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Digging for truth

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IBERIA PARISH -- Three years after the state spent about \$1 million on a water quality project in the Atchafalaya Basin, the U.S. Army Corps of Engineers has declared it out of compliance, a pending lawsuit claims the project violates the federal Clean Water Act and the legislative auditor's office is looking into allegations of fraud.

In 2000, when the Atchafalaya Basin Program of the Louisiana Department of Natural Resources first considered the Bayou Postillion dredging project in eastern Iberia Parish, its purpose was to supposed to be to keep the waterway open to recreational and commercial fishermen, improve water quality in a 6,500-acre section of the Basin south of the bayou by allowing fresh water in, and guarantee state ownership of at least a portion of the bayou that would be lost if the waterway silted shut.

State officials hoped the project would become a model for future water quality projects in the Atchafalaya Basin.

But as early as 2004, before the U.S. Army Corps of Engineers even permitted the project, Lafayette businessman and environmentalist Harold Schoeffler and West Atchafalaya Basin crawfishermen said it was flawed.

For more than a year now, others have joined in the criticism, alleging that the project did little to improve water quality. Instead, they argue, the project profited the landowners and a company with ties to Lafayette attorney Newman Trowbridge, who is linked to former Gov. Mike Foster's administration and was on contract with the state when the project was developed.

Detractors say state taxpayers, in reality, dredged an oil and gas access channel for Trowbridge, his family and business associates, and forfeited state surface and mineral rights in a productive oil field in the process.

The Daily Advertiser spent more than six weeks digging through hundred of public records. While those documents provided some clarity as to how the project went down, the true story behind the Bayou Postillion dredging project remains as muddy as the waters of the Atchafalaya River.

How it happened

Before it was dredged, Bayou Postillion had become a narrow slip of a waterway, surrounded by thick vegetation, so overgrown and silted that you could walk across it in some places. Sediment carried by the north-south Port Allen to Morgan City Intracoastal Waterway had nearly filled in the mouth of the bayou so that most boats could no longer enter it.

It's a problem not uncommon in the Basin as water from the Atchafalaya River dumps sediment into connecting canals and bayous. Eventually, the waterway fills up, making it too narrow and shallow for boats.

Unless someone dredges the waterway, the state -- along with the public -- can forever lose access. That's not all the state stands to lose. According to the law, where that sediment builds new land along bayous and canals, the new land and minerals under it (think oil and natural gas) belong to the adjacent landowner, not the state.

Waterways that silt shut also deprive inland swamps of fresh water needed to support bass, crawfish and crabs. Fresh water flows from the Atchafalaya River and Intracoastal Waterway into connecting waterways like Bayou Postillion, then into inner waterways.

During times of high water like the Basin is experiencing now, if unimpeded by oversized dredge spoil banks, the water will overflow its banks into those inner swamps, flushing out stagnant water and decaying vegetation. Without that influx of fresh water, everything in the water -- from the tiniest microorganism to crawfish and bass -- may die.

Supposedly, that's what the Atchafalaya Basin Program set out to address in the early 2000s when the Bayou Postillion dredging project was proposed. Fishermen would be able to continue using the bayou, fresh water would keep inland swamps healthy and the state would not forever lose ownership of the bayou.

Since much of the land in the Atchafalaya Basin is privately owned, the state needed permission from adjacent landowners to dump the mud they would dredge from Bayou Postillion onto their land, leaving gaps to let fresh water through. In exchange for that right, the state signed an unprecedented agreement that forever gave away waterbottoms and mineral rights to the landowners.

Employees with the state's Atchafalaya Basin Program say the project would not have happened without that unique agreement. The deal involved a give and take just like any other public project, with the state coming out a winner, they say.

Detractors, like Baton Rouge landman Dan Collins, call the deal an elaborate scheme in which the state was outwitted by Trowbridge, the lawyer who negotiated the deal on behalf of the landowners, including himself.

Collins, Schoeffler, west Atchafalaya Basin crawfishermen and others believe Trowbridge got a free oil and gas access channel that opens his family's land to exploration and potentially hundreds of thousands of dollars in oil and gas royalties.

Trowbridge denies that he was behind the deal.

"I masterminded nothing. This was the state's idea," Trowbridge told The Daily Advertiser. "We reluctantly went along with it and, when we agreed to do it, we did it on terms that made sense to everybody."

Trowbridge claims the critics all have personal or professional vendettas against him and that the alleged scheme is a complete fabrication. Furthermore, he says the bayou has not been used for oil and gas exploration and his business associates have not made a penny off the Bayou Postillion dredging project.

In the beginning

The Atchafalaya Basin Program in the late 1990s and early 2000s was looking for small projects it could undertake to improve water quality using state money. Several proposed projects were rejected because landowners would not consent.

Bayou Postillion was one of the top projects on the list. Only one entity had to be dealt with, Kyle-Peterman Management, which represents dozens of landowners associated with a former cypress mill company. Trowbridge is one of the landowners, is president of Kyle-Peterman Management and was under contract with the state Department of Natural Resources and the state attorney general's office at the time.

"Sandra Thompson (then director of the Atchafalaya Basin Program) came to me and begged for the project," Trowbridge said. Thompson, who resigned in 2007, declined to comment for this story. But documents appear to back Trowbridge's assertion that it was Thompson who approached him with the proposal.

Trowbridge said his initial reaction was to say "no deal." In another year, Bayou Postillion would have silted shut, crawfishermen would have no access to sue over and ownership would shift to the families.

Thompson persisted. Documents show in April 2001, Thompson proposed a unique boundary and dredge/servitude agreement, and asked Trowbridge to talk to Kyle-Peterman.

Trowbridge said he returned to the state with a proposal: The landowners would give the state the right to use their land at no cost for dredge spoil disposal, and let the state knock down trees on their land under two conditions, he said. Those conditions were that the state must maintain the channel at a sufficient width and depth for it to be accessible in the future for rigs and other oil and gas activity, and the state must enter a boundary agreement that forever sets the limits of what belongs to the state and what belongs to the landowner, Trowbridge said.

"The state said they would not do a deal unless the state felt it was on the plus side of the we-us exchange," he said.

State Land Office Administrator Charlie St. Romain believes the state came out a winner in the deal.

The boundary agreement was an unusual document not normally used in such cases. The state usually uses right of way, easement or servitude agreements, Collins said. Trowbridge said the boundary agreement was his idea because he didn't want himself or a successor to have to fight the state years from now over who owns what.

That document would prove to be powerful in directing the design of the project and would raise questions in its wake.

'A ruse'

Collins, who was on contract with the state to prepare a land ownership agreement on the project, now believes the first-of-its-kind boundary agreement was key to a plan by Trowbridge to transfer mineral rights from the state to the landowners. The only other way to do so would be through an act of the state Legislature or a state constitutional amendment. Collins also believes the entire project was designed to open up Kyle-Peterman land to oil and gas exploration.

By April 24, 2001, the deal was done and "everything else was a ruse," Collins said.

No water quality study had been conducted, but the basic design of the project was already set, he said.

Schoeffler, one of the project's first critics, agrees.

"This whole project was an oil and gas access canal project, and by calling it a water quality project, they could get the state to pay for it, get favorable agreements for mineral ownership and defining the channel, and they could avoid mitigation," Schoeffler said.

Trowbridge said it wasn't a secret that the bayou was dredged to a depth and width to accommodate oil and gas equipment.

In the dredging and spoil servitude agreement, the state acknowledges that the channel "will be utilized as an access route by oil and gas operators conducting exploration and development activities on the adjacent lands of private owners."

Whether Schoeffler, Collins and the detractors are right or Trowbridge and state officials are right is uncertain. Some who could shed light on the situation aren't talking. Thompson sent word through Department of Natural Resources employees that she would not return our calls, and attempts by The Daily Advertiser for more than six weeks to interview current DNR Secretary Scott Angelle proved fruitless.

Meanwhile, some current or former state employees limit what they're willing to say for public disclosure or refuse to talk at all for fear of reprisal. Public documents alone don't paint a clear picture.

Here's what the documents show.

In a Sept. 11, 2000, memo to Atchafalaya Basin channel committee members, chairman Ernie Gammon of HydroConsultants (who would later be hired to work on the project) wrote that Postillion was agreed upon as the first channel restoration project to be undertaken with 100 percent state funds.

On Sept. 12, 2000, Collins completed a preliminary ownership report on land on either side of Bayou Postillion, noting the land was owned by Kyle-Peterman, with the state being the presumed owner of the bayou.

As early as April 2001, the plan to use a boundary agreement had been laid out by Thompson in a letter to Trowbridge. She wrote, "We are prepared to offer what we feel is a good compromise to expedite the project and to save possibly lengthy court battles over ownership of accretion land."

Thompson then outlined details of the boundary agreement where the state would keep ownership of a channel through Bayou Postillion: 25 feet wide at the bayou's entrance, 50 feet wide in the middle and 100 feet wide in the western section.

Kyle-Peterman would keep minerals of the remainder of the bed and banks of the bayou "in perpetuity."

By then, the end of Foster's final term in office was approaching. His people signed the boundary and dredge/servitude agreements. Documents show the agreements reached Foster for his signature by November 2003, but he did not sign them.

Oddly, on Dec. 31, 2003, DNR Secretary Jack Caldwell wrote to the purchasing and property control division that Bayou Postillion was on hold because of problems with landowner agreements.

When Blanco took over, at the urging of Thompson and others, she signed the agreement on May 12, 2004.

In the meantime, Thompson applied for and received a Corps of Engineers permit to dredge Bayou Postillion for water quality improvement and navigation. The U.S. Fish and Wildlife Service and federal Environmental Protection Agency voiced concerns over potential harm to water quality and wildlife during the application process.

Those concerns were worked out and they eventually agreed to issue the permit, said Ronnie Duke, chief of the Corps' western evaluation section for the regulatory branch, who signed the permit in July 2003.

Something amiss

It wasn't until about a year ago that Collins began to realize something was amiss with the Bayou Postillion project.

The revelation came to him at an oil and gas expo in Houston in early 2007 when he found fliers offering and promoting large drilling prospects in the East Bayou Postillion Field on Kyle-Peterman lands. The fliers said six wells already were producing in the field.

Touting the Blackbird and Falcon prospects was a company called Tortuga Interests. President and treasurer is John Hine, who sits on the board of Kyle-Peterman Management with Trowbridge. Hine's and Trowbridge's families have been in business together since the late 1800s and Trowbridge is godfather to Hine's first child. Trowbridge is listed with the secretary of state as registered agent for Tortuga Interests and Tortuga Operating, of which Hine is vice president. In a 1996 deposition, Hine states that Trowbridge owns an interest in Tortuga, Collins said.

A little research by Collins revealed Hine had acquired state leases in the Bayou Postillion area in 2003, while the deal with Kyle-Peterman was being drafted. Trowbridge says he's not an owner in Tortuga, although he admits to occasionally investing in some of Hine's operations.

Collins believes Bayou Postillion was dredged so that oil and gas rigs could reach the fields being brokered by Hine.

Thompson, in an April 24, 2007, e-mail to Paul Maclean of Maclean Land Services Inc. of Houma, who was investigating another matter involving Tortuga, said oil and gas access was not considered in selecting Postillion.

In June 2007, in another e-mail to Maclean, Thompson wrote that Kyle-Peterman reserved the right to use the bayou for oil and gas development, but "that is not the purpose of the project," she wrote.

It was clear to some early on in development of the Postillion plans that part of the give and take between the state and Kyle-Peterman's Trowbridge was dredging the bayou wide and deep enough for oil and gas rigs.

Gammon, in an April 5, 2002, memo to DNR files, wrote, "Newman (the Peterman family) is interested in seeing this work done as a means of facilitating future oil and gas exploration work in the area. (He wants the channel excavated so that drilling rigs can navigate Bayou Postillion)."

But Collins, who was a member of the Atchafalaya Basin Program's channel maintenance committee, which supported the Bayou Postillion dredging project and also on contract with the state, said neither he nor the committee knew the project was about oil and gas production nor did they know of Trowbridge's link to the oil and gas business through Tortuga.

Duke, who signed the Corps permit, said they knew there were oil and gas facilities around Bayou Postillion as there are through most of the Basin. The permit was issued primarily for water quality enhancement. To achieve that, dredging was required and that improved navigation for fishermen as well as oil and gas activities, he said.

Gary Keyser, on contract as an attorney for the Atchafalaya Basin Program at the time and who previously was chief of lands in DNR, is careful about pointing fingers over the Bayou Postillion project. But he will hint that something was unusual, especially with the proposed width, and history of mineral leases..

"I was not directed or instructed to do a full examination of all factors pertaining to the project," Keyser told The Daily Advertiser.

He was not allowed to insist, as he wanted to, that the width of the bayou be made regular and wide, nor was he allowed to examine oil and gas leases in the vicinity of the project, Keyser said.

Another contract attorney handled certain aspects of the deal, including the boundary agreement, he said.

The result was that the state dredged the width of the bayou but only got to keep 25 feet of it in places.

A second look

Four years after the project was completed, controversy continues.

The Atchafalaya Basin Program in late 2007 approached the Corps about the Bayou Postillion project after receiving complaints from Atchafalaya Basinkeeper Dan Wilson and others.

Corps officials and Toni DeBossier of the Basin Program visited the site to inspect the gaps cut into the spoil bank.

In a March 10 letter, Corps project manager Timmy Lacoste wrote "it was discovered that various components of your project were in noncompliance" with the 2003 permit. The problem is with the spoil bank gaps and the lack of a mitigation plan, he said.

Mitigation is required when projects disturb natural habitat, like wetlands. The entity conducting the project must then create new habitat or wetlands in another area to replace what their project destroyed.

Interim Basin program director David Fruge' wrote back that the Technical Advisory Group is working on recommendations for redredging the gaps to allow fresh water through and a company will be hired to work on the mitigation assessment.

Basinkeeper Wilson, meanwhile, joined the Louisiana Environmental Action Network in advising the Basin Program of plans to sue.

On their behalf, the Tulane Environmental Law Clinic notified the program in an April 11 letter of plans to sue over Bayou Postillion for violating the federal Clean Water Act. They claim the spoil banks were not built according to the permit, that permission was not granted by the Corps' real estate division, that the mitigation was not conducted and pre- and post-project photos were not submitted as required by the Corps permit.

Gammon, of HydroConsultants, said the spoils were built according to the designs submitted with the Corps permit application. He produced aerial photos that show gaps cut into the spoil banks.

On a trip to the project site in March, there appeared to be no gaps in the spoil bank along Postillion. But a few weeks later, on a trip with Gammon in April, he pointed out alternating places on the bank where the tree line dips a little. Those are the gaps in the spoil banks, four years after the project was finished, he said.

The questions raised by Collins, Schoeffler and others about the true intent behind Postillion -- in their opinion to dredge an oil and gas access channel for private landowners -- has raised eyebrows with some in state government.

The Louisiana legislative auditor's office is evaluating allegations about the project, Dan Daigle, director of compliance audits, said.

"We're not sure this is fraud," he said. "We're determining the veracity of the allegations" to determine if a thorough audit and investigation are warranted.

The state attorney general's office is assisting the Department of Natural Resources in looking into the project as well, public information officer Jennifer Cluck said Friday.

Collins said he approached at least one person on Gov. Bobby Jindal's transition team last year about his questions over the project and discussed the matter with Chief of Staff Timmy Teepel. Information was forwarded to State Inspector General Stephen Street, who apparently opened and closed a case on the matter without asking Collins for all the information he had acquired or even asking him questions.

When The Daily Advertiser requested information about the case through the state's public records laws, Street said his office is under the governor's office and thus is exempt from disclosure of documents.

In the end

The state Atchafalaya Basin Program is developing plans to address the spoil bank gaps and mitigation needs required by the Corps. Nothing has been decided yet.

DNR Secretary Scott Angelle still has not responded to requests for an interview. Spokeswoman Phyllis Darenbourg said once the potential lawsuit was pending that he probably won't be able to talk.

The legislative auditor's office and attorney general's office won't comment on their inquiries into the project.

Regardless of who may have profited, the main purposes of the Bayou Postillion dredging from an Atchafalaya Basin Program standpoint were navigation and water quality. It's hard to criticize the outcome of the project when it comes to navigation. The bayou is much more accessible than before it was dredged.

Regarding water quality, LSU is waiting until the current high water in the Basin falls, probably in July or August, before conducting another analysis.

William Kelso of the LSU School of Renewable Natural Resources said they collected four years of data before the project and one year of data afterwards and compared it with a control site at Bayou Sorrel. Six of the 10 or 12 collection sites in Bayou Postillion showed improvement in dissolved oxygen, he said. While not overwhelming, water quality near the project site did show improvement, Kelso said.

Schoeffler believes the studies aren't sufficient. Extensive study was not done before the project and LSU is not sampling water elevation, direction of flow, turbidity, temperature and tides, he said. They also are not sampling small creatures such as snails, grubs and worms that live in the first six inches of top soil, he said.

"There was no need to dredge Postillion without doing a study before," Schoeffler said. "The worst thing we can do out there is dredge. It's the most damaging thing we can do. The only dredging we need to do it take the dams out and restore the flow."

Bob Wilson of Bayou Pigeon was catching crawfish in Bayou Postillion in April. It was slow, he said, probably because the water was so high. But when the water was low, you couldn't catch hardly any.

Dredging Bayou Postillion "helped a whole lot," he said.

For the skeptics who question whether the project met the goals of improving navigation and water quality, Wilson advises, "You tell them to come to Pigeon and talk to people about it."

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Abstract (Document Summary)

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