



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

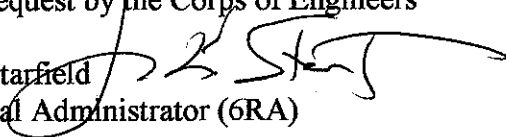
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APR -2 2009

MEMORANDUM

SUBJECT: Bayou aux Carpes Clean Water Act (CWA) Section 404(c)
modification request by the Corps of Engineers

FROM: Lawrence E. Starfield 
Acting Regional Administrator (6RA)

TO: Michael H. Shapiro
Acting Assistant Administrator (4101M)

On February 5, 2009, my staff participated in a briefing for you on the Bayou aux Carpes Clean Water Act (CWA) Section 404(c) modification request from the New Orleans District of the U.S. Army Corps of Engineers (Corps). At that time, we were anticipating the submission of one more key evaluation from the Corps prior to making a Recommended Determination to you on this matter. That piece is an expanded documentation of the Corps' evaluation of an alternative that might have further reduced or avoided impacts to the Bayou aux Carpes site. We received it on March 26, 2009, and have completed our review of the Corps' request to modify the 1985 CWA Section 404(c) designation.

The intent of the Corps' November 2008 request is to reduce risks to the 286,000 people living on the west bank of the Mississippi River and to infrastructure supporting the greater New Orleans area by building a more resilient and reliable storm damage and risk reduction system, as directed by Congress. The Corps and the Environmental Protection Agency (EPA) Region 6 have worked closely together and with other federal partners, State and local agencies, and many stakeholders to understand fully the possibilities for accommodating the Corps' project purpose while protecting the ecological integrity of the Bayou aux Carpes CWA Section 404(c) site. Seeing no acceptable option but to recommend flood control measures which would have unavoidable adverse environmental impacts on the Bayou aux Carpes CWA Section 404(c) wetlands, the Corps has asked EPA to modify the 1985 CWA Section 404(c) determination to allow the construction of the West Closure Complex Alternative, involving a berm and floodwall in an area disturbed by dredged material discharges predating the EPA designation.

The Corps has determined that this alternative would provide the safest and most reliable engineering solution with the least environmental impact to the Bayou aux Carpes CWA Section 404(c) wetland site. This alternative represents a more streamlined surge barrier that reduces the number of potential failure points in the system. A critical lesson the Corps learned from Hurricane Katrina was that extensive reaches of levees, floodwalls, and floodgates provided numerous possible points of failure within the system. By removing 25 miles of parallel protection from the primary line of defense, this more streamlined surge barrier significantly reduces risks and increases resiliency of the flood protection system. No more than 9.6 acres of previously altered wetlands in the Bayou aux Carpes CWA Section 404(c) site would be affected. Based on our independent review and extensive analyses over the course of almost two years, my staff and I agree that the current design of the West Closure Complex Alternative is the most reasonable structural option for achieving the project goals while incurring the least environmental harm to the Bayou aux Carpes CWA Section 404(c) site.

EPA has a long record of protecting these wetlands, dating back to the earliest days of the agency, and we believe this recommendation will provide adequate protection of the ecological integrity of the Bayou aux Carpes wetlands. We do not believe that this recommendation, conditioned as specified, will result in significant or unacceptable impacts to the Bayou aux Carpes CWA Section 404(c) wetland site. The projected construction impacts will be limited in time and area, the unavoidable impacts will be appropriately mitigated, additional augmentation features will be developed and implemented to enhance the wetlands, and the site will be monitored and managed for any adverse changes for the life of the Corps project.

In this case, EPA Region 6 concludes that compelling circumstances justify a modification of the Bayou aux Carpes CWA Section 404(c) designation, that there are no less environmentally damaging alternatives that would adequately address those circumstances, and that all feasible means of minimizing adverse wetland effects to the Bayou aux Carpes site will be implemented. We therefore recommend that the requested modification be granted with conditions as specified in the attached Recommended Determination.

This situation is without precedent. Because it reflects a series of extraordinary circumstances, we do not expect this decision to have any bearing upon other current or future CWA Section 404(c) designations or modification requests. Each CWA Section 404(c) designation represents a unique situation that responds to a specific set of parameters unlike any other.

Finally, we believe that the recent passage of the Omnibus Land Management Act of 2009, which clarifies future management of most of these wetlands by the National Park Service, will offer great new opportunities for protection and public enjoyment of this coastal wetland property. This recommendation is fully compatible with the new status of the area.

Thank you so much for the continued support of your staff during this difficult deliberation. Please do not hesitate to call if you or your staff has any questions about this recommendation.

Attachment

cc: Mr. David Luchsinger
Jean Lafitte National Historical Park and Preserve

Mr. Garrett Graves
Coastal Protection and Restoration Authority of Louisiana