



September 27, 2021

U.S. Army Corps of Engineers
Regional Planning and Environmental Division South PDS-C
7400 Leake Ave, New Orleans, LA 70118
Via Email: mvnenvironmental@usace.army.mil

RE: West Shore Lake Pontchartrain scoping and notice of intent to publish Supplemental Environmental Impact Statement

We write this letter in response to the Corps' scoping comment request and the notice of intent published in the Federal Register informing the public that your agency will soon release a SEIS, which will address a reasonable range of alternatives based on the proposed West Shore Lake Pontchartrain Hurricane and Storm Damage Risk Reduction Project's (WLP) purpose and need.¹ It states that the Supplemental Environmental Impact Statement (SEIS) will compare, at a minimum, the previously identified "BBA Alternative for the WSLP Project in EA 576 to Alternative 1 (MSP-1: Public and Private Lands) and Alternative 2 (MSP-2: Public Land Only) by using the Alternatives Evaluation and Comparison (AEC) process."

Restore the Mississippi River Delta Campaign (MRD) has long advocated for the U.S. Army Corps of Engineers (Corps) to fund a portion of Louisiana's "River Reintroduction into Maurepas Swamp" (MSP) restoration project as wetlands mitigation for the Corps' separate but adjacent West Shore Lake Pontchartrain (WSLP) levee project. The Maurepas Swamp project, managed by the Louisiana's Coastal Protection and Restoration Authority (CPRA) and funded in large part by *Deepwater Horizon* settlement funds, will sustain and enhance the forested wetland habitat that the WSLP project construction will damage and, like the WSLP project, is in the Lake Pontchartrain basin. Thus, we believe that alternative 2 is the best compensatory mitigation alternative for mitigating unavoidable impacts for WSLP, both in-basin and in-kind, and will also render a host of benefits, including improved hydrology, resilience and saved time and money.

Compensatory Mitigation

Compensatory mitigation is the last step in the three-step approach to compensate for unavoidable impacts to wetlands. Pursuant to the Corps "no overall net loss" the goal of the § 404 regulatory program mitigation

¹Federal Register. 2021 Notice of Intent to Prepare a Supplemental Environmental Impact Statement to the 2014 Final Integrated Feasibility Report and Environmental Impact Statement for the West Shore Lake Pontchartrain Hurricane and Storm Damage Risk Reduction Study, St. Charles, St. James, and St. John the Baptist, Department of the Army Corps of Engineers' August 13, 2021. Volume 86, No 154, pp. 44700-44701.





has three components: avoidance, minimization, and compensatory mitigation.² Compensatory mitigation is used where appropriate to compensate for unavoidable adverse impacts after all avoidance and minimization measures have been taken.

Compensatory mitigation is defined as an action that results in the restoration, establishment, enhancement, and/or preservation of resources to address a residual impact to a resource elsewhere.³ There are a variety of mechanisms for accomplishing wetland compensatory mitigation.⁴

The EPA and Corps' MOA of 1990 directs that the functional values lost should be carefully considered when determining compensatory mitigation, and that, generally, in-kind mitigation should be used.⁵ Compensatory mitigation can include the restoration of existing wetlands or the creation of new wetlands and is to be done as close to the discharge site as possible ("on-site mitigation"). Thus, it must occur within some approved geographic area so as to ensure that the impacts are appropriately offset by the restoration or conservation activity. Where on-site mitigation is not possible, then off-site mitigation is permitted, but should take place in the same geographic area if possible. Under current rules for wetlands, all program types must use a watershed approach for compensation (33 CFR 332.3(c)(1)). The intent is to establish geographic proximity and thus functional similarity between the impacted and compensation sites.

Maurepas Swamp Project is Best Compensatory Mitigation Option for West Shore Lake Pontchartrain

We have designated the River Reintroduction into the Maurepas Swamp as a priority project for coastal Louisiana as this diversion would restore the flow of freshwater, nutrients and suspended sediment to the Maurepas swamp, mimicking natural spring overflow. MSP as the compensatory mitigation alternative could provide ecosystem benefits that increase over time, coordinate public resources effectively permit mitigation that is in-basin and immediately adjacent to the impacts as anticipated by policy, and will restore the ecosystem around the WSLP project increasing overall resiliency.

It would improve hydrology by increasing flow-through and decreasing salinities; improve resiliency and long-term sustainability against relative sea level rise by increasing growth rates and soil accumulation; and increase primary productivity and ecosystem function while maintaining healthy populations and

² 55 Fed. Reg. 9210 (Mar. 12, 1990).

³ (3 CFR part 332.2/40 CFR 230.92).

⁴ Under the Corps' CWA Guidelines, a § 404 permit cannot issue "unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge [of fill material] on the aquatic ecosystem." 40 C.F.R. § 230.10(d) (2008). This mitigation policy typically follows a hierarchy, where project developers must first avoid and minimize impacts, and then compensate for unavoidable impacts (40 CFR 1508.20).

⁵ The MOA further instructs that restoration options should be considered before creation options.



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biodiversity in one of the nation's largest swamps. The selection of the Maurepas Swamp project would also result in mitigation immediately adjacent to the WSLP project site, would conserve existing mitigation bank credits for other projects in the basin, and could serve as a funding model for future restoration.

Based on the location and overall benefits of the River Reintroduction into the Maurepas Swamp, we believe there are no other mitigation actions that would satisfy the mitigation regulations for the WSLP; therefore, we strongly encourage the USACE to select this project as mitigation for the WSLP project.

Thank you for considering this and we look forward to reviewing and providing comments on the SEIS.

Sincerely,

Brian Moore,
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