

August 23, 2019

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Via E-mail to: Col. Stephen Murphy; James Little, james.little@usace.army.mil

Re: Follow-up regarding ABK Notices of Potential Permit Violations of the Bayou Bridge Pipeline

Dear Colonel Murphy and Mr. Little,

On May 9, 2018, June 1, 2018, and January 4, 2019, Atchafalaya Basinkeeper (“ABK”) and Healthy Gulf (formerly Gulf Restoration Network) sent a series of letters to the New Orleans District of the Corps, identifying potential permit violations by Bayou Bridge Pipeline, LLC in the construction of its 162-mile crude oil pipeline across jurisdictional wetlands in the Atchafalaya Basin. These notice letters identified potential violations of the § 404 permit issued by the Corps (MVN 2015-02295-WII) ranging from failure to implement adequate erosion/siltation control measures to unpermitted blockages and spoil piles. *See* Notice Letters, attached hereto.

Following each letter, Brad Guarisco with the Corps’ Surveillance and Enforcement Section promptly responded by email stating that the information would be shared with the Project Manager associated with the permit, Mr. James Little, for compliance review. On January 4, 2019, Mr. Guarisco responded to the third notice letter by email, again reiterating that it was shared with the Project Manager, Mr. Little, and further explaining the limitations of sharing information involving open enforcement actions, beyond informing interested persons whether an enforcement action is open and pending. In response, on January 7, 2019, ABK further inquired by email to Mr. Guarisco and Mr. Little for clarification as to the availability of information to the public and specifically requested “whether there is an open and pending enforcement action with respect to Bayou Bridge Pipeline, LLC’s permits to construct in the Basin” explaining that ABK was “simply dismayed that some of the harms we’ve identified have continued for many months without any observed abatement.” *See* January 2019 emails attached hereto.

On July 31, 2019, after receiving no additional response after our January email exchange with the Corps and no response from Mr. Little, Atchafalaya Basinkeeper sent a follow up email to Mr. Little directly requesting information regarding ABK's three notice letters and whether the Corps had information that it could share regarding any enforcement actions pertaining to the now operational pipeline project. On August 9, 2019, Mr. Little stated via email that "in response to your 31 July 2019 inquiry, we will conduct a post-construction compliance inspection" also vaguely indicating that "compliance enforcement is on-going". On August 12, 2019, Basinkeeper sought additional clarification as to whether the Corps had inspected and/or initiated a compliance action during construction, but ABK has not yet received a response from Mr. Little. *See* July-August 2019 emails attached hereto. What is most concerning in this exchange is that post-construction compliance inspections are incapable of rectifying the most egregious potential permit violations ABK observed, documented and shared with the Corps. These harms that were ongoing throughout construction, particularly during high water, may have resulted in irreparable damage to the surrounding areas, including unmitigated sediment deposition into interior swamps.

ABK has repeatedly raised its concerns regarding the Corps' sporadic enforcement in the Atchafalaya Basin. In our original comments to the proposed pipeline permit, ABK argued that the history of noncompliance and lack of enforcement has plagued the Basin, causing decades of harm and degradation. In consideration thereof, ABK continued to air its concerns as to whether the Corps has the capacity to adequately monitor and enforce its permits. The Corps responded in claiming that "the Regulatory Branch in fact does have means to access the pipeline ROW to inspect work as it is proceeding and/or after project completion." *See* Memorandum for Record, MVN 2015-02295-WII, Bayou Bridge Pipeline, LLC, at 23 (December 14, 2017). In fact, the Corps did little more to dispel the many concerns raised by ABK and others with respect to its long-standing failure to enforce Section 404 permit conditions, and the impacts these failures have on newly permitted activities. Even if the Corps does in fact have the capacity to enforce, it has done little to show any willingness to do so or to work with the public to address these concerns.

At a minimum, the individuals and organizations that are in the field, monitoring the permitted activities, witnessing the damage, and reporting back to the regulatory agencies deserve a modicum of respect. ABK has worked diligently to monitor the construction of this pipeline to ensure permit compliance and report any observations that may suggest noncompliance to the Corps. However, despite acknowledgement of receipt of our notice letters, the Corps has made little effort to engage and inform ABK regarding its reported observations and concerns. Moreover, the Corps' response to the myriad enforcement and permit compliance concerns raised in comments during the permitting process for this particular project is woefully inadequate. Despite the Corps' alleged capacity and means to monitor permit compliance in the Basin, capacity to enforce and willingness to enforce are two entirely distinct concepts.

The agency's conduct throughout this particular pipeline project, and its unwillingness to communicate with ABK after it went to great lengths to share potentially violative information with the Corps perpetuates the distrust articulated during this project's comment period. Furthermore, if the agency has failed to act despite receiving information identifying permit compliance, it is creating a dangerous, unsustainable precedent that signals to permittees and unpermitted actors alike that there is no enforcement in the Basin, and it is incentivizing noncompliance and harm to the local environment and communities. This one example legitimizes

the many enforcement concerns raised, and results in further loss of respect for the efficacy of the regulators, and perpetuates the loss of trust for the entire permitting process, the impact of public participation in that process, the agencies themselves and the its duties to protect Louisiana's jurisdictional wetlands. Louisiana, its communities and environment deserve better.

Respectfully Submitted,



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Via email and regular mail

May 9, 2018

Re: Notice of Potential Permit Violations, Bayou Bridge Pipeline, LLC (MVN 2015-02295-WII)

Dear Mr. Guarisco,

Atchafalaya Basinkeeper, Gulf Restoration Network and the Louisiana Crawfish Producers Association-West submit this Notice of Potential Permit Violations to the Corps' Regulatory Branch- Enforcement Section, identifying potential ongoing violations by Bayou Bridge Pipeline, LLC of the § 404 permit issued by the Corps on December 14, 2017 (MVN 2015-02295-WII).

The aforementioned organizations have identified potential ongoing permit violations during monitoring flights and boat-trips on both the East and West sides of the Basin between February and April, 2018. Following the Fifth Circuit's order staying District Court Judge Shelly Dick's February 23, 2018 order enjoining construction in the Basin, construction resumed on elevated ground on both the west and east sides of the Atchafalaya River. These areas have been inaccessible by boat since March. However, after a recent monitoring flight over the Basin, we can confirm that construction clearing has resumed in these areas of elevated ground on either side of the Atchafalaya River. Pipeline construction began in January 2018 and continued up Judge Dick's February 23rd order enjoining all construction in the Atchafalaya Basin. The below-described potential permit violations include possible construction violations identified before Judge Dick's injunction order, and after the appellate court's order staying the injunction pending appeal.

Monitoring Reports: February – April, 2018

February 27, 2018

On February 27, 2018, Atchafalaya Basinkeeper inspected the Bayou Bridge pipeline right-of-way on the west side of the Basin. From the West Atchafalaya Basin Levee moving east along the corridor to approximately 0.5 miles east of Bayou L'Embarras, Basinkeeper found that a total of 3.7 miles had been cleared. Basinkeeper observed signs of channel trenching and spoil piles on the north side of the right-of-way, from Bayou L'Embarras continuing one mile west along the corridor, without gaps required by the permit. U.S. Army Corps of Engineers Permit # MVN-2015-02295-WII to Bayou Bridge Pipeline, LLC, at 5, special condition No. 20 (Dec. 14, 2017) ("the permittee shall maintain an approximate 50 foot gap for approximately every 500 feet of

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Atchafalaya Basinkeeper, Gulf Restoration Network and Louisiana Crawfish Producers Association-West

temporary side cast material resulting from pipeline trench activities.”). The spoil pile without gaps also blocks navigation in violation of special condition No. 9 to the permit. *Id.* at 4.



The above two photos were taken by Dean Wilson on Feb. 27, 2018 on the west side of the Basin. These photos were taken from his boat (at 30.1439417, -91.63122222222222) facing north-east and north, depicting the spoil piles on the north side of the Bayou Bridge pipeline right-of-way.

March 2, 2018

On March 2, 2018, during an overflight of the Basin, Gulf Restoration Network identified blockages from pipeline construction at Crocodile Bayou (crossing the Bayou Bridge pipeline right-of-way 0.7 miles west of Bayou L'Embarras, at the following coordinates: at 30.143999, -91.637619). GRN noted the tread marks on the spoil pile located at Bayou L'Embarras extending one (1) mile west into Haha Bay, crossing Crocodile Bayou and Bay Barron, noting its apparent use as a road (see photo above from Feb. 27, 2018 monitoring boat trip confirming the presence of tread marks on the spoil pile).

Like ABK, GRN also identified that Bayou Bridge failed to create gaps in this spoil pile, in violation of conditions No. 9 and No. 20 of its Section 404 permit. *BBP § 404 Permit*, at 4, 5.

GRN notified the Corps of these concerns and potential violations via email on March 5, 2018.

March 25 & April 7, 2018

On both March 25 and April 7, 2018, Atchafalaya Basinkeeper inspected the Bayou Bridge pipeline right-of-way on the east side of the Basin. In the areas along the corridor accessible by boat, Basinkeeper observed no pipeline construction. Basinkeeper measured the water depth at the following locations:

1. At the landing area at the Gulf Intracoastal Waterway next to the Eastern Atchafalaya Guide Levee (coordinates: 30.09087222222222, -91.31093055555556)

The water depth on March 25 at this location was 46 5/8 inches (3.89 feet)

The water depth on April 7 at this location was 6 inches

Basinkeeper noticed a strong current from the GIWW, a significant source of sediment, moving into the right-of-way due to the absence of trees that would slow down the current.

2. At the end of the cleared right-of-way on the east side of the Basin (coordinates: 30.09021388888886, -91.35345000000001)

The water depth on March 25 at this location was 110.5 inches (9.21 feet)

The water depth on April 7 at this location was 71 inches (5.91 feet)

The elevated water level raised concerns regarding construction in the Basin due to the enhanced capacity of the pipeline trench to channel high-volumes of sediment-laden water into the interior of the Basin, distributing sediment into productive swamps, elevating the natural ground and disrupting the hydrology of these areas. Construction during high water exacerbates this process, and the inability to employ erosion/siltation protection measures (as outlined in special condition

No. 21 to the permit) during high water makes trenching and spoil piling along the corridor a threat to water quality.

April 17, 2018

On April 17, 2018, during another overflight of the Basin, Gulf Restoration Network identified new clearing areas adjacent to the Atchafalaya River. On the west side of the River, 1300 feet has been cleared. The areas previously cleared by Bayou Bridge before February 23, 2018, were under high water.

On the west side of the Basin, GRN identified that, despite GRN's March 5, 2018 complaint to the Corps, the spoil pile from Bayou L'Embarras west to Haha Bay still lacks the required gaps in accordance with applicable permit conditions. (*Photo below taken by GRN's Scott Eustis on April 17, 2018 Basin overflight*).



At this time, high water overtopped much of the spoil near Haha Bay.

Additionally, the previously-identified blockage at Crocodile Bayou likewise remains.

On the east side of the Basin, Bayou Bridge has cleared an additional 3280 feet from Lake Chicot to where Coon Trap empties into the pipeline right-of-way.

The high water covers the areas previously cleared on the east side and a strong current is moving into the right-of-way, carrying significant amounts of sediments into the interior swamps. The impact is an adverse alteration to the hydrology of the area, impacting wildlife, access/navigability and the management of flood waters.

April 29, 2018

In an email to the Corps on February 20, 2018, Basinkeeper notified the enforcement section of a blockage consisting of discarded bushes, branches and other debris at Bayou Set on the east side of the Bayou Bridge Pipeline right-of-way (coordinates where the blockage was identified: 30.0904944444444, -91.327). Upon later inspection, the blockage identified by Basinkeeper had been removed. However, recent travels along this portion of the right-of-way reveal that Bayou Set is filling in with sediments at an alarming rate. The exacerbation of sediment into this navigable Bayou, used by recreationists and fishermen alike, can potentially be contributed to, at least in part, the clearing of the pipeline right-of-way between Bayou Set and the GIWW, a significant sediment source.

On Sunday April 29, Dean Wilson of Basinkeeper traveled along the right-of-way and through Bayou Set. On this day, the water stage at Bayou Sorrel was 9.4' and Wilson's lower unit outboard engine was lifting mud were Bayou Set crosses the cleared right-of-way. (Coordinates: 30.09049444, -91.32694444). Before clearing of the pipeline right-of-way began for this pipeline project, Bayou Set was navigable at a stage under 6' at the Bayou Sorrel gage. Based on his experience and knowledge traveling through Bayou Set for many years, and based on his recent observations in the area, according to Mr. Wilson, where Bayou Set crosses the pipeline right-of-way, it appears to have accumulated over three feet of silt since construction began. Cypress swamps in the area are filling in more rapidly. Special condition No. 21 to the permit requires siltation control measures to be employed during construction. *BBP § 404 Permit*, at 5. Such reasonable measures should have been employed to prevent the filling in at Bayou Set and the surrounding swamps.

Applicable Permit Conditions

The above-identified blockages, failures to create gaps in the spoil piles and lack of erosion/siltation control measures present potential ongoing violations by Bayou Bridge Pipeline, LLC of its Section 404 permit conditions.

Special condition No. 20 of the §404 permit states: "As to avoid potential disruption and impediment to natural watercourses or hydrologic exchange along the authorized pipeline route during construction, to the greatest extent practicable, the permittee shall maintain an approximate 50 foot gap for approximately every 500 feet of temporary side cast material resulting from pipeline trench activities." *BBP § 404 Permit*, at 5.

Special condition No. 9 of the §404 permit provides that "[t]he permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States." *BBP § 404 Permit*, at 4.

Special condition No. 21 requires the permit to implement “adequate erosion/siltation control measures to ensure that no sediment or other activity related debris is allowed to enter waters of the state.” *BBP § 404 Permit*, at 5. Large amounts of debris, including tree clippings and large branches, have littered the corridor as a result of tree-clearing along the pipeline right-of-way on both sides of the Basin. Some of the debris has blocked waterways, including Crocodile Bayou as noted above, while other tree-clearing debris remained in the right-of-way, impeding navigation. The company does not appear to have implemented control measures to clean up the clearing debris or prevent debris from entering the waterways.

Additionally, when the water began its annual rise in the Basin, the undersigned organizations failed to identify any measures implemented by the company to ensure that sediment would not be allowed to enter the waters. As the water level began to rise in the weeks leading up to Judge Dick’s February 23rd injunction order, we failed to observe protection measures employed to prevent erosion or siltation related to the ongoing presence of un-gapped piled spoil along the north side of the corridor on the west side of the Basin. Now, the water has overtopped the spoil. We submit that the company was required to implement some degree of “adequate erosion/siltation control measures” with regard to the spoil piles to protect the waters from additional sediments in compliance with special condition No. 21. Similarly, where Bayou Set is filing in with sediments, proper siltation control measures employed in advance of the annual water rise in the Basin could have protected the navigability of this Bayou and the surrounding cypress swamps from the exacerbated sedimentation it is now experiencing.

Despite repeated assurances from the Corps and the company of the minor impact construction and clearing will have on the Basin, it is evident from monitoring efforts on the ground that tree-clearing, channel dredging and trenching, spoil piles and blockages have very real, significant adverse effects on the Basin’s ecosystems and hydrology. The temporary spoil piles, without the required gaps, disrupt the natural watercourse, capture sediments exacerbating accretion in these areas, and block navigation, commercial and recreational access of our members. Especially during the current high water season in the Basin, these channels contribute to the significant movement of suspended sediments into interior swamps, as observed at Bayou Set and surrounding cypress swamps.

In light of the identified potential permit violations by Bayou Bridge Pipeline, LLC, we request that the Corps’ enforcement section take proper action to investigate and enforce its §404 permit issued on December 14, 2018 to Bayou Bridge. *See* 33 U.S.C. § 1319. Continued non-compliance with its permit will result in ongoing harms, disrupting the distribution of sediments, impeding navigation and impairing water quality across the Atchafalaya Basin.

Respectfully submitted by,



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Notice of Potential Permit Violations (MVN 2015-02295-WII)
Atchafalaya Basinkeeper, Gulf Restoration Network and Louisiana Crawfish Producers Association-West

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On behalf of the following:

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Coastal Wetland Specialist
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Supplemental Notice of Potential Permit Violations (MVN 2015-02295-WII)
Atchafalaya Basinkeeper and Gulf Restoration Network

Brad Guarisco
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Via email and regular mail

June 1, 2018

**Re: Supplemental Notice of Potential Permit Violations, Bayou Bridge Pipeline, LLC
(MVN 2015-02295-WII)**

Dear Mr. Guarisco,

Atchafalaya Basinkeeper and Gulf Restoration Network submit this Supplemental Notice of Potential Permit Violations, in addition to our original Notice letter sent on May 9, 2018, to the Corps' Regulatory Branch- Enforcement Section, identifying potential ongoing violations by Bayou Bridge Pipeline, LLC of the § 404 permit issued by the Corps on December 14, 2017 (MVN 2015-02295-WII).

Atchafalaya Basinkeeper has identified additional, potential permit violations during on-site boat trips on the eastern portion of the Bayou Bridge Pipeline right-of-way in May 2018. As indicated in our Notice letter of May 9, 2018, following the Fifth Circuit's order staying District Court Judge Shelly Dick's February 23, 2018 order enjoining construction in the Basin, construction resumed on elevated ground on both the west and east sides of the Atchafalaya River. Construction has, to our knowledge, remained halted on inundated portions of the right-of-way closer to the east and west guide levees. However, on May 31, 2018, Basinkeeper observed the presence of some machinery and activity on the east side as described in further detail below. The potential permit violations discussed below include possible construction violations that, although identified in May 2018, may have been in place since before Judge Dick's injunction order in light of the high water levels that have permeated the Basin since late February 2018.

Monitoring Report:

On May 31, 2018, Atchafalaya Basinkeeper inspected the Bayou Bridge pipeline right-of-way on the east side of the Basin from the Gulf Intracoastal Waterway (GIWW) west to the end of the cleared right-of-way. We observed one excavator moving boards from a boardwalk into large piles at the landing area at the GIWW next to the Eastern Atchafalaya Guide Levee (approximate coordinates: 30.0908722222222, -91.3109305555556).

Crawfish season is at its height right now in the Basin. Trenching while the corridor remains inundated (as it is still to this date) will have significant impacts on water quality, impairing the fisheries that commercial fishermen are now actively fishing. Trenching and the piling of temporary spoil along the right-of-way, at this time, would also impact the navigability of these areas and impede upon the fishers ability to access these productive fishing grounds. The impacts

to water quality and navigability from trenching and piling temporary spoil along the right-of-way on the east side will harm crawfish production and commercial crawfishing interests in this area during this window of high productivity. Trenching will also accelerate siltation rates throughout the area. Thousands of wader birds will soon migrate into this area on the east side near the corridor and Lake Zadrack specifically. Active trenching and construction in this area while the water remains high could detrimentally impact these migratory species, their habitat and food sources.

On May 31, Basinkeeper measured the width of the construction right-of-way at the following locations on the east side of the Basin:

1. At the landing area at the Gulf Intracoastal Waterway next to the Eastern Atchafalaya Guide Levee (coordinates: 30.09087222222222, -91.31093055555556) – the width of the right-of-way clearing is **186.9 feet**
2. Moving westerly along the right-of-way at ROW site #1 (coordinates: 30.090886, -91.315594) – the width of the construction right-of-way is **89 feet**
3. Continuing west along the right-of-way at ROW site #2 (coordinates 30.090565, -91.318053) – the width of the construction right-of-way is **81.9 feet**

The Corps' Permit authorizes the pipeline construction activities in accordance with the attached drawings which indicate that the construction right-of-way width in wetlands shall not exceed 75 feet. *See* U.S. Army Corps of Engineers Permit # MVN-2015-02295-WII to Bayou Bridge Pipeline, LLC, at 1, (Dec. 14, 2017) (hereinafter, "BBP § 404 Permit").

On May 31, Basinkeeper also measured the water depth at the following locations:

1. At the landing area at the Gulf Intracoastal Waterway next to the Eastern Atchafalaya Guide Levee (coordinates: 30.09087222222222, -91.31093055555556)

The water depth on May 31, 2018 at this location was: no water

Comparatively, the water depth on March 25 at this location was 46 5/8 inches (3.89 feet), and on April 7 at this location the water depth was 6 inches

2. At the end of the cleared right-of-way on the east side of the Basin (coordinates: 30.090213888888886, -91.35345000000001)

The water depth on May 31, 2018 at this location was 22.5 inches (1.87 feet)

Comparatively, the water depth on March 25 at this location was 110.5 inches (9.21 feet), and on April 7 at this location the water depth was 71 inches (5.91 feet)

The elevated water level, although now beginning to recede, continues to raise concerns regarding construction in the Basin due to the enhanced capacity of the pipeline trench to

channel high-volumes of sediment-laden water into the interior of the Basin, distributing sediment into productive swamps, elevating the natural ground and disrupting the hydrology of these areas. Construction during high water exacerbates this process, and the failure to employ erosion/siltation protection measures during high water makes trenching and spoil piling along the corridor a threat to water quality.

On May 31, 2018 the water stage at Bayou Sorrel was 6.7 feet. Although the water level is slowly beginning to recede, at its current level, these areas should be navigable without issue. Before clearing of the pipeline right-of-way began for this pipeline project, Bayou Set was navigable for Basinkeeper's boat at a stage under 6 feet at the Bayou Sorrel gage. As described in our May 9, 2018 Notice letter, Dean Wilson of Basinkeeper traveled along the right-of-way and through Bayou Set on April 29, 2018. On this day, the water stage at Bayou Sorrel was 9.4 feet and Wilson's lower unit outboard engine was lifting mud were Bayou Set crosses the cleared right-of-way. (Coordinates: 30.09049444, -91.32694444). On May 31, 2018, this Bayou was not navigable by the same boat.

As noted in our May 9, 2018 Notice letter to the Corps, an issue of grave concern is the accelerated rate of sedimentation in these areas and the resulting impacts to the hydrology, particularly on the east side of the Basin. As previously noted, within the Williams Canal, where Bayou Set and the Williams Canal intersect along the pipeline right-of-way, we have observed accelerated sedimentation. The exacerbation of sediment into this navigable Bayou, used by recreationists and fishermen alike, is a consequence of the clearing of the pipeline right-of-way between Bayou Set and the Gulf Intracoastal Waterway, a significant sediment source. Cypress swamps in the area are filling in more rapidly. And while Fishermen are intentionally prop washing the Bayou to aid in navigation and remove some of the accretion, our tour boat that could easily navigate the Bayou at a water depth of under 6 feet just last year cannot navigate the Bayou this week at a water stage of 6.7 feet. Special condition No. 21 to the permit requires siltation control measures to be employed during construction. *BBP § 404 Permit*, at 5. Such reasonable measures should have been employed to prevent the filling in at Bayou Set and the surrounding swamps. Additionally, the permit prohibits more than minimal damage to the hydrology of these wetlands. But as we are observing on the ground, these areas surrounding the construction activities are being significantly and negatively impacted.

Applicable Permit Parameters & Conditions

The above-identified lack of erosion/siltation control measures, excessive width of the cleared right-of-way and the hydrologic alternations as a result of construction activities present potential, additional ongoing violations by Bayou Bridge Pipeline, LLC of its Section 404 permit conditions.

General condition No. 2 states in pertinent part: "You must maintain the activity authorized by this permit in good condition and in conformance with the terms of this permit." *BBP § 404 Permit*, at 1.

As indicated above and in our May 9, 2018 Notice letter, Bayou Bridge is neither maintaining the activity in good condition in light of the exacerbated sedimentation in areas on the east side

of the Basin, ungapped spoil piles on the west side of the Basin, and the width of the construction right-of-way width exceeding permit limits, nor is the company acting in conformance with the terms of the Permit.

Special condition No. 9 provides that “[t]he permitted activity must not interfere with the public’s right to free navigation on all navigable waters of the United States.” *BBP § 404 Permit*, at 4.

Exacerbated sedimentation and distribution of sediments into navigable bayous, canals and other waterways due in part to Bayou Bridge’s failure to implement adequate control measures to protect hydrologic conditions and depth interferes with the public’s right of free navigation in these previously navigable areas. Trenching while crawfish season is ongoing will interfere with the public’s right of free navigation and interstate commerce.

Special condition No. 12 provides in pertinent part: “The authorized activities *must not* cause more than minimal changes to the existing hydrologic conditions and flow characteristics in wetland areas or cause more than minimal degradation of water quality of any stream.” *BBP § 404 Permit*, at 4. (emphasis added).

Again, as indicated in above, construction activities have significantly altered the existing hydrologic conditions at Bayou Set and the Williams Canal along the east side of the pipeline right-of-way.

Special condition No. 13 states in pertinent part that “[a]ll work *shall* be done in accordance with the approved plans and confined to the permitted work area represented within the attached drawings.” *BBP § 404 Permit*, at 4. (emphasis added). In conjunction, special condition No. 19 requires the permittee to limit clearing, grading, dredging and filling to areas contained within the specified construction right-of-way and identified temporary work spaces. *Id.* at 5.

Although construction plans limit the construction right-of-way width in wetlands to 75 feet, as recently observed, at least on the east side of the Basin, the right-of-way exceeds the parameters provided in the approved plans and drawings attached to and incorporated in the Permit.

Special condition No. 21 requires the permit to implement “adequate erosion/siltation control measures to ensure that no sediment or other activity related debris is allowed to enter waters of the state.” *BBP § 404 Permit*, at 5.

We have again failed to identify any temporary sediment control measures or barriers (silt fences, straw bales, etc.) implemented by the company to protect pre-project hydrologic conditions and flow characteristics around the right-of-way in the Basin. These measures were particularly important in light of the annual water level rise in the Basin that began in late February 2018 and persists to this date.

Similarly, where Bayou Set, the Williams Canal and surrounding swamps are filling in with sediments, proper siltation control measures, such as building a berm where the right-of-way and

Supplemental Notice of Potential Permit Violations (MVN 2015-02295-WII)
Atchafalaya Basinkeeper and Gulf Restoration Network

Gulf Intracoastal Waterway intersect, employed in advance of the annual water rise in the Basin could have protected the navigability of this Bayou and the surrounding cypress swamps from the exacerbated sedimentation it is now experiencing. However, it is not too late to employ these measures now to mitigate this ongoing harm.

Despite repeated assurances from the Corps and the company of the minor impact construction and clearing will have on the Basin, and the many claims by Bayou Bridge that its construction activities comply with permit requirements, it is evident from monitoring efforts on the ground that tree-clearing, channel dredging and trenching, spoil piles and blockages have very real, significant adverse effects on the Basin's ecosystems and hydrology.

Especially during the annual high water season in the Basin, these channels and clearing of trees contribute to the significant movement of suspended sediments into interior swamps, as observed thus far at Bayou Set, the Williams Canal and surrounding cypress swamps.

In light of the identified potential permit violations by Bayou Bridge Pipeline, LLC in our May 9, 2018 Notice letter and June 1, 2018 Supplemental Notice letter, we respectfully request that the Corps' enforcement section consider the following actions:

1. Continue to inspect the locations identified in both Notice letters to ascertain whether Bayou Bridge Pipeline, LLC has complied with the terms of the Permit (*BBP § 404 Permit*, at 2, General condition No. 6);
2. Reevaluate the permit decision warranted under the circumstances, including alleged failure to comply with the terms and conditions of the Permit, and the introduction of significant new information regarding the accelerated rate of sediment distribution and hydrologic alteration in the project area (*BBP § 404 Permit*, at 3, #5(a), (c)); and
3. Suspend, revoke or enforce the Permit in accordance with procedures contained in 33 C.F.R. §§ 325.7, 326.4, 326.5, including costs for corrective measures. (*BBP § 404 Permit*, at 3).

Continued non-compliance with the Permit will contribute to the ongoing harms, continually disrupting the distribution of sediments, impeding navigation and impairing water quality and wildlife habitat across the Atchafalaya Basin. We appreciate your time and consideration of these concerns.

Respectfully submitted by,



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Supplemental Notice of Potential Permit Violations (MVN 2015-02295-WII)
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Atchafalaya Basinkeeper

Scott Eustis
Coastal Wetland Specialist
Gulf Restoration Network

Third Notice of Potential Permit Violations (MVN 2015-02295-WII)
Atchafalaya Basinkeeper and Gulf Restoration Network

Brad Guarisco
Chief Surveillance and Enforcement Section
Regulatory Branch
New Orleans District
U.S. Army Corps of Engineers
Brad.A.Guarisco@usace.army.mil
Via email and regular mail

January 4, 2019

Re: Third Notice of Potential Permit Violations, Bayou Bridge Pipeline, LLC (MVN 2015-02295-WII)

Dear Mr. Guarisco,

Atchafalaya Basinkeeper and Gulf Restoration Network submit this Third Notice of Potential Permit Violations to the Corps' Regulatory Branch - Enforcement Section, identifying potential ongoing violations by Bayou Bridge Pipeline, LLC of the § 404 and § 408 permits issued by the Corps on December 14, 2017 (MVN 2015-02295-WII).

Atchafalaya Basinkeeper has identified additional, potential permit violations during on-site boat trips on the eastern portion of the Bayou Bridge Pipeline right-of-way, and monitoring overflights across the Basin in July – December, 2018. These violations include existing observations previously shared with the agency in our two prior Notice Letters, dated May 9 and June 1, 2018, but also identify additional potential permit violations for the Corps to address.

Monitoring Report:

On October 9, 2018, Atchafalaya Basinkeeper (“Basinkeeper”) inspected approximately 5 miles of the Bayou Bridge pipeline right-of-way on the east side of the Atchafalaya Basin, moving west from the Gulf Intracoastal Waterway (“GIWW”) by the Eastern Atchafalaya Guide Levee. Basinkeeper observed construction in high water, insufficient gaps in spoil, and number of dammed/blocked waterways. On October 12, 2018, Basinkeeper sent via email notification of these observations to the New Orleans District Corps' Enforcement Section, including corresponding coordinates and photographs taken by Dean Wilson, Executive Director and Basinkeeper, during the October 9, 2018 monitoring trip. The October 12, 2018, email to the Corps is attached hereto as Exhibit A. On October 18, 2018, Basinkeeper sent a subsequent email to the Corps identifying that the blockage at Bayou Set was partially removed but that the waterway remained impassable. The correspondence included corresponding coordinates and a photograph taken on that day by Dean Wilson. The October 18, 2018, email to the Corps is attached hereto as Exhibit B.

On December 7, 2018, Atchafalaya Basinkeeper inspected the Bayou Bridge pipeline right-of-way from the GIWW along the eastern levee for about 8 miles west to Flat Lake Pass. On this date the water stage at Bayou Sorrel was 7.16' and rising. During this monitoring trip we observed four excavators actively digging in the high water. While these excavators were digging (as seen in Figures A-D below), we observed no erosion or sediment control measures in place, the mud was flowing freely into the wetlands and diesel oil presumably from the excavators could be seen as a sheen on the water.



Figure A: This photo was taken by Dean Wilson during the monitoring trip in the Basin on December 7, 2018. This photo was taken approximately 1.5 miles east of Flat Lake Pass. Approximate coordinates 30.08572778, -91.41138889. Figures A-C depict active construction in the area and a lack of erosion or sediment control measures in place.



Figure B: This photo was taken by Dean Wilson during the monitoring trip in the Basin on December 7, 2018. This photo was taken in the same location as Figure A. This photo depicts active construction in the area and again, a lack of erosion or sediment control measures in place.



Figure C: This photo was taken by Dean Wilson during the monitoring trip in the Basin on December 7, 2018. This photo was taken in the same location as Figures A and B above. This photo more clearly depicts the discharge of mud from construction.



Figure D: This photo was taken by Dean Wilson during the monitoring trip in the Basin on December 7, 2018. This photo was taken approximately 0.8 of a mile west of Cross Bayou. Approximate coordinates: 30.08656111, -91.39194444. This photo depicts diesel sheen on the water.

The elevated water level continues to raise concerns regarding construction in the Basin due to the enhanced capacity of the pipeline trench to channel high-volumes of sediment-laden water into the interior of the Basin, distributing sediment into productive swamps, elevating the natural ground and disrupting the hydrology of these areas. Construction during high water exacerbates this

process, and the failure to employ erosion/siltation protection measures during high water makes trenching, spoil piling and construction along the corridor a threat to water quality and hydrology. Construction without adequate consideration of water level and the implementation of sediment control measures accelerates siltation rates throughout the area, impacting wildlife habitat and navigability as well.

From October 25, 2018 to December 26, 2018, the Carrollton gage for the Mississippi River exceeded 11.00 feet. *See Exhibit C* attached hereto. Construction during these high water events exacerbates the harms to water quality and surrounding areas as more sediment is distributed into interior swamps. To the best of our knowledge and observation, Bayou Bridge continued to construct during this time. On October 9, 2018, the water was rising in the Basin, and Basinkeeper observed construction, what appeared to be trenching, in the pipeline right-of-way east of the Atchafalaya River. On October 17, 2018, to the best of our knowledge and observation, Bayou Bridge was still constructing, digging the trench, in sections of the right-of-way east of the Atchafalaya River. On October 30, 2018, the Carrollton gage reading was at 11.55 feet, and to the best of our knowledge and observation, Bayou Bridge continued construction on the east side of the Basin. On December 7, 2018, four days after the Carrollton gage exceeded 11 feet, and five days before the Carrollton gage again exceeded 11 feet, we observed Bayou Bridge constructing its pipeline on the east side of the Atchafalaya Basin. On December 19, 2018, the Carrollton gage read 12.54 feet, and to the best of our knowledge and observation, Bayou Bridge continued to construct on the east side of the Basin, and appeared to be digging in the high water, with some of the temporary spoil exposed, but a majority of which was overtopped with high water.

As noted in our May 9, 2018 Notice letter to the Corps, our June 1, 2018 Supplemental Notice letter to the Corps, and again reiterated herein, an issue of grave concern is the accelerated rate of sedimentation in these areas and the resulting impacts to the hydrology, particularly on the east side of the Basin. The Corps' 404 permit prohibits more than minimal damage to the hydrology of these wetlands. But as we are observing on the ground, these areas surrounding the construction activities are being significantly and negatively impacted due to the observed, ongoing failure to use sediment control measures and constructing during high water.

Additionally, during the monitoring trip on December 7, 2018, Basinkeeper identified a blocked/dammed waterway on the east side of the Basin approximately 1.3 miles west of Cross Bayou. Figure E below depicts the blocked waterway.



Figure E: This photo was taken by Dean Wilson during the monitoring trip in the Basin on December 7, 2018. This photo was taken at the following approximate coordinates: 30.08608056, -91.39916667. This photo depicts a waterway dammed by pipeline construction in this area.

The Corps' Permit prohibits the activity from interference with the public's right of free navigation of *all* navigable waters of the United States. *See* U.S. Army Corps of Engineers Permit # MVN-2015-02295-WII to Bayou Bridge Pipeline, LLC, at 4, (Dec. 14, 2017) (hereinafter, "BBP § 404 Permit") (emphasis added). The addition of sediment into navigable waters, elevating the water bottom, and the blockages of waterways from construction activities and debris impedes navigation.

During the monitoring trip on December 7, 2018, Basinkeeper also observed the presence of trash and debris left behind in the construction right-of-way.



Figure F: This photo was taken by Dean Wilson during the monitoring trip in the Basin on December 7, 2018. This photo was taken at the following approximate coordinates: 30.08576944, -91.41333333. This photo depicts trash and debris in the construction right-of-way being carried by the current into the wetlands. The presence of trash presumably left behind from construction can be found in various places along the right-of-way.

Additionally, in several areas across the pipeline right-of-way, it appears that the pipeline may have been constructed in existing spoil banks. The presence of spoil banks in the pipeline right-of-way and the depth of the pipeline's construction in the Basin has been a cause for concern since the Corps first noticed the public of the project in 2016. It is well documented that spoil piles interfere with the disposition of sediment, water flow and navigation, resulting in harms to surrounding swamps, wildlife habitat and commercial and recreational interests in the Basin. We reiterate this concern today to request that the Corps investigate whether the pipeline has been buried at a sufficient depth so as to not interfere with future restoration projects as the Louisiana Department of Natural Resources raised during the public comment period¹, and so as to not make any pre-existing spoil banks permanent by laying pipe in the spoil and/or not at a sufficient depth below natural grade, which would not include any manmade spoil piles.

¹ U.S. Army Corps of Engineers Section 408 Permit Signed Permission Letter to Bayou Bridge Pipeline, LLC, at 11-12 (Dec. 14, 2017) (hereinafter, "BBP § 408 Permit").



Figure G: This Photo was taken by Dean Wilson on September 20, 2018. This photo was taken facing southeast along the pipeline right-of-way at approximately 30.11311944, -91.54972222. This photo depicts an existing spoil pile on the south side of the pipeline right-of-way, and pipeline markers on top of the spoil pile.

Applicable Permit Parameters & Conditions

The above-identified lack of erosion/siltation control measures, inadequate gaps in spoil and the hydrologic alterations as a result of construction activities, particularly during high water, present potential, additional ongoing violations by Bayou Bridge Pipeline, LLC of its Section 404 permit conditions.

General condition No. 2 states in pertinent part: “You must maintain the activity authorized by this permit in good condition and in conformance with the terms of this permit.” *BBP § 404 Permit*, at 1.

As indicated above and in our May 9 and June 1, 2018 Notice letters, Bayou Bridge is neither maintaining the activity in good condition in light of the exacerbated sedimentation in areas on the east side of the Basin, high water levels during construction and ungapped spoil piles on the west side of the Basin, nor is the company acting in conformance with the terms of the Permit.

Special condition No. 9 provides that “[t]he permitted activity must not interfere with the public’s right to free navigation on all navigable waters of the United States.” *BBP § 404 Permit*, at 4.

Exacerbated sedimentation and distribution of sediments into navigable bayous, canals and other waterways due in part to Bayou Bridge’s failure to implement adequate sediment control measures to protect hydrologic conditions and depth interferes with the public’s right of free navigation in these previously navigable areas. As noted above and shown in Figure E, construction of the pipeline has blocked waterways, impeding navigation and interfering with interstate commerce.

The New Orleans District of the U.S. Army Corps of Engineers authorized construction of the Bayou Bridge Pipeline pursuant to Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 408, provided that Bayou Bridge Pipeline, LLC complies with certain conditions, including Condition m as provided below:

Open excavations must be backfilled, and drilling operations ceased 5 days prior to anticipated landfall of any high river event, tropical storm or hurricane. A high river event is defined by Carrollton gage reading of +11 feet or higher. **No waiver will be granted.** *BBP § 408 Permit*, at 5.

As described *infra*, the Carrollton gage reading exceeded 11.0 feet on more than 45 days between October 25 and December 26, 2018. Construction during a high river event contributes to more movement of sediment, particularly without sediment control measures in place to mitigate. To date the water levels remain high and to our knowledge, no waiver has been granted nor has the Corps demanded that construction cease despite the Carrollton gage reading having surpassed 11.0 feet for over 45 days, nor for the several days leading up to the crest above 11.0 feet and the interim dates during which the gage read at or above 10.0 feet and rising. Per the above-referenced condition to the BBP § 408 Permit, open excavations **must** be backfilled and drilling operations ceased at least 5 days prior to any high river event. Therefore, construction should have ceased as early as October 20, 2018, and throughout the months following until the high river event was anticipated to recede, which has yet to occur. Any open trenches that were not backfilled on or before October 20, 2018, or any ongoing drilling operations after October 20, 2018, were in violation of this very important permit condition.

Special condition No. 12 provides in pertinent part: “The authorized activities *must* not cause more than minimal changes to the existing hydrologic conditions and flow characteristics in wetland areas or cause more than minimal degradation of water quality of any stream.” *BBP § 404 Permit*, at 4 (emphasis added).

Again, as indicated in above, construction activities have significantly altered the existing hydrologic conditions across the Basin. This is in large part due to allowance of construction during high water and the lack of sediment control measures employed during construction.

Special condition No. 13 states in pertinent part that “[a]ll work *shall* be done in accordance with the approved plans and confined to the permitted work area represented within the attached drawings.” *BBP § 404 Permit*, at 4 (emphasis added).

Special condition No. 20 provides that, “to avoid potential disruption and impediment to natural watercourses or hydrologic exchange along the authorized pipeline route during construction, to the greatest extent practicable, the permittee *shall* maintain an approximate 50 foot gap for approximately every 500 feet of temporary side cast material resulting from pipeline trench activities.” *BBP § 404 Permit*, at 5 (emphasis added).

Special condition No. 21 requires the permittee to implement “adequate erosion/siltation control measures to ensure that no sediment or other activity related debris is allowed to enter waters of the state.” *BBP § 404 Permit*, at 5.

Not also that Condition ss in the Section 408 Permit also requires the permittee to implement “temporary sediment control measures at the federal project and easement crossings, such as silt fences, to minimize the introduction of sediment into waterbodies during construction and minimize the movement of spoil and sediment from surface runoff during and after construction.” *BBP § 408 Permit*, at 10.

We have again failed to identify any temporary sediment control measures or barriers (silt fences, straw bales, etc.) put in place by the company to protect pre-project hydrologic conditions and flow characteristics around the right-of-way in the Basin. Moreover, in some areas there is a complete lack of gaps in the spoil of temporary side cast material, and in others (such as that detailed in the October 12, 2018 email to the Corps and attached hereto as Exhibit A) the gaps that are present do not comply with the requirements at special condition No. 20, blocking navigability and impairing water quality and sediment disbursement. These measures were particularly important in light of the excessive water levels the Basin has experienced from the months of October through December, 2018, as a result of rain-events in the Mississippi River Valley and local rainfall, in conjunction with the annual water rise.

Similarly, proper siltation control measures, such as building a berm where the right-of-way and Gulf Intracoastal Waterway intersect, employed in advance of the annual water rise in the Basin could have protected the navigability surrounding waterways and cypress swamps from the exacerbated sedimentation. At a minimum, the Corps should assess how to remediate the affected

areas to remove excessive sediment and restore pre-construction hydrology as required by the permits and accompanying Environmental Assessments.

Finally, there is concern that the pipeline may have been constructed into existing spoil piles at various points along the right-of-way in the Basin. The Environmental Assessment accompanying the Section 404 Permit contains the following applicable language:

In regards to the recommendations that the applicant not install the pipeline within existing spoil banks along the proposed ROW within the Atchafalaya Basin ..., the applicant has stated that the pipeline will be installed in a manner and to a sufficient depth so as to not disrupt natural water flows in the basin. ***The applicant is not proposing to install the pipeline within any of the spoil banks, but is proposing to install it 4 feet below natural grade and would thus not preclude future spoil bank removal projects.*** Also, the proposed project will not involve the placement of excavated material on existing spoil banks which parallel the pipeline right-of-way. All excavated materials placed in temporary spoil piles in the workspace will be replaced in the trench and the area restored to pre-construction contours, which will not exacerbate existing flow conditions or preclude future spoil bank restoration activities.

See U.S. Army Corps of Engineers, "Memorandum for Record" 404 Environmental Assessment, # MVN-2015-02295-WII (Dec. 14, 2017) (hereinafter, "BBP § 404 EA") (emphasis added).

However, despite such assurances from BBP that it will not install the pipeline within any existing spoil bank, we have observed pipeline markers on existing spoil (see Figure G *infra*) in areas particularly on the west side of the Atchafalaya Basin. In light of the many concerns raised during the permit comment period with respect to spoil piles and the depth of pipeline construction, it is important that the Corps investigate whether these assurances that the Corps relied on in making its determination of no significant impact and issuing the permit have in fact been followed.²

Despite repeated assurances from the Corps and the company of the minor impact construction and clearing will have on the Basin, and the many claims by Bayou Bridge that its construction activities comply with permit requirements, it is evident from monitoring efforts on the ground that tree-clearing, channel dredging and trenching, spoil piles and blockages, and construction in high water have very real, significant adverse effects on the Basin's ecosystems and hydrology.

In light of the identified potential permit violations by Bayou Bridge Pipeline, LLC in our May 9, 2018 Notice letter, June 1, 2018 Supplemental Notice letter, and January 4, 2019 Third Notice Letter, we respectfully request that the Corps' enforcement section consider the following actions:

1. Inspect the locations identified in all three Notice letters to ascertain whether Bayou Bridge Pipeline, LLC has complied with the terms of the Permit(s) (*BBP § 404 Permit*, at 2, General condition No. 6), or in the event Bayou Bridge Pipeline, LLC has failed to abide by such conditions, invalidate the authorization and permission or determine whether it has violated the law (*BBP § 408 Permit*, at 2, 7 and 8, Conditions b, dd, ff and jj);
2. Reevaluate the permit decision warranted under the circumstances, including alleged failure to comply with the terms and conditions of the Permits, and the introduction of significant new information regarding the accelerated rate of sediment distribution and hydrologic alterations in the project area (*BBP § 404 Permit*, at 3, #5(a), (c));

² Note that the Section 404 Permit provides at Special Condition no. 4 that "[t]he determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided." *BBP § 404 Permit*, at 3. Furthermore, the accompanying Environmental Assessment states that "[s]ignificant secondary and cumulative impacts are not anticipated ***provided*** the applicant adheres to the special conditions in the Department of the Army permit." *BBP § 404 EA*, at 58. (emphasis added). The Corps made assumptions of compliance in determining that the project would not result in more than minimal impacts to the health of the environment and public interest. To the extent that these conditions are not complied with, or the assumptions relied upon were not followed, including the depth of the pipeline or assurance not to construct in existing spoil, the impacts are significant. It is incumbent upon the Corps to investigate issues of noncompliance and take reasonable measures to address the resulting harms.

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3. Suspend, revoke or enforce the Permit in accordance with procedures contained in 33 C.F.R. §§ 325.7, 326.4, 326.5, including costs for corrective measures (*BBP § 404 Permit*, at 3);
4. Stop pipeline construction during the present high river event as required by condition m to the Section 408 Permit; and
5. Conduct a full assessment of the damage to the Atchafalaya Basin and require restoration of the damaged site(s) or other appropriate remedial action. (*BBP § 408 Permit*, at 2, Condition b).

Continued non-compliance with the Permit contributes to the ongoing harms, continually disrupting the distribution of sediments, permanent degradation of wetlands, impeding navigation and impairing water quality and wildlife habitat across the Atchafalaya Basin. The conduct that we have observed in the Basin is unprecedented – construction with such disregard for the water level, distribution of sediment and critical permit conditions creates a dangerous precedent we can ill-afford. We strongly encourage the Corps initiate, or continue, an investigation into the above-articulated concerns, and take necessary steps to curtail and mitigate ongoing harms, prevent future harms, restore impacted areas and enforce the Clean Water Act and applicable permits, including assessing penalties and requiring any additional, appropriate measures to comply with the law.

We appreciate your time and consideration of these concerns. Please notify us upon any action taken in response to our three Notification letters.

Respectfully submitted by,



Misha L. Mitchell, SBN: 37506
Atchafalaya Basinkeeper, *Staff Attorney*
P.O. Box 410
Plaquemine, LA 70765
Phone: (225) 692-1133
Fax: (205) 718-7683
Email: Basinkeeperlegal@gmail.com

On behalf of the following:

Dean A. Wilson
Basinkeeper and Executive Director
Atchafalaya Basinkeeper

Scott Eustis
Coastal Wetland Specialist
Gulf Restoration Network

EXHIBIT A



Misha Mitchell <basinkeeperlegal@gmail.com>

BBP possible violations and more.

Fri, Oct 12, 2018 at 2:26 PM

Basinkeeper <enapay3@aol.com>

To: brad.a.guarisco@usace.army.mil

Cc: gutierrez.raul@epa.gov, basinkeeperlegal@gmail.com, scott@healthygulf.org, jmeche44@hotmail.com, julie.rosenzweig@sierraclub.org

Hello Brad,

On Tuesday October 9, 2018, Atchafalaya Basinkeeper inspected approximately 5 miles of construction along the Bayou Bridge Pipeline right-of-way on the east side of the Atchafalaya Basin, moving west from the Gulf Intercoastal Waterway by the Eastern Atchafalaya Levee.

The name on the excavators is DEAN. In places the company was digging in water, with rivers of mud cascading from the bucket and floating all over the place. The damage to the wetlands by digging during high water is hard to describe and impossible to quantify. Some Gaps were kept but many of them were 10 to 20 feet and very far apart (special condition No. 20 to the permit requires 50 foot gaps for every 500 feet of temporary side cast material). Many waterways and small bayous were dammed including Bayou Set, which has become impassible.

Coordinates: 30° 05'25.78" N 91° 19'37.20" W

Another small unnamed bayou was dammed 12,000 yards west of Cross Bayou.

Coordinates: 30° 05'12.53" N 91° 23'18.83" W

The following images depict the damming of these bayous, the excavator at work, and the lack of appropriate gaps within the elevated spoil banks along the pipeline right-of-way.

Picture of Bayou Set dam



Excavator digging





Spoil bank, no gaps



Unnamed bayou dam



Another waterway dammed



In response to our May 9, 2018 and June 1, 2018 Notice Letters sent to the Corps documenting a number of potential permit violations as a result of construction of the Bayou Bridge Pipeline in the Basin (attached below for reference), and in consideration of the ongoing issues observed and described above pertaining to pipeline construction in the Atchafalaya Basin, we inquire as to whether the Corps is investigating these potential violations or is otherwise working to address permit compliance in any way. Please let us know what actions have been taken to address these documented, potential permit violations and compliance concerns regarding the Bayou Bridge Pipeline project.

Thank you for your time and we look forward to hearing back from you soon.

Dean

Dean A. Wilson
Atchafalaya Basinkeeper
Executive Director
Office: 225-685-9439
Cell: 225-692-4114

What evil needs the most to succeed is for good men and women to do nothing

Information contained in this email is confidential. If you are not intended recipient of this email, destroy it

EXHIBIT B



Bayou Set impassible

Basinkeeper <enapay3@aol.com>
To: brad.a.guarisco@usace.army.mil, gutierrez.raul@epa.gov
Cc: basinkeeperlegal@gmail.com, basinkeeper@gmail.com, jmeche44@hotmail.com, scott@healthygulf.org

Hello Brad,

The Bayou Set dam was partially removed but is still impassible. At this water stage Bayou Set was about 3' deep at that location. Some spoil was left, the bayou is not as wide as it should be and le is the case I want to thank you. Commercial fishermen and one swamp tour company need access to the bayou.

Coordinates: 30° 05'25.78" N 91° 19'37.20" W



Please call me any time if we can help in any way or if you have any questions.

Thank you,

Dean

Dean A. Wilson

Atchafalaya Basinkeeper
Executive Director
Office: 225-685-9439
Cell: 225-692-4114

What evil needs the most to succeed is for good men and women to do nothing

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EXHIBIT C

Historic Data For Mississippi River at New Orleans (Carrollton) (01300)

Stream Name: Mississippi River

Longitude: -90.13611111

Gage Zero: 0 Ft. Gage

Latitude: 29.93472222

Flood Stage: 17 Ft.

Record High Stage: 21.27 Ft.

River Mile: 102.8

Record High Stage Date: 04/25/1922

Location of Gage:

Corps of Engineer's dock on left descending bank at river mile 102.8. Natural flow is affected by tides.

Adjustment for vertical datum **NAVD88: -0.79 ft.**
(e.g. for data relative to NAVD88 subtract 0.79 ft.)

LWRP 2007 (Low Water Reference Plane) has been defined
with respect to NAVD88, corrections valid as of Sept 20, 2011.

** Raw data, subject to change **

08:00 Central

Date / Time	Stage (Ft)
9/1/2018 8:00	4.39
9/2/2018 8:00	4.36
9/3/2018 8:00	4.49
9/4/2018 8:00	4.69
9/5/2018 8:00	4.95
9/6/2018 8:00	4.41
9/7/2018 8:00	4.02
9/8/2018 8:00	3.94
9/9/2018 8:00	3.73
9/10/2018 8:00	3.8
9/11/2018 8:00	3.73
9/12/2018 8:00	3.96
9/13/2018 8:00	4.12
9/14/2018 8:00	4.19
9/15/2018 8:00	4.25
9/16/2018 8:00	4.6
9/17/2018 8:00	5.22
9/18/2018 8:00	5.71
9/19/2018 8:00	6.18
9/20/2018 8:00	6.64
9/21/2018 8:00	6.8
9/22/2018 8:00	6.94
9/23/2018 8:00	7.21
9/24/2018 8:00	7.49
9/25/2018 8:00	7.72
9/26/2018 8:00	8.08
9/27/2018 8:00	8.39
9/28/2018 8:00	8.6

9/29/2018 8:00	8.82
9/30/2018 8:00	8.98
10/1/2018 8:00	9.11
10/2/2018 8:00	9.22
10/3/2018 8:00	9.33
10/4/2018 8:00	9.19
10/5/2018 8:00	9.24
10/6/2018 8:00	9.42
10/7/2018 8:00	9.42
10/8/2018 8:00	9.68
10/9/2018 8:00	10.06
10/10/2018 8:00	10.56
10/11/2018 8:00	10.16
10/12/2018 8:00	9.81
10/13/2018 8:00	9.77
10/14/2018 8:00	9.71
10/15/2018 8:00	9.53
10/16/2018 8:00	9.46
10/17/2018 8:00	9.19
10/18/2018 8:00	9.25
10/19/2018 8:00	9.13
10/20/2018 8:00	9.21
10/21/2018 8:00	9.55
10/22/2018 8:00	9.98
10/23/2018 8:00	10.38
10/24/2018 8:00	10.91
10/25/2018 8:00	11.45
10/26/2018 8:00	11.5
10/27/2018 8:00	11.57
10/28/2018 8:00	11.53
10/29/2018 8:00	11.53
10/30/2018 8:00	11.55
10/31/2018 8:00	11.48
11/1/2018 8:00	11.73
11/2/2018 8:00	10.94
11/3/2018 8:00	10.54
11/4/2018 8:00	10.32
11/5/2018 8:00	10.25
11/6/2018 8:00	10.25
11/7/2018 8:00	10.29
11/8/2018 8:00	10.57
11/9/2018 8:00	10.82
11/10/2018 8:00	11.23
11/11/2018 8:00	11.45
11/12/2018 8:00	11.67
11/13/2018 8:00	12.08
11/14/2018 8:00	12.21
11/15/2018 8:00	12.32

11/16/2018 8:00	12.44
11/17/2018 8:00	12.43
11/18/2018 8:00	12.53
11/19/2018 8:00	12.59
11/20/2018 8:00	12.48
11/21/2018 8:00	12.53
11/22/2018 8:00	12.44
11/23/2018 8:00	12.37
11/24/2018 8:00	12.47
11/25/2018 8:00	12.45
11/26/2018 8:00	12.22
11/27/2018 8:00	11.9
11/28/2018 8:00	11.79
11/29/2018 8:00	11.55
11/30/2018 8:00	11.45
12/1/2018 8:00	11.6
12/2/2018 8:00	11.35
12/3/2018 8:00	10.99
12/4/2018 8:00	10.67
12/5/2018 8:00	10.32
12/6/2018 8:00	10.16
12/7/2018 8:00	10.02
12/8/2018 8:00	10.23
12/9/2018 8:00	10.29
12/10/2018 8:00	10.48
12/11/2018 8:00	10.73
12/12/2018 8:00	11.12
12/13/2018 8:00	11.63
12/14/2018 8:00	12.25
12/15/2018 8:00	12.17
12/16/2018 8:00	12.21
12/17/2018 8:00	12.17
12/18/2018 8:00	12.4
12/19/2018 8:00	12.54
12/20/2018 8:00	12.58
12/21/2018 8:00	12.3
12/22/2018 8:00	12.17
12/23/2018 8:00	12.05
12/24/2018 8:00	12.08
12/25/2018 8:00	12.17
12/26/2018 8:00	12.15



Misha Mitchell <basinkeeperlegal@gmail.com>

Third Notice of Potential Permit Violations (MVN 2015-02295-WII)

Misha Mitchell <basinkeeperlegal@gmail.com>

Fri, Jan 4, 2019 at 7:52 PM

To: "Guarisco, Brad A CIV USARMY CEMVN (US)" <Brad.A.Guarisco@usace.army.mil>

Cc: Cynthia M Sarthou <cyn@healthygulf.org>, Dean Wilson <ENAPAY3@aol.com>, Scott Eustis <scott@healthygulf.org>

Dear Mr. Guarisco,

Please find the attached third notice letter sent on behalf of Atchafalaya Basinkeeper and Gulf Restoration Network identifying additional potential permit violations in the Atchafalaya Basin related to construction of the Bayou Bridge Pipeline (MVN 2015-02295-WII). I've also attached our previous two letters of May 9th and June 1, 2018 for your convenience and reference.

I hope we can have an open dialogue regarding these issues, and that you will notify us of any actions undertaken by the Corps to inspect or enforce with respect to our present and past raised concerns. We have not received a response from the Corps with respect to our notice of concerns sent vial email on October 12 and 18th, 2018, which are attached to the third notice letter as exhibits. Moreover, following our previous two letters identifying potential violations, beyond acknowledgment of receipt and notification that Mr. Little has been engaged to assess compliance issues raised, we have not received any subsequent correspondence or information regarding investigation or enforcement actions taken by the Corps in response. If there have been any such actions or further investigation in light of this letter, we would appreciate notice thereof.

We do appreciate your time and consideration. I am happy to discuss with you further at your convenience via phone or email. Please confirm receipt of this correspondence. Thank you and have a wonderful weekend.

Best Regards,

Misha Mitchell

Atchafalaya Basinkeeper

Staff Attorney

P.O. Box 410

Plaquemine, LA 70765

Cell: (225) 692.1133

Email: Basinkeeperlegal@gmail.com

Website: www.basinkeeper.org

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Misha Mitchell

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3 attachments

 **1-4-19 ABK Third Notice of Potential Violations (MVN 2015-02295-WII).pdf**
8409K

 **ABK et al. May 9, 2018 BBP Permit Violations .pdf**
8934K

 **ABK et al. June 1, 2018 Supp. Notice of Potential Violations (MVN 2015-02295-WII).pdf**
162K

Third Notice of Potential Permit Violations (MVN 2015-02295-WII)

Guarisco, Brad A CIV USARMY CEMVN (US) <Brad.A.Guarisco@usace.army.mil> Fri, Jan 4, 2019 at 8:21 PM
To: Misha Mitchell <basinkeeperlegal@gmail.com>
Cc: Cynthia M Sarthou <cyn@healthygulf.org>, Dean Wilson <ENAPAY3@aol.com>, Scott Eustis <scott@healthygulf.org>

Ms. Mitchell,

I appreciate your e-mail. Each of your letters have been forwarded to Mr. Little because it is a potential non-compliance issue. My section does not handle non-compliance issues beyond assisting with any cease and desist orders. Non-compliance issues are always handled by the project manager that issued the permit.

As far as not receiving responses, we are only allowed to discuss open enforcement actions (unauthorized activities or permit non-compliance) with the alleged violator, their agent, their lawyers, or the landowner. We are not allowed to discuss the specifics of enforcement actions with any other individuals or entities beyond informing them that an enforcement action is open and pending. Open enforcement actions are also not releasable under FOIA until the action is closed. For these reasons, we are not able to give you status updates other than to tell you we are still working through the action.

I will forward your letter to Mr. Little and copy Mr. Mayer (our Branch chief), as I've done with your past letters.

Thank you for the continued information as it assists us with our enforcement efforts.

Respectfully,

Brad Guarisco
Chief, Surveillance and Enforcement Section Regulatory Branch New Orleans District U.S. Army Corps of Engineers

P: (504) 862-2274

----- Original message -----

From: Misha Mitchell <basinkeeperlegal@gmail.com>
Date: 1/4/19 6:58 PM (GMT-06:00)
To: "Guarisco, Brad A CIV USARMY CEMVN (US)" <Brad.A.Guarisco@usace.army.mil>
Cc: Cynthia M Sarthou <cyn@healthygulf.org>, Dean Wilson <ENAPAY3@aol.com>, Scott Eustis <scott@healthygulf.org>
Subject: [Non-DoD Source] Third Notice of Potential Permit Violations (MVN 2015-02295-WII)

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Misha Mitchell <basinkeeperlegal@gmail.com>

Third Notice of Potential Permit Violations (MVN 2015-02295-WII)

Misha Mitchell <basinkeeperlegal@gmail.com>

Mon, Jan 7, 2019 at 3:13 PM

To: "Guarisco, Brad A CIV USARMY CEMVN (US)" <Brad.A.Guarisco@usace.army.mil>

Cc: Cynthia M Sarthou <cyn@healthygulf.org>, Dean Wilson <ENAPAY3@aol.com>, Scott Eustis <scott@healthygulf.org>

Mr. Guarisco,

Thank you for notifying me of your receipt of our Jan. 4, 2019, third notice letter, and for clarifying both your role and that of the project manager. I do appreciate the information you provided regarding the agency's limitations vis a vis enforcement actions taken in response to permit noncompliance.

As I understand, the Corps cannot provide specific information pertaining to any pending enforcement action, but am I correct in my understanding of your previous email that the agency can at least inform third parties whether there is an open and pending enforcement action? If so, we would appreciate to know whether there is an open and pending enforcement action with respect to Bayou Bridge Pipeline, LLC's permits to construct in the Basin. We are simply dismayed that some of the harms we've identified have continued for many months without any observed abatement.

Again, thank you for your time, and for sharing our letter with Mr. Little and Mr. Mayer as well.

Best,
Misha

[Quoted text hidden]

[Quoted text hidden]

Website: www.basinkeeper.org

[Quoted text hidden]

We do appreciate your time and consideration. I am happy to discuss with you further at your convenience via phone or email. Please confirm receipt of this correspondence. Thank you and have a wonderful weekend.

Best Regards,

Misha Mitchell

Atchafalaya Basinkeeper

Staff Attorney

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[Quoted text hidden]



RE: [Non-DoD Source] Third Notice of Potential Permit Violations (MVN 2015-02295-WII) (UNCLASSIFIED)

Guarisco, Brad A CIV USARMY CEMVN (US) <Brad.A.Guarisco@usace.army.mil>

Mon, Jan 7, 2019 at 9:55 PM

To: Misha Mitchell <basinkeeperlegal@gmail.com>

Cc: "Little, James W Jr CIV USARMY CEMVN (US)" <James.Little@usace.army.mil>

CLASSIFICATION: UNCLASSIFIED

Ms. Mitchell,

I've copied Mr. Little here. He will need to provide that answer.

Respectfully,

Brad Guarisco
Chief, Surveillance and Enforcement Section
Regulatory Branch
New Orleans District
U.S. Army Corps of Engineers

P: (504) 862-2274

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

From: Misha Mitchell [mailto:basinkeeperlegal@gmail.com]

Sent: Monday, January 7, 2019 2:14 PM

To: Guarisco, Brad A CIV USARMY CEMVN (US) <Brad.A.Guarisco@usace.army.mil>

Cc: Cynthia M Sarthou <cyn@healthygulf.org>; Dean Wilson <ENAPAY3@aol.com>; Scott Eustis <scott@healthygulf.org>

Subject: Re: [Non-DoD Source] Third Notice of Potential Permit Violations (MVN 2015-02295-WII)

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Misha

On Fri, Jan 4, 2019 at 7:21 PM Guarisco, Brad A CIV USARMY CEMVN (US) <Brad.A.Guarisco@usace.army.mil> > wrote:

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Brad Guarisco

Chief, Surveillance and Enforcement Section Regulatory Branch New Orleans District U.S. Army Corps of Engineers

P: (504) 862-2274 <tel:(504)%20862-2274>

----- Original message -----

From: Misha Mitchell <basinkeeperlegal@gmail.com <mailto:basinkeeperlegal@gmail.com> >

Date: 1/4/19 6:58 PM (GMT-06:00)

To: "Guarisco, Brad A CIV USARMY CEMVN (US)" <Brad.A.Guarisco@usace.army.mil <mailto:Brad.A.Guarisco@usace.army.mil> >

Cc: Cynthia M Sarthou <cyn@healthygulf.org <mailto:cyn@healthygulf.org> >, Dean Wilson <ENAPAY3@aol.com <mailto:ENAPAY3@aol.com> >, Scott Eustis <scott@healthygulf.org <mailto:scott@healthygulf.org> >

Subject: [Non-DoD Source] Third Notice of Potential Permit Violations (MVN 2015-02295-WII)

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Best Regards,

Misha Mitchell
Atchafalaya Basinkeeper
Staff Attorney
P.O. Box 410
Plaquemine, LA 70765

Cell: (225) 692.1133

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CLASSIFICATION: UNCLASSIFIED



Misha Mitchell <basinkeeperlegal@gmail.com>

RE: [Non-DoD Source] Third Notice of Potential Permit Violations (MVN 2015-02295-WII) (UNCLASSIFIED)

Misha Mitchell <basinkeeperlegal@gmail.com>

Wed, Jul 31, 2019 at 1:38 PM

To: "Guarisco, Brad A CIV USARMY CEMVN (US)" <Brad.A.Guarisco@usace.army.mil>

Cc: "Little, James W Jr CIV USARMY CEMVN (US)" <James.Little@usace.army.mil>

Mr. Little,

I am reaching out to inquire as to whether you have any information you can share with me regarding ABK's notice of potential permit violations to the Corps pertaining to the Bayou Bridge pipeline construction across jurisdictional wetlands. I understand, as Mr. Guarisco explained, that there are limitations to what can be shared with the public regarding active enforcement actions, but if there is any update you can provide me it would be greatly appreciated.

Best regards,

Misha L. Mitchell, Esq.

Cell: (225) 692.1133

Email: Basinkeeperlegal@gmail.com

On Behalf Of

Atchafalaya Basinkeeper

P.O. Box 410

Plaquemine, LA 70765

Website: www.basinkeeper.org

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[Quoted text hidden]



RE: [Non-DoD Source] Third Notice of Potential Permit Violations (MVN 2015-02295-WII) (UNCLASSIFIED)

Little, James W Jr CIV USARMY CEMVN (US) <James.Little@usace.army.mil>

Fri, Aug 9, 2019 at 5:03 PM

To: Misha Mitchell <basinkeeperlegal@gmail.com>

Cc: "Guarisco, Brad A CIV USARMY CEMVN (US)" <Brad.A.Guarisco@usace.army.mil>, "Mayer, Martin S CIV USARMY CEMVN (USA)" <Martin.S.Mayer@usace.army.mil>, "Barbara, Darrell S CIV USARMY CEMVN (USA)" <Darrell.Barbara@usace.army.mil>, "Taff, Thomas M CIV USARMY CEMVN (US)" <Thomas.M.Taff@usace.army.mil>

Good afternoon Ms. Mitchell,

In response to your 31 July 2019 inquiry, we will conduct a post-construction compliance inspection once water levels in the Basin recede to a level that allows safe access and facilitates an assessment of ROW conditions. Consequently, compliance enforcement is on-going and to render any determinations relative to this matter at this point would be premature. Any non-compliant matters identified will be appropriately addressed with the permittee. Please recall Mr. Guarisco's previous advice that we have to restrict our communications on open enforcement actions to the involved parties."

v/r,

James W. Little, Jr.
Senior Project Manager
U.S. Army Corps of Engineers
New Orleans District (ODR)
P. O. Box 44487
Baton Rouge, LA 70804-4487
(225)342-3099 Baton Rouge
(504)862-1879 New Orleans

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

From: Misha Mitchell [mailto:basinkeeperlegal@gmail.com]

Sent: Wednesday, July 31, 2019 12:38 PM

To: Guarisco, Brad A CIV USARMY CEMVN (US) <Brad.A.Guarisco@usace.army.mil>

Cc: Little, James W Jr CIV USARMY CEMVN (US) <James.Little@usace.army.mil>

Subject: Re: [Non-DoD Source] Third Notice of Potential Permit Violations (MVN 2015-02295-WII) (UNCLASSIFIED)

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Email: Basinkeeperlegal@gmail.com <mailto:Basinkeeperlegal@gmail.com>

On Behalf Of

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Website: [Blockedwww.basinkeeper.org](http://www.basinkeeper.org) <Blockedhttp://www.basinkeeper.org>

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On Mon, Jan 7, 2019 at 9:55 PM Guarisco, Brad A CIV USARMY CEMVN (US) <Brad.A.Guarisco@usace.army.mil> <<mailto:Brad.A.Guarisco@usace.army.mil>> > wrote:

CLASSIFICATION: UNCLASSIFIED

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Respectfully,

Brad Guarisco
Chief, Surveillance and Enforcement Section
Regulatory Branch
New Orleans District
U.S. Army Corps of Engineers

P: (504) 862-2274

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

From: Misha Mitchell [<mailto:basinkeeperlegal@gmail.com> <<mailto:basinkeeperlegal@gmail.com>>]
Sent: Monday, January 7, 2019 2:14 PM
To: Guarisco, Brad A CIV USARMY CEMVN (US) <Brad.A.Guarisco@usace.army.mil> <<mailto:Brad.A.Guarisco@usace.army.mil>> >
Cc: Cynthia M Sarthou <cyn@healthygulf.org <<mailto:cyn@healthygulf.org>> >; Dean Wilson <ENAPAY3@aol.com <<mailto:ENAPAY3@aol.com>> >; Scott Eustis <scott@healthygulf.org <<mailto:scott@healthygulf.org>> >
Subject: Re: [Non-DoD Source] Third Notice of Potential Permit Violations (MVN 2015-02295-WII)

Mr. Guarisco,

Thank you for notifying me of your receipt of our Jan. 4, 2019, third notice letter, and for clarifying both your role and that of the project manager. I do appreciate the information you provided regarding the agency's limitations vis a vis enforcement actions taken in response to permit noncompliance.

As I understand, the Corps cannot provide specific information pertaining to any pending enforcement action, but am I correct in my understanding of your previous email that the agency can at least inform third parties whether there is an open and pending enforcement action? If so, we would appreciate to know whether there is an open and pending enforcement action with respect to Bayou Bridge Pipeline, LLC's permits to construct in the Basin. We are simply dismayed that some of the harms we've identified have continued for many months without any observed abatement.

Again, thank you for your time, and for sharing our letter with Mr. Little and Mr. Mayer as well.

Best,
Misha

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Email: Basinkeeperlegal@gmail.com <<mailto:Basinkeeperlegal@gmail.com>> <<mailto:Basinkeeperlegal@gmail.com>> <<mailto:Basinkeeperlegal@gmail.com>> >

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<Blockedhttp://Blockedwww.basinkeeper.org <Blockedhttp://www.basinkeeper.org> >

[Quoted text hidden]



RE: [Non-DoD Source] Third Notice of Potential Permit Violations (MVN 2015-02295-WII) (UNCLASSIFIED)

Misha Mitchell <basinkeeperlegal@gmail.com>

Mon, Aug 12, 2019 at 3:52 PM

To: "Little, James W Jr CIV USARMY CEMVN (US)" <James.Little@usace.army.mil>

Cc: "Guarisco, Brad A CIV USARMY CEMVN (US)" <Brad.A.Guarisco@usace.army.mil>, "Mayer, Martin S CIV USARMY CEMVN (USA)" <Martin.S.Mayer@usace.army.mil>, "Barbara, Darrell S CIV USARMY CEMVN (USA)" <Darrell.Barbara@usace.army.mil>, "Taff, Thomas M CIV USARMY CEMVN (US)" <Thomas.M.Taff@usace.army.mil>

Mr. Little,

Thank you for your response which indicates, as I understand, that the Corps will be conducting post-construction compliance inspections in the Basin once the water recedes to a safe level for access. However, I am still unclear as to whether my original question from January has been answered, so if you could explain further I would greatly appreciate it. As I think I understand from Mr. Guarisco and confirmed in your previous email, the Corps cannot discuss the specifics of enforcement actions with any individuals or groups beyond the involved parties, but can at a minimum identify that an enforcement action is open and pending. Is this correct?

I understand that the Corps cannot discuss specifics regarding compliance matters that are open and pending, but what I am trying to ascertain is not the specifics of an action, but simply whether the Corps took action to inspect for compliance and/or enforce permit conditions for this project during construction (Jan. 2018-April 2019), or following any of Basinkeeper's three letters identifying compliance concerns (May 2018, June 2018, Jan. 2019). Although some of the issues raised in ABK's notice letters may still remain following completion of construction, a post-construction compliance inspection cannot rectify all harms resulting from potentially noncompliant conduct that occurred during construction, particularly those caused and/or exacerbated by the high water levels over the past 18+ months. Despite the importance and need for a pending post-construction compliance inspection, whether the Corps conducted compliance inspections and/or commenced an enforcement action with regards to this project during construction remains unclear. You state that "compliance enforcement is ongoing" - does that mean the Corps conducted inspections and/or commenced an enforcement action during construction? I apologize if I am missing the mark but again, I'm trying to understand the Corps' process and extent to which notification of actions can be shared with interested third parties such as ABK.

I do appreciate your time and I hope we can continue to communicate so that I can better understand the Corps' actions and process in handling this matter.

Best regards,

Misha L. Mitchell, Esq.

Cell: (225) 692.1133

Email: Basinkeeperlegal@gmail.com

On Behalf Of

Atchafalaya Basinkeeper

P.O. Box 410

Plaquemine, LA 70765

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