



TULANE LAW SCHOOL

TULANE ENVIRONMENTAL LAW CLINIC

September 13, 2022

Our file no. 155-025

Neil T. Gauthier
Project Manager
Regulatory Division
U.S. Army Corps of Engineers
New Orleans District
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New Orleans, LA 70118-3651

Sent by electronic mail to Neil.T.Gauthier@usace.army.mil

RE: Supplemental Report in Further Support of Comments Submitted on Behalf of the Atchafalaya Basin Coalition and Waterkeeper Alliance Opposing the Proposed Ecological Swamp Enhancement Project (East Grand Lake) in the Atchafalaya Basin, in Iberville Parish (MVN 2016-01163-CM)

Dear Mr. Gauthier:

On behalf of the Atchafalaya Basinkeeper, the Louisiana Crawfish Producers Association – West, Healthy Gulf, the Sierra Club Delta Chapter, and the Waterkeeper Alliance (collectively, “Basin Advocates”), we attach and submit for your consideration an expert report prepared by Dr. Ivor Van Heerden in further support of the Comments submitted by Basin Advocates on May 24, 2022, and re-urge our original request that the U.S. Army Corps of Engineers (“Corps”) deny the proposed East Grand Lake Project (“Project”) for permit approval as MVN 2016-01163-CM (“Permit Application”). Exhibit A. The Project will cause or contribute to significant degradation of the East Grand Lake area of the Basin, therefore violating 40 C.F.R. §230.10(c) of the 404(b)(1) Guidelines. Section 230.10(c) mandates that “no discharge or dredged or fill material shall be permitted which will cause or contribute to “significant degradation of the waters of the United States.” When describing which effects contribute to “significant degradation,” §230.10(c)(3) includes effects of dredged materials “on aquatic ecosystem diversity, productivity, and stability.” The Guidelines provide a non-exhaustive list of examples illustrating what these effects might look like. This list includes the loss of capacity for wetlands to assimilate nutrients and reduce wave energy. Further, §230.10(c)(1) states that effects on human health and welfare can contribute to significant degradation. When considering §230.10(c)(1) and §230.10(c)(4) in combination, it becomes clear that the loss of flood capacity in the Atchafalaya Basin, as well as the increasing eutrophication the Project will cause if completed as proposed, will result in significant degradation to the Basin under the 404(b)(1) Guidelines.

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Dr. Ivor van Heerden's prior report was included in the comments submitted by the Basin Advocates opposing the related 2018 East Grand Lake proposal. In the attached supplemental report, Dr. van Heerden reviews the 2022 version of the Project and finds that it will have the same adverse impacts as the original proposal. As a central conclusion, Dr. van Heerden determines that the Project if executed as proposed will lead to a decreased capacity of the Basin to absorb and retain floodwaters due to the excess sedimentation it will cause. As another central conclusion, Dr. van Heerden identifies that the Project if executed as proposed will add excess nutrients to the East Grand Lake area, resulting in hypoxia and eutrophication. Dr. van Heerden's declaration includes the following key findings:

- “As greater amounts of sediment are introduced within the Basin, settling out and elevating ground levels throughout the area, the Basin's floodwater-carrying-capacity shrinks. This will adversely affect downstream communities that rely on the Basin to absorb annual floodwaters.”
- The Project as designed will result in the creation of “a north-to-south flow barrier extending 2000 feet into the interior swamp that will totally inhibit east to west (and vice versa) flows and lead to levee flood water overtopping. The design is “fundamentally at odds with the proposed benefit for this project as it will ensure high volumes of sediment, nutrient rich water, further hypoxia-creation ... and increase in erosion” for banks impacted by Elements 11 and 12.
- The Project as designed includes “a series of poorly planned cuts that will allow fast-moving, nutrient and sediment-carrying river waters to flow freely into low-lying healthy Cypress-Tupelo swampland, depositing their suspended sediment loads in these still water interior areas, and causing eutrophication.”
- “The 2022 version of the East Grand Lake Project is fundamentally similar to the 2018 version, and thus my conclusions pertaining to the 2018 version remain applicable. The documentary support of this 2022 version, however, is almost non-existent; there is no adequate explanation of the purported wetlands creation.”
- Regarding the administrative record, “the Public Notice documents are incomplete, riddled with errors or inconsistencies, and fail to provide the public (including other governing agencies) with the requisite information needed to provide informed, meaningful comment.”

In summary, Dr. van Heerden finds that the poorly planned proposed cuts in the 2022 East Grand Lake project would allow fast-moving, sediment-carrying water into the Basin, which would cause eutrophication and infilling. The Basin would be severely and irreversibly impacted by not only fundamentally changing its ecology but also by leaving many downstream Louisiana residents unprotected from flooding. The project will cause inevitable significant

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degradation to the Basin, and any derivative of the Project will have similar consequences. Therefore, the Basin Advocates again urge the Corps to deny a permit for the Project, and any derivatives or version of the Project, for significant degradation to the Basin will be unavoidable if the project is permitted. If there are any questions, we would appreciate the opportunity to meet with the Corps to discuss the matter in depth.

Substantially Prepared By:

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Enclosure

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