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*Submitted electronically via Email only* as recommended by the Revised Mail Processing Instructions for the New Orleans District, Special Public Notice Dated March 19, 2020

April 22, 2020

**Re: Supplemental Comments on Behalf of Atchafalaya Basinkeeper, Healthy Gulf, the Louisiana Crawfish Producers Association-West and Sierra Club Delta Chapter regarding the Proposed Ecological Swamp Enhancement Project (East Grand Lake) in the Atchafalaya Basin (MVN 2016-01163-CM, WQC 180312-01)**

Dear Mr. Gauthier and Ms. Hill,

This supplemental comment letter is submitted on behalf of Atchafalaya Basinkeeper, Healthy Gulf, the Louisiana Crawfish Producers Association-West and Sierra Club Delta Chapter, to contribute additional information with respect to the decision-making process for the Louisiana Department of Natural Resources' ("LDNR" or "Applicant") (which is now under the purview of the Coastal Protection and Restoration Authority) application to the U.S. Army Corps of Engineers ("the Corps") for a permit to discharge dredge and fill material under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act for its Proposed Ecological Swamp Enhancement Project (East Grand Lake) in the Atchafalaya Basin, in Iberville Parish. 33 U.S.C. §§ 403, 1344. The permit application is identified as MVN 2016-01163-CM. This letter also provides comment on DNR's application before the Louisiana Department of Environmental Quality ("DEQ") for a Water Quality Certification ("WQC") pursuant to La. R.S. 30:2074(A)(3) and Section 401 of the Clean Water Act for the aforementioned project in the Basin. The WQC application is identified as WQC 180312-01. For the additional reasons discussed herein, the permit and certification for the EGL project should be denied.

**Atchafalaya Basinkeeper** is a non-profit organization comprised of over 1,1000 members dedicated to protecting and restoring the ecosystems within the Atchafalaya Basin for future generations. **Healthy Gulf** is a diverse coalition of individual citizens and local, regional, and national organizations committed to uniting and empowering people to protect and restore the natural resources of the Gulf of Mexico. **Sierra Club** is a national grassroots organization whose mission it is to explore, enjoy and protect the wild places of the Earth; to practice and promote the responsible use of the Earth's ecosystems and resources; and to educate and enlist people to protect and restore the quality of the natural and human environment. **Louisiana Crawfish Producers Association-West** ("LCPA") is a nonprofit organization whose purpose is to educate the public and advocate for the right to access navigable waters. Its members are commercial and recreational

fishermen, hunters and nature photographers. Its members regularly use the Atchafalaya Basin and other public waters and lands in pursuit of these interests. The members of LCPA have economic, recreational, cultural, historic, spiritual and aesthetic interests in the Basin.

Atchafalaya Basinkeeper, Healthy Gulf, the Louisiana Crawfish Producers Association—West and Sierra Club Delta Chapter reserve the right to rely on all comments to this permit application submitted by any party.

The Louisiana Department of Natural Resources, c/o Sigma Consulting Group, Inc. seeks permits and certification from the above-referenced agencies for its proposed swamp enhancement project in the Bayou Sorrel area of the Atchafalaya Basin, hereinafter referred to as the “East Grand Lake” or “EGL” project. The character of work for which the applicant seeks permits from the Corps and DEQ, as described in the March 19, 2018 Joint Public Notice, is to clear, grade, excavate, dredge, and place fill within the Atchafalaya Basin, to include Bayou Sorrel, the Gulf Intracoastal Waterway and the Florida Pipeline Canal. The work will include shaving and dredging existing spoil banks, clearing, snagging, excavation, dredging and placement of spoil in designated areas. The Notice provides that 25,535 yards of native material will be excavated and re-deposited to complete the project, and that 2.4 acres of jurisdictional wetlands will be directly impacted by clearing and conversion to open water, that approximately 8.3 acres of jurisdictional forested wetlands will be cleared and excavated to become open water, and approximately 5.8 acres of jurisdictional forested wetlands will be cleared and filled. The Permit Application concedes that the project footprint will impact 16.51 acres of wetlands.

The purported purpose of the EGL project is “to improve the north to south hydrologic flow in Bayou Sorrel during moderate river stages to improve the circulation and ecological function through the back swamp of the East Grand Lake Area of the Atchafalaya Basin.” The Notice suggests that the area that stands to benefit from the proposed activity’s “hydrologic restoration” in EGL includes “approximately 5,560 acres of swamp habitat” and that the project will “enhance and improve existing forested wetlands.” *Joint Public Notice*, March 19, 2018, *available at* [http://www.mvn.usace.army.mil/Portals/56/docs/regulatory/publicnotices/2016\\_01163\\_%20PNal1.pdf?ver=2018-03-16-091140-303](http://www.mvn.usace.army.mil/Portals/56/docs/regulatory/publicnotices/2016_01163_%20PNal1.pdf?ver=2018-03-16-091140-303) (hereinafter, “Joint Public Notice”).

For the permitting agencies’ edification, the undersigned organizations have attached hereto as “Exhibit A” a report created by USEPA in May 1979, which provides informative insight into appropriate management of the Atchafalaya Basin to both accommodate flood-flows and maintain an acceptable level of environmental quality in the Basin. *Hydraulics of the Atchafalaya Basin Main Channel System: Considerations from a Multiuse Management Standpoint*. May 1989. U.S.E.P.A. (hereinafter, *May 1979 EPA Report*). Attached *hereto as Exhibit A*. In the following discussion, the undersigned organizations highlight critical portions of the May 1979 EPA Report pertinent to the responsibilities of the regulatory agencies in evaluating, and permitting, proposed projects and development impacting the effective management of the Atchafalaya Basin to preserve and restore public access, environmental integrity, water management and recreation opportunities well into the future. In addition, the undersigned provides comments in response to the highlighted portions taken directly from the report.

## **MAY 1979 EPA REPORT**

## 1. PURPOSE

The May 1979 EPA report “examines the relationships among hydraulic elements in the Atchafalaya Basin floodway system in terms of discharge regime, sediment load, channel form and size, flood control, water surface slope, bank elevation, overbank capacity, dredging requirements, and spoil disposal. Hydraulic geometry of the present main channel system is analyzed and the rate of natural channel development along the main channel is presented with the net change in channel cross-sectional area from changes in bed and flow line.” The Report’s abstract further provides that “[t]he U.S. Environmental Protection Action, the U.S. Army Corps of Engineers, the U.S. Department of the Interior, the State of Louisiana, special interest groups, and other interested individuals will use this information to assess the potential impact of proposed hydrological modifications and to develop alternative land and management plans, which will accommodate flood-flows and maintain an acceptable level of environmental quality.” *May 1979 EPA Report*, at iii. The articulated purpose of the report was to consider the hydraulics of the Basin main channel system from a multiuse management standpoint. *Id.* at 1.

## 2. BACKGROUND

**June 11, 1968, and March 23, 1972, the U.S. Senate Committee on Public Works, and on June 14, 1972, the U.S. House of Representatives Committee on Public Works, adopted resolutions concerning management and use of the water and related land resources of the Atchafalaya River Basin.** These resolutions directed the USCE to determine whether, in light of changed conditions, modifications to the operation of the Old River control system are warranted and to review cooperation with other agencies, including the USEPA, **the report on the Mississippi and Tributaries Project, House Document 308, 88<sup>th</sup> Congress, and other pertinent reports** with a view to developing a comprehensive plan for the management and preservation of the waters and related land resources of the Atchafalaya River Basin, Louisiana. **As directed, this will include provisions for reduction of siltation, improvement of water quality and possible improvement of the area for commercial and sport fishing.** *Report at 9-10.*

## 3. MAIN FINDINGS

**Report “Conclusions”, pg. 5:** “The most effective alternative for achieving maximum long-term use for flood control at a minimum cost to the environment is to enhance the development of the channel in the direction of its ultimate stable conditions as determined by stream distance and flow-sediment regime while simultaneously minimizing sedimentation in the backwater areas.”

**ABK et al. Comment:** Because the Corps has ignored these guidelines, the Corps’ Buffalo Cove Project and the Corps’ permitted Beau Bayou Project has resulted in massive sedimentation in the backwater areas and massive unnecessary loss of flood capacity, putting millions of people at greatest risk from Mississippi River floods, both in Louisiana and Mississippi. Our prior comments likewise direct the permitting agencies attention to this point, which was recognized as early as 1979 by the EPA and the Corps.

**Report “Relationships between hydraulic elements”, pg. 17:** “When most of the diversion of water into the flood plain takes place through diversion channels, however, a quite different condition develops (Figure 7B), in particular where banks have been elevated by spoil until overflow no longer occurs on a regular basis. Under those circumstances, diversion of water takes place at high velocity into the flood plain, enabling the water to carry large quantities of sediment. Most of the sediment is deposited in the backwater area, gradually reducing overbank capacity. Any resultant increase in channel discharges as a result of loss in overbank capacity will perpetuate the process of backwater sedimentation as long as the greater channel discharges or overall adjustment of the river gradient elevate the water surface profile and thereby maintain the gradient into the backwater area. Channel enlargement will take place at much less than the potential rate since the increase in elevation of the water surface profile minimizes the losses of overbank storage relative to the river so that channel discharges increase only slowly. Loss of overbank storage relative to a fixed datum plain, however, is considerable and represents a major loss of floodway capacity.”

**ABK et al. Comment:** Unfortunately, despite the predictions and observations included in this report, the floodway capacity of the Basin has already been significantly reduced, as evidenced and contributed by the magnitude of sedimentation and devastation to the project areas in and around the Buffalo Cove and Beau Bayou projects. These observations and recommendations in the report further reinforce the findings on Dr. van Heerden in his expert reports and the expert opinion of ABK and the fishermen throughout the Atchafalaya Basin. The Corps and the state of Louisiana, not only are ignoring the recommendations, but they are doing the opposite greatly affecting the flood capacity of the Basin.

**Report “Background”, pgs. 8-9:** “After flood control, maintenance dredging mainly for navigation is the most detrimental to the Basin's ecology. Annual maintenance above the Teche Ridge requires dredging of approximately 2,000,000 yds<sup>3</sup> (USCE, 1973). One-half of this dredging is done in waterways in the backwater areas and waterways connecting the former to the Atchafalaya River. These include the east and west access channels, which account for 600,000 yds<sup>3</sup>, the freshwater distribution channels, and the alternate route of the Gulf Intracoastal Waterway. As indicated to some extent by the volume of maintenance dredging required, these channels are also the main route for the diversion of excessively larger volumes of sediment into the backwater area of the floodway below I-10. Not only does this result in a decrease in floodway capacity, it also results in several ways in the degradation of environmental integrity of the floodway's wetlands. Introduction of sediments through these channels into the flood plain swamps greatly contributes to the present reduction of the total water area and the degradation of the quality of forested wetlands. Equally detrimental has been the disposal of spoil on stream banks. This has been a major cause of reduced circulation and resultant water quality problems, in particular the depression of dissolved oxygen values. While annual reduction of dissolved oxygen values is in part a natural phenomenon resulting from large organic litter input and the organic nature of swamp sediments, at present the oxygen values in large swamp areas as well as streams are depressed for periods in excess of one month to levels where water can no longer support fishes and other aquatic life.”

**ABK et al. Comment:** The Corps ignored this recommendation and did the opposite by realigning and straightening Bayou Chene in the late 1980s and Grand River in the early 1990s. As warned by this EPA report, the realignment of Grand River has destroyed ABK's executive director Dean Wilson's fishing grounds, rapidly filling all the main sloughs with large amounts of sand. This realignment plus the realignment and straightening of Bayou Sorrel will magnify the sedimentation process if the Corps' approves and permits the East Grand Lake Project.

**Report "Present Conditions", pg. 20:** "Figure 9A shows the scouring of the channel and the associated lowering of the water level for a given discharge. Since water levels in the channel become lower relative to the overbank area, less water will be diverted, and stages in overbank area will decrease resulting in a loss of aquatic habitat and reduction of the area periodically flooded. Below mile 55 this loss is farther augmented because sediment introduction into the overbank area occurs increasingly through diversion channels, and therefore most sediment is deposited in aquatic habitats rather than on the channel bank. The process illustrated in Figure 9A will continue until the flow line has stabilized, and future and future loss of aquatic habitat and wetlands to mixed hardwoods must thus be expected. Likewise, a drift to drier hardwoods must be expected, and therefore an increasing encouragement for agricultural development will follow forest clearing."

**ABK et al. Comment:** The process described above is exactly what is happening with the Buffalo Cove and the Beau Bayou Projects. If the Corps approves and permits the East Grand Lake Project as proposed, the agency's action will directly run afoul of the recommendations made in this report resulting in destruction of the most important wetland habitats for migratory birds in the western hemisphere, and significantly diminishing the Basin's flood capacity putting millions of people at greater risk for devastating Mississippi River floods to benefit a handful of corporate waterbottom-claimants.

#### 4. CONCLUSIONS.

The Corps has a mandate by Congress to reduce siltation, improve water quality and improve the area for sport and commercial fishing. Not only has the Corps failed to following the recommendations articulated in the May 1979 EPA Report, but it has proactively permitted and authorized projects that contribute to unsustainable siltation, reduction of the Basin's flood capacity, and permanent destruction of critical wetland habitat at the expense of commercial and sport fishing interests, recreational interests, the safety of millions of people in Louisiana and Mississippi and trillions of dollars on industry infrastructure.

The 1979 report clearly articulates the biggest threats to the Basin's wetland forests to be dredging of the distributaries of the Atchafalaya River and introducing river water into wetlands by cuts or channels. Despite this recognition and recommendation since at least 1979, the Corps' subsequent actions belie this guidance - dredging, realigning and straightening Bayou Chene in the late 1980s and Grand River in 1992, opening Coon Trap and Thibodeaux Chute, facilitating and implementing the Buffalo Cove Project, permitting the Beau Bayou Project and now considering approval of the East Grand Lake Project.

One of the conditions provided in the Environmental Assessment for the Buffalo Cove Project was “Monitoring Efforts” discussed by the Corps in the draft EA, which asserts that it has undertaken an extensive pre-construction and post-construction monitoring program to evaluate the performance of constructed elements within the BCMU. Despite assurances that the “project’s *effectiveness* will continue to be monitored for a 5-year period after the final element is constructed,” it is incomprehensible that the Corps has been collecting extensive data in this area since 1997 and yet it continues to make the same mistakes that cause irreversible damage and irreparable harm to these deep-water habitats and surrounding wetlands. The sediment trap at Bayou Eugene was built in 2001, and sadly by 2003 it was completely filled in with sediment. Similarly, Buffalo Cove Lake has filled in rapidly, and Jackass Bay and Bayou Gravenburg is nearly lost, and the large tracks of cypress-tupelo wetlands among them are filling in.

Moreover, the Buffalo Cove EA provided “measurable goals” for its monitoring program, which includes to “limit sediment accretion to less than 1 inch per year in the areas of influenced by water inlet projects.” However, in many of these areas, you can measure the sediment accretion in *feet* but the project was never modified or halted.

One of the conditions for approval of the Beau Bayou Project was for the St. Martin Parish to monitor sediment accretion, but to our knowledge there are no records of any sediment deposition records with the parish.

When Coon Trap was opened in the early 1990s, the Corps assured the fishermen that no significant accretion will take place and that Coon Trap will be closed if any significant sediment problem was detected. However, after nearly thirty years since it was opened, Coon Trap is still open despite massive accretion and loss of wetlands and the outcry by fishermen and environmental groups demanding its closure.

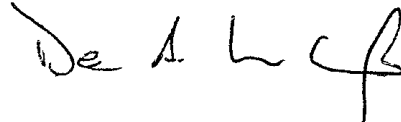
Based on past performance and prior failures to both adequately account for and consider the totality of environmental impacts of these former projects and actions, and to enforce the express conditions relevant to these projects’ permits and decision documents, there is no condition or set of conditions the Corps could include in a permit for the East Grand Lake project as proposed that can possibly comply with decades-old recommendations for multi-use management in the Atchafalaya Basin, with state and federal environmental laws, and with environmental management and enforcement capacity as demonstrated by the Corps in the past several decades in the Basin. The Corps should not authorize conduct in the Basin that is not commensurate with its own capacity to ensure compliance with state and federal environmental regulations and recommendations.

In response to the proposed EGL project, we respectfully request that the Corps and DEQ deny DNR’s application for a §404/10 permit and a water quality certification. While there is more than sufficient information known and provided in ABK et al.’s original and supplemental comments to conclude that the proposed East Grand Lake project is severely problematic to the long-term health of the Atchafalaya Basin and that the proposed permit should be denied, at a minimum, the Corps should prepare an environmental impact statement (“EIS”) to assess the totality of impacts and availability of alternatives to the EGL project. The proposed project presents significant threats to the health and longevity of the wetlands surrounding the EGL area and the entire Atchafalaya

Basin. For the myriad of reasons discussed in detail in ABK et al.'s April 19, 2018 comment letter and the November 13, 2019 comment letter as well as the information included herein, the undersigned organizations request that the Corps and DEQ deny the Department of Natural Resources' permit and certification applications for the proposed East Grand Lake Project.

Thank you for your time and consideration of our supplemental comment.

Respectfully submitted by,



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On behalf of the following:

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