

# SWAMP WARS:

THE FIGHT FOR THE  
ATCHAFALAYA BASIN



Atchafalaya  
**BASINKEEPER®**

Annual Report  
for the year 2013

## **A Word from Your Atchafalaya Basinkeeper**

Each year ABK is stronger as an organization than the year before. Today we have over 670 members and business sponsors. It is the support of our members, sponsors, volunteers, and partner organizations that allows us to keep up the fight to protect Atchafalaya wetlands and Louisiana's cypress forests. And this year we are going to need your support more than ever if we are to stop the biggest threat ever to our remaining wetland forests—the wood pellet industry.

It is heartbreaking to see the same handful of people in the State of Louisiana determined to come up with new devilry to destroy forever what little is left of our children's natural heritage. Their latest wicked idea is to sell our native forests to make wood pellets to be burned for power in Europe.

### This is what we know from different sources:

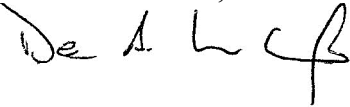
In January 2012 the State of Louisiana began discussions with the British company Drax about its plans for wood pellet facilities. Apparently, the State was willing to pay whatever the cost to negotiate with a company that would forever destroy our native forests. To secure the project, the State offered Drax a custom incentive package that includes a \$1.7 million Economic Development Loan Program commitment that will not require repayment if the company meets payroll performance obligations. How many jobs? 63 jobs (This is not a joke). Average annual salaries: \$35,000. The industry already informed the press that to supply the plant in Port Allen it is targeting the Atchafalaya Basin, Red River Basin and the forests along the intercoastal waterway. As a reward for burning our forests in Europe for power, Drax will receive the services of the nation's No. 1-ranked State workforce training program, LED FastStart™, at no cost. The company is also expected to utilize Louisiana's Quality Jobs and Industrial Tax Exemption program incentives. Drax is also eligible for Louisiana tax credit on capital investment up to \$1.8 million, as well as free job training and property tax breaks. Wow! And we thought that it could not get worse than liquidating cypress forests for mulch! In response to this new threat, ABK is taking on the economic risk of hiring an Outreach Coordinator who will work full-time to keep

the world aware of what is going on here in Louisiana and help us stop the wood pellet industry from destroying our forests. ABK is also spearheading the creation of the *Save Our Native Forests Coalition*. And we are already working with the European and U.S. media to raise awareness about the impending threat of the wood pellet industry to Louisiana's forests.

A new way that you can support ABK is by becoming a sustaining member or sponsor by signing up for automatic weekly, monthly, quarterly, or yearly donations. For more information, please go to our website: [www.basinkeeper.org](http://www.basinkeeper.org)

**Thank you, everyone, for taking a stand on this epic battle to protect our very special corner of this planet.**

For Our Children,

A handwritten signature in black ink, appearing to read "Dean A. Wilson". The signature is fluid and cursive, with the first name "Dean" being the most prominent.

Dean A. Wilson

## **2013 Atchafalaya Awards**

On February 23, 2014, the Tulane Environmental Law Clinic and SouthWings earned honors for their work protecting Louisiana's wetlands and the Atchafalaya Basin during the year 2013 and before.

The Tulane Environmental Law Clinic received the second-ever Super Swamper Award from Atchafalaya Basin-keeper, Louisiana Environmental Action Network (LEAN), and the Louisiana Crawfish Producers Association-West (LCPA-West) engraved with the following: "Super Swamper Award. To the attorneys and students of the Tulane Environmental Law Clinic with tremendous gratitude for putting up a herculean fight to save what is left of Louisiana's wetlands and the Atchafalaya Basin. You are Super Swampers and you are our heroes." The Clinic has provided years of pro-bono legal assistance, helping to protect the environmental health of the Atchafalaya Basin. The Tulane Environmental Law Clinic has represented (and continues to represent) ABK, LCPA-West, and LEAN, making a huge difference in the health of Louisiana's wetlands and its people. Adam Babich and Geri Davis of Tulane were at the meeting to receive

the award. LCPA-West, LEAN, and Atchafalaya Basinkeeper regularly collaborate to stop illegal wetland development and to protect the public's right to use navigable waters of the U.S.

The following was etched on Southwings' Atchafalaya Angel Award: "With eternal gratitude to SouthWings and all the volunteer pilots that are flying to protect Louisiana's wetlands, the Mississippi River and the Atchafalaya Basin. You are our heroes and you are God's Angels." Atchafalaya Basinkeeper and Lower Mississippi Riverkeeper (LMRK) presented the award to SouthWings and its volunteer pilots who have provided dozens of monitoring flights, free-of-charge, to LMRK and ABK. These flights play a critical role in the strategy that ABK and LMRK employ to protect Louisiana's wetlands, the Mississippi River, and the Atchafalaya Basin. Meredith Dowling attended the meeting on behalf of SouthWings.

## **Atchafalaya Basin: Overall Status**

The major threats to the long-term integrity of the Atchafalaya Basin's ecosystems are oil and gas industry activities, poor water quality, excessive sediment, unsustainable cypress logging, and widespread illegal development of wetlands; much of this is a result of the lack of enforcement of environmental easements and environmental laws.

## **Illegal Development of Wetlands**

ABK persists with lawsuits challenging illegal wetland development and the Corps of Engineers' policy of rewarding environmental criminals with after-the-fact permits. ABK continues working hard to stop further construction of roads through wetlands along the I-10 corridor, and encouraging oil companies and landowners to correct past damages caused by unpermitted activities in wetlands that are supposed to be protected by environmental easements.

## **The Fight for the Maurepas Basin**

Our lawsuit against an illegal cypress logging operation in the Maurepas Basin continues. For now there is not any logging in the Maurepas Basin and the State of Louisiana is still buying land, permanently protecting more wetlands there.

## **Summary of Activities in 2013**

In 2013, with help from our Board of Directors, our Board of Trustees, and many of our members, ABK managed to increase its membership to over 670 (up from 550 members in 2012), and about 49% of our annual budget came from memberships, business sponsorships, and other direct donations. We are very thankful for the support of our foundations, members, and sponsors for making ABK's work possible in 2013! The other 51% of our budget came from the generous support of foundations and grant-making agencies —Thank you!

### **Our Struggle Against Big Oil Continues**

For one year we tried to work with Shell Oil to come up with a compromise to fix some of the huge environmental problems it and other oil companies created when they illegally laid their pipelines along an illegally built pipeline canal. For a whole year Shell Oil attempted to deceive us into believing that the company was interested in restoring the area while the equipment was there to lay the pipeline. In reality, Shell was hoping to prevent ABK from commenting against its permit application for the pipeline and did not have any intention of restoring the area. We fully realized Shell's game when one of the other companies that Shell was supposed to be working with to do the restoration contacted us letting us know that Shell was lying to us and that they were never contacted by Shell about this project. ABK has worked with many oil companies in the past, but we have never encountered a company as unethical, conniving, or irresponsible as Shell Oil. Shell already has a pipeline along the same right-of-way, a project that is completely out-of-compliance with the original permit. It is ridiculous that the Corps of Engineers continues issuing permits to the same environmental criminals when they will not and cannot enforce the terms of the permits because the enforcement department does not even own a boat. We will do our best to stop Shell Oil from constructing this new petroleum pipeline across most of Louisiana and the Atchafalaya Basin until it complies with previous permit obligations. We have sent legal comments against Shell's permit application and are considering suing the Corps of Engineers if the permit is issued.

## **Oil Spills**

Sometime around January 1-4, 2013, ORB Exploration spilled about 5,000 gallons of oil into a remote area of the Atchafalaya Basin. ABK discovered the spill and after a thorough investigation we determined that ORB was trying to cover up the spill, which had not been reported to the Coast Guard as required by Federal law. ABK reported the spill to the Coast Guard on January 9, 2013. The cleanup is ongoing even to this day.

## **Monitoring and Enforcement**

Our program to shield cypress-tupelo swamps from further destruction worked very well in 2013, with zero cypress logging operations in coastal Louisiana. Our network of informants keeps us up to date on logging operations throughout coastal Louisiana. With the help of SouthWings, we fly as necessary to monitor for illegal logging or development in wetlands. We lead a strong coalition of NGOs that is ready to take action in the form of joint letters and/or notices of violation (if needed), and we keep the coalition alive by sharing information on new developments and by providing constant updates.

In addition to cypress logging, we monitor for illegal roads built on wetlands that are supposed to be protected by the Corps' environmental easements, and we have managed to stop the plan to illegally extend a road north of and running parallel to I-10, and to stop the illegal damming of East Branch Brown Bayou. We filed a new lawsuit against the Corps of Engineers for an illegally issued General Permit that is helping to legalize an unpermitted road and two illegal dams.

In 2013, Atchafalaya Basinkeeper conducted three monitoring flights and 46 monitoring trips by boat or truck, and reviewed all permits and permit applications for work in wetlands in the New Orleans District of the Corps of Engineers. In addition, we reviewed every single project put out for public notice by the New Orleans District of the Corps.

In August 2013, we took one of the first aerial photos of the Bayou Corne sinkhole. Since then, we have continued to monitor the growing sinkhole, sharing all pictures with LEAN and

LMRK, groups that are actively working on this increasingly tragic predicament. We also work closely with LEAN and LMRK to identify, monitor, and deal with other situations.

### **St. Martin Parish School Board Logging**

They did it again! In a completely outrageous move, the St. Martin Parish School Board rejected an opportunity to permanently protect six Section 16 properties for future generations. In 2013 the Coastal Protection and Restoration Authority offered a one-time payment of up to \$1.4 million in exchange for placing the land into protective easement.

In 2012 the School Board rejected an offer from the Louisiana Department of Natural Resources in favor of selling off the timber in Section 16 in upper St. Martin Parish, despite impassioned pleas from citizens and environmental groups to protect the trees for the enjoyment of eco-tourists and others. We explained to the School Board that the sale of cypress and tupelo, for a total profit of only \$88,650 from the 640 acres slated for logging, would essentially be a one-time windfall since the slow-growing native trees are unlikely to grow back under competition from fast-growing invasive species such as black willow and Chinese tallow. The magical Atchafalaya cypress swamps are the best assets that our children have—the Atchafalaya Basin is a priceless natural jewel like no other place on Earth. The trees were finally saved after ABK and other environmental groups represented by the Tulane Environmental Law Clinic threatened to sue the School Board and the timber company involved. Cypress trees growing on State-owned water bottoms are protected under State law, and unsustainable logging is not exempt under the Clean Water Act.

As it stands today, those trees could be cut at any time because the School Board has rejected all plans to permanently protect the trees. Please remember this when election time comes!

## Legal Actions

The Tulane Environmental Law Clinic (New Orleans) regularly offers a tremendous amount of support. The attorneys working for Tulane are so committed to creating a better Louisiana that in many cases they work after hours, traveling great distances to make sure that our swamps and wetlands survive another day, another year, another generation. We are also very grateful for all of the hard work and assistance provided by attorneys Gordon Schoeffler and Buzzy Joy of Joseph Joy and Associates, Robert Wiygul from Waltzer and Wiygul Law Firm, attorney David Brown, and attorney Ben Trant.

It is only after exhausting all other possibilities that ABK takes legal action, an act of last resort and always a sign of failure by our State and Federal agencies to uphold their obligations to enforce our environmental laws and to protect the best interests of the public and the nation. Before any legal action is taken, ABK goes to great lengths to investigate the situation, to report the violations, and to do whatever is in our power to help our agencies do their jobs. **The way the laws are now enforced, the penalty is greater for keeping an undersized bass than for illegally damming a bayou or damaging hundreds of acres of wetlands without a permit.**

At this time we are actively pursuing eight legal actions (see descriptions below) — two related to logging, two related to illegal roads and dams, two against the Corps, one regarding the illegal development of wetlands in Fisher Lake, and one for an ongoing oil spill.

**Bayou Postillion:** Our case against the State of Louisiana for canalizing Bayou Postillion, with the hidden agenda of creating an oil-industry canal and blocking access to fishermen to the benefit of the landowners, was thrown out of court. Atchafalaya Basin-keeper Trustee Dan Collins will continue with his whistleblower lawsuit against the State of Louisiana for the same violations.

**Taylor Oil Spill:** ABK, together with the Waterkeeper Alliance, Apalachicola Riverkeeper, Galveston Baykeeper, Emerald



Coastkeeper, Louisiana Bayoukeeper, Lower Mississippi Riverkeeper and LEAN, is suing Taylor Energy for an oil spill in the Gulf of Mexico, ongoing since 2004. Most oil spills in the Gulf have not incurred fines.

**Illegal Cypress Logging—Lake Maurepas:** The lawsuit against the illegal logging operation in Maurepas Swamp is ongoing. We will be asking the landowner to restore the site, including hydrology, replanting cypress and other native trees, and controlling invasive plants such as Chinese tallow.

**Bayou Duquesne—Illegal Dam and Log Jams:** The Notice of Violation we filed regarding the damming of Bayou Duquesne is helping us to solve the problem. The dam was removed and we will be working with the landowner to find a way to get logs removed from the bayou. Bayou Duquesne is part of Louisiana's canoe trail system.

**Illegal Roads and Dams Along I-10:** Two elevated roads and dams built east to west along I-10, both north and south of the interstate, along with the the huge battery tank installation, were constructed by an oil company without permits and/or using fraudulent permits, and they were built on wetlands that are supposed to be protected by the Corps' environmental easements. To make matters worse, the Corps refuses to enforce the law and is giving after-the-fact permits to this environmental offender in an effort to help make the dams, roads and platforms legal.

We filed a Notice of Violation and managed to stop (for now) the illegal damming of East Branch Brown Bayou and the illegal westward expansion of the northern road along I-10. If our efforts fail to prompt federal agencies to enforce the environmental easements and federal law, we are considering a lawsuit against the landowner, the oil company, or both. We also filed a Notice of Violation against the Corps for unlawfully issuing a permit to legitimize the illegally built roads and dams on wetlands protected by environmental easements. More lawsuits against the Corps for issuing after-the-fact permits are being considered.

**Fisher Lake Lawsuits:** Together with LCPA-West, ABK took legal action against another illegal developer in the Basin after multiple failed attempts to get the Corps to take action. The Corps responded by giving an after-the-fact permit to the developer and conducted an evaluation based on the developer's own false data to justify the permit. ABK complained to the head of the Corps' permitting department, without results. In the next step, Atchafalaya Basinkeeper, LCPA-West, and LEAN—represented by the Tulane Environmental Law Clinic—filed suit against the Corps, challenging the Corps' issuance of after-the-fact permits for development of Atchafalaya Basin wetlands. By issuing after-the-fact permits, the Corps encourages destructive behavior—sending the message that it is easier to seek forgiveness than permission. Such permits encourage the degradation of wetlands, precious and endangered natural resources that are critical to the livelihood and culture of many Louisianans.

The challenged permits purport to validate prior unpermitted activity. Seeking to replace natural wetlands with a private duck pond, developers dug a ditch more than two miles long through wetlands, drained the water out of a lake, and installed a dam and metal water-control devices to artificially control the flow and level of water—all without obtaining permits required by the Clean Water Act. These actions alter the hydrology of over 700 acres of lake and forested hardwood swamp in the Atchafalaya Basin in an area designated as critical habitat for the Louisiana black bear and they also block access to the area by sport and commercial fishermen. By granting after-the-fact permits, the Corps dismisses the Clean Water Act and rationalizes the unpermitted actions of the developer.

The Fisher Lake lawsuit against the Corps for granting after-the-fact permits to environmental offenders is ongoing. The magistrate gave the Corps time to review the permit and the Corps used the opportunity to try to clean up the record and then reissued the permit to the new landowner (The previous landowner sold the land.). In addition, the lawsuit against the landowner for damming and dredging Bayou Cane and draining Fisher Lake without a permit is pending the outcome of our lawsuit against the Corps.

## **Corps of Engineers Versus the Environment—For Whom does the Corps work for?**

The U.S. Army Corps of Engineers is the main federal agency enforcing the two federal laws that protect streams, lakes, and wetlands. But for whom does the Corps of Engineers really work—the public, future generations, or a privileged few?

### **A few facts:**

To enforce the law regarding illegal wetland development and permit compliance, the New Orleans District of the Corps (encompassing all of coastal Louisiana and the Atchafalaya Basin) employs only two enforcers. Furthermore, the Enforcement Department does not even own a boat. Since the enforcers do not have a boat, historically they rode in other people's boats to investigate violations. Since ABK was founded, we became an important vehicle for the enforcers to inspect sites, efficiently stopping several illegal operations. Last year, ABK scheduled such a trip with EPA and the Corps to look at some illegal roads in the Basin, after which someone from the Enforcement Department called ABK and notified us that they could not ride with us ever again to inspect sites. When we asked how they intended to enforce anything without a boat, they replied that they would use the violator's boat or vehicle. In other words, it is unethical to inspect the crime scene with the victim, but not with the criminal. In addition, the Corps repeatedly refuses to take action against certain gross violations of federal law and environmental easements, protecting the violators. However, as soon as the fishermen and ABK take legal action to confront the illegal developers, the Corps again protects the violators by issuing a cease-and-desist order, followed by an after-the-fact permit.

In contrast, to manage the 27,000 acres in the Indian Bayou Area, it looks like the Corps is well-armed against the fishermen. They have eleven enforcement agents and multiple vessels including an airboat, mud boat, and two large patrol boats. As you can see, when it comes to enforcing the law against regular citizens and fishermen the Corps has plenty of funding and

seemingly limitless resources. **It's no wonder we are losing the Atchafalaya Basin at an alarming rate!**

Despite ABK's complaints about the Corps' use of the violators' vehicles and boats to inspect sites, the Corps is still inspecting sites in vehicles and boats belonging to violators, but to this day they refuse to allow the enforcers to use boats and vehicles belonging to ABK or fishermen. In addition, the Corps is diverting up to 50% of the Mississippi River sediment load into the Atchafalaya Basin and has realigned all the main rivers and bayous that feed our swamps to capture Atchafalaya River water from the curves of the river, maximizing sediment loads moving into wetlands, effectively silting up thousands of acres of swamps, lakes, and bayous.

The situation with the Corps is troubling and disturbing, especially considering that it is a federal agency charged with the protection of our environment and the best interests of the nation. The public itself deserves better treatment than they are currently receiving from the Corps of Engineers with regard to this essential, unique natural treasure. ABK is committed to doing whatever is in our power to hold the Corps accountable and to put an end to its pattern of unethical decisions relating to violations of our environment. Our future, our children, and our Basin are counting on us.

**You can read the latest letter of complaint we sent to the EPA and the Corps about this issue on ABK's website.**

## **Education & Outreach**

In 2013, ABK directly connected with 1,808 people through PowerPoint presentations, paddling trips, swamp tours, tree planting events, workshops, and meetings, educating them about the Atchafalaya Basin, wetland ecology, the importance of and threats to Louisiana's forested wetlands, and applying the Clean Water Act and the Rivers and Harbors Act to protect wetlands. ABK staff and trustees conducted a workshop to train 25 university students in wetland ecology and the use of logic-based reasoning to protect wetlands. ABK staff and volunteers introduced 85 people to the beauty of the Atchafalaya Basin through four educational paddling trips into the swamp. One trip was held for college students from Lafayette, one for environmental law students from Tulane and Loyola Universities in New Orleans, while the other two were for the general public. ABK staff, board members, and volunteers, in coordination with the LSU Ag Center's Youth Wetlands Program, conducted two student-centered tree-planting events at Lake Fausse Pointe State Park, involving 40 local middle school and high school students in the restoration of the vegetation at Lake Fausse Pointe in St. Martin and Iberia Parishes.

## **Atchafalaya Basin Stewardship & Community Empowerment Program**

With funding from the EPA's Environmental Justice Small Grants Program, ABK trained 119 fishermen and other concerned citizens in communities on both the East and West sides of the Basin in using the Clean Water Act and the Rivers and Harbors Act to protect the environmental health of the Basin's wetlands and waterways as well as fishermen's right to access their traditional fishing grounds. Workshops focused on teaching the public how to recognize and report possible violations of the Clean Water Act and the Rivers and Harbors Act. Additionally, through this program, ABK staff spoke one-on-one with 370 fishermen by setting up a tent and table with literature and cold drinks at several boat landings around the Atchafalaya Basin. The public expressed much support for this program, which garnered substantial front-page coverage in important local papers.

Overall, the program was a huge success and we are seeking additional funding to continue the project in 2014 and beyond.

## **Billboard**

The ABK billboard went up in April 2013 because of the generosity of Lamar Advertising and the Reilly Family Foundation of Baton Rouge, which donated the billboard space in addition to providing a cash grant. **Thank you, Lamar Advertising and Reilly Family Foundation!**

Please support businesses that care about Louisiana and their communities and are committed to making our world a better place, like Lamar Advertising and the other ABK Business Sponsors listed later in this report.



*A tranquil morning in the Atchafalaya Basin. Photo by Greg Guirard.*

## **In Memoriam - Al Berard, Musician and Christian Humanist (1960-2014)**

Baskinkeeper member and promoter Al Berard of Cecilia died on February 26, 2014, at the age of 53. There was no better man than Al, and he was loved by every person who knew him. Al and his wife Karleen and their three daughters formed the most beautiful family imaginable. They often performed Cajun music together.

Al Berard's father was a commercial fisherman in the Atchafalaya, and Al's first real band was called The Basin Brothers. All five members were connected in some meaningful way to the Atchafalaya. "I love you, my brother – You're the best." That's how Al greeted his friends. In truth, he was himself the best and he will be missed by everyone who ever knew him, for his music as well as for his extraordinary love and kindness.

-Greg Guirard, Atchafalaya Basinkeeper Board of Directors



*Al Berard is pictured, front center, with the Basin Brothers.  
Photo by Greg Guirard.*

## **Thank You, Basinkeeper Business Sponsors!**

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162 Croydon Ave.

Baton Rouge, LA 70806

## **How Can You Help?**

- Don't buy cypress mulch!
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- The way you spend your money makes a big difference. Do business with Basinkeeper Sponsors.
- Spread the word. Talk about the issues.
- Encourage others to join ABK in the fight to save the Basin.
- Invite Basinkeeper to do a presentation for your civic or school group.
- Don't support businesses that use or sell cypress mulch.
- Volunteer.
- Report possible violations in Atchafalaya wetlands and waterways by calling: 225-685-9439.

### **Atchafalaya Basinkeeper Staff**

- Dean A. Wilson, Atchafalaya Basinkeeper & Executive Director
- Cara Leverett, Staff Scientist/ Basinkeeper Assistant

### **Contact Information ~ Atchafalaya Basinkeeper**

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Baton Rouge, LA 70806

# Thank you for your support!

ABK would like to thank the following individuals for volunteering their time and/or resources: the folks at SouthWings, especially Meredith Dowling and pilot David Mauritson; John and Becky Williams of Pack and Paddle; Greg Guirard; David Brown; Mabelle Hall, Adam Babich, Lisa Jordan, Liza Calderon, and the student attorneys at the Tulane Environmental Law Clinic; Ben Trant; Gordon Schoeffler; Buzzy Joy; Robert Wiygul; Chris Ventre; Stacey Scarce; Mollie Day; Jody Meche; Judith Z. Gardner and John Guillory; Melanie Harrington of Joy de Vivre Cafe; Jeremy Simon; Anik Boudreau and Faren Serrette; Diana Toledo of River Network; the Atchafalaya Basinkeeper Board of Directors and Board of Trustees; Dr. G. Paul Kemp; Senator Fred Mills, Jr.; Henderson Mayor Sherbin Collette; St. Martin Parish President Guy Cormier; Hollis Simpson of Uncle Johnny's; Deborah Monlux of Bayou N Brooklyn; all of the volunteers that have helped with mailouts; and all of the members and business sponsors whose generosity makes our work possible. Tremendous gratitude goes to Greg Guirard for his herculean efforts to increase members, sponsors, and donors.

**Atchafalaya Basinkeeper could not continue to operate without the generous support that we receive from several environmentally conscious and responsible foundations and corporations. Thank you!**

**Thank you, Lamar Advertising,** for continuing to donate billboard space. The ABK billboard is now situated on Airline Highway, next to Academy in Baton Rouge!

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