restoration of the Atchafalaya Basin.

**II. Background,**

The Atchafalaya Basin is a natural resource of national significance encompassing 838,000 acres of forests, bayous, swamp and lakes. It extends south from the Old River Control Structure approximately 140 miles to Morgan City. The Atchafalaya Basin represents the largest contiguous bottomland hardwood forest, and overflow alluvial swamp remaining in the United States. The Atchafalaya Basin also plays a significant role in the flood protection efforts of the Mississippi River Valley and has been designated as a floodway by the United States Army Corps of Engineers (USACE). Many of the actions taken to modify the basin into a floodway by the USACE have adversely impacted the natural hydrology and habitat of the Atchafalaya Basin. The Louisiana Legislature, by Act 3 of the First Extraordinary Session of 1998 created and empowered the ABP to coordinate the efforts of various governmental agencies and private concerns in the implementation of the State Master Plan for the Atchafalaya Basin. The Mission in the State Master Plan is to conserve, restore and enhance (where possible) the natural habitat, and to give all people the opportunity to enjoy the Atchafalaya experience. Act 606 of the 2008 Regular Session of the Louisiana Legislature established the Atchafalaya Basin annual plan process, created the Technical Advisory Group (TAG) to elevate the role of science in developing proposed solutions as well as specific projects, and created a focus on water management and water quality to accelerate restoration of the Atchafalaya Basin. The TAG via the annual plan process is also tasked with improving access to enhance public use of the recreational opportunities in the Atchafalaya Basin.

TNC seeks to collaborate with public and private landowners and other stakeholders to promote conservation of the Atchafalaya Basin with science-driven decision making.

This agreement is to recognize the value of the public service that TNC is voluntarily undertaking in furtherance of its internal mission and goals, and to identify areas that the ABP can provide assistance to TNC as part of its mission, and to illuminate the resulting public benefit by the mutual collaboration of the two entities on matters affecting the Atchafalaya Basin.

**III. ABP AGREES TO:**

1. Consider environmental sustainability concepts suggested by TNC for incorporation into the conceptualization, planning, construction, execution, and evaluation of projects within the Atchafalaya Basin.
2. Provide any publicly available data to TNC in support of its development of scientific evaluation of the state of the Atchafalaya Basin, and the development of modeling tools related thereto.
3. Collaborate with TNC to provide public information that will promote conservation and enhancement of the resources of the Atchafalaya Basin.

4. Work with TNC to secure funding for ABP projects that have been approved via the Annual Plan process through the TAG, the Research and Promotion Board (RPB), CPRA, and the Louisiana Legislature for the construction of hydrological restoration elements in designated Water Management Units (e.g. East Grand Lake). ABP and TNC will also work to secure additional matching funds for these ABP projects through grants and other funding mechanisms (e.g. North American Wetland Conservation Council).
5. Coordinate with TNC to unify grant funds and ABP restoration funds to maximize impact of number of installed hydrological restoration features on approved ABP projects on TNC lands, and adjacent tracts owned by Louisiana Division of State Lands.

**IV. TNC AGREES TO:**

1. As appropriate and subject to its internal policy regarding confidential information, contribute pertinent scientific and conservation planning information and documents to ABP for its activities affecting the Atchafalaya Basin for distribution to the public;
2. To assist ABP in gathering of information related to conservation, restoration and enhancement (where possible) of the natural habitat of the Atchafalaya Basin.
3. Assist ABP with dissemination of information to the public by supporting public outreach and collaborating on stakeholder involvement and engagement efforts with regard to its programs in the Atchafalaya Basin.
4. Assist ABP with regard to identification and development of sustainable sources of funding for conservation, preservation, and restoration projects in the Atchafalaya Basin.
5. Assist ABP by providing timely and cogent scientific evaluation of proposed projects in the Atchafalaya.
6. Contribute grant writing expertise and coordination to leverage ABP funding with other programs in order to expand restoration capacity in the Basin.

**V. THE PARTIES AGREE TO:**

1. Collaborate to the extent practicable, on joint development of scientific knowledge with respect to the ecosystems, hydrology, and wildlife habitat of the Atchafalaya Basin.
2. Promote and advance the cause of policies that under scrutiny of scientific examination demonstrate real or potential improvement to the Atchafalaya Basin.
3. Collaborate to the extent practicable to leverage funding for hydrological restoration and land acquisition in the Atchafalaya Basin.

**VI. MUTUAL UNDERSTANDING.** It is mutually understood and agreed by and between the parties that:

1. PUBLIC RECORDS. Any records or information furnished to the ABP under this instrument are subject to the Louisiana Public Records Law, La. R.S. 44:1, et. seq.
2. MODIFICATION. Modifications within the scope of the instrument shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed.
3. PARTICIPATION IN SIMILAR ACTIVITIES. This instrument in no way restricts the ABP or TNC from participating in similar activities with other public or private agencies, organizations, and individuals.
4. TERM AND TERMINATION. This Agreement shall be in effect from the latest date of execution by a party, and shall continue until modified or terminated. Either party may terminate this instrument, in whole or in part, at any time, upon 60 days prior written notice to the appropriate principal contact of the other party.
5. FUNDING. Nothing in this agreement shall be interpreted as authorization for the expenditure of funds, or as support for any demand for the reimbursement for any expenses.

6. PRINCIPAL CONTACTS. The principal contacts for this instrument are:

**Atchafalaya Basin Program**

Don Haydel, Director  
Atchafalaya Basin Program  
Louisiana Department of Natural Resources  
P.O. Box 94396  
Baton Rouge, La. 70804-9396

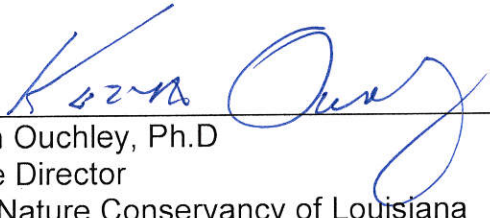
**The Nature Conservancy**

James Bergan, Director of Freshwater and Wetland Conservation  
The Nature Conservancy  
P.O. Box 4125  
Baton Rouge, La 70821

VII. Effective date. This agreement shall be effective on the latest date signed below.

  
\_\_\_\_\_  
Stephen Chustz  
Secretary  
Louisiana Department of Natural Resources

Date: 12/17/2015

  
\_\_\_\_\_  
Keith Ouchley, Ph.D  
State Director  
The Nature Conservancy of Louisiana

Date: 12/17/15

  
\_\_\_\_\_  
Don Haydel  
Director, Atchafalaya Basin Program

Date: 12/17/15