LAKE PONTCHARTRAIN HURRICANE PROTECTION PROJECT

Response to Environmental Defense Fund Letter

1. Letter from Mr. James T. B. Tripp, counsel for Environmental Defense Fund (23 Dec 76).

2. DF from NOD providing a discussion of pertinent item for response to Environmental Defense Fund (CMT 1, 8 Jan 77; CMT 2, 19 Jan 77).

3. LMVD Draft response.

4. NOD Draft response (27 Jan 77).

5. News Article (25 Jan 77).

15 February 1977

ENVIRONMENTAL
DEFENSE
FUND

162 OLD TOWN ROAD, EAST SETAUKET, N.Y.11733/618 751-5181

December 23, 1976

Colonel Early J. Rush, III
District Engineer
New Orleans District
Corps of Engineers
Department of the Army
P O Box 60267
New Orleans, Louisiana 70160

RE: Corps of Engineers Lake Pontchartrain, Louisiana, and Vicinity Hurricane Protection Project

Dear Colonel Rush:

We are writing to you to express our serious concern about certain aspects of the Lake Pontchartrain Hurricane Protection Project which is now under construction by the New Orleans district of the U.S. Corps of Engineers. This project was the subject of a final environmental impact statement dated August 1974, and released by the Corps in January, 1975. A Section 404 hearing held on February 22, 1975, a Section 404 Statement of Findings issued August 22, 1975 and EPA approval October 1, 1975. Legal action was instituted by Save Our Wetlands with respect to this project on December 5, 1975.

Through the construction and enlargement of barrier levees, this project is designed in part to increase the flood control protection of metropolitan New Orleans against the design hurricane. Of grave concern to us is the fact that the hurricane protection project is designed to afford protection, not only to developed areas of metropolitan New Orleans or upland areas which are suitable for development, but also to undeveloped wetland areas. These undeveloped areas include extensive, viable wetland areas in New Orleans East and in the Chalmette area of Saint Bernard Parish. We understand that of the approximately 150,000 acres which will be provided additional protection by the project, almost 74,000 acres are presently wetlands.*

* A portion of the levee was originally designed to be constructed along the St. Charles Parish lakefront. We understand that the construction of this portion of the levee has been indefinitely postponed (EIS I-7).

In your economic analysis for the project, the Corps of Engineers has included substantial flood reduction benefits relating to wetlands in New Orleans East. The EIS (VI-3) maintains that the wetlands of this area would be converted for development use regardless of the project, although you admit that any developer who proposes to fill in any of these wetlands would have to apply to your office for a Section 404 permit. With respect to the Chalmette area in Saint Bernard Parish, the EIS claims land intensification benefits for undeveloped wetlands.

In view of the fact that any person intending to fill in and develop any of the wetlands in New Orleans East or in the Chalmette area of Saint Bernard Parish would have to obtain a Section 10 and 404 permit from the Corps of Engineers or a Section 402 NPDES permit from EPA, we do not understand how the Corps can include either flood control reduction benefits or land intensification benefits relating to flood protection afforded such wetlands. In the case of the Chalmette wetlands, since a Section 404 permit is required, any increase in the value of those wetlands would be entirely speculative. In our view, the Corps of Engineers should not be permitted to include any such speculative increases in a benefit-cost analysis. Furthermore, since such "benefits" are contrary to national policy as they should not be included in an economic analysis as EP 1105-2-351 itself suggests.

In its Decision in the Matter of the Application of the Deltona Corporation for Section 10 and 404 permits, dated April 1976, the Corps of Engineers, per General Gribbles, found that housing is not generally dependent upon wetlands and, therefore, as a general matter, wetlands should not be filled in and destroyed for real estate development. In view of this position and recognition in the Corps regulations, 33 CFR 209.120(g)(3) and EP 1165-2-501, dated October 25, 1976, that "wetlands constitute a productive and valuable public resource, the unnecessary alteration or destruction of which should be discouraged as contrary to the public interest", we do not understand how the Corps of Engineers should be able to claim that development in the New Orleans East wetlands would occur, with or without the project, and therefore claim benefits for flood control protection for real estate development which should never occur and which the Corps of Engineers has authority to prevent. The inclusion of either flood control flood reduction benefits or land intensification benefits for wetland areas cannot help but serve as an inducement to real estate development in these wetland areas and therefore make a mockery of the 404 process.

Under these circumstances, in light of the mandates of NEPA, Section 404 of the 1972 Amendments, Corps of Engineer and EPA regulations issued under Section 404, CEQ guidelines 40 CFR §1500, 8(a)(2), and other statutes, we have concluded that the Corps of

Engineers has improperly included benefits for flood protection and land intensification of wetland areas in connection with the Hurricane Protection Project. Instead, the stated policy of the Corps of Engineers should be to protect these wetland areas, and a proper EIS should evaluate the programs available to the Corps and other federal agencies to protect and enhance the viability of these wetlands, consistent with national policy.

We would therefore request that the Corps of Engineers take the following setps:

1. The flood reduction and land intensification benefits of the project relating to wetlands in New Orleans East and Saint Bernard Parish should be deleted from the economic analysis for the project;

2. Additional construction of the levees in New Orleans East and Chalmette area of Saint Bernard Parish should be halted immediately insofar as these levees are not justified in providing additional protection to already developed areas of metropolitan New Orleans;

3. Whatever levees are in fact constructed or expanded in New Orleans East and in the Chalmette area of Saint Bernard Parish should be redesigned and modified so that the coastal wetlands in these areas can and will remain viable.

Yours very truly,

s/ James T.B. Tripp
Counsel

cc: General DRake Wilson

DISPOSITION FORM

LMNED-DD

Environmental Defense Fund Letter Relative to Lake Pontchartrain Hurricane Protection Project

TO C/Planning Div FROM C/Engineering Div DATE 8 Jan 77 CMT 1
Mr. Guizerix/jh/445

1. You are requested to furnish input for a reply to the inclosed letter from the Environmental Defense Fund dated 23 December 1976.

2. Since the letter pertains to matters which are presently under litigation in the lawsuit filed against the Corps by Save Our Wetlands, Inc., the Corps' defense attorney, Mr. Boese, has recommended that our reply be limited to information already released to SOWL in the discovery phase of the legal proceedings. Therefore, it is recommended that your input consist basically of quotes from interrogatories and replies to interrogatories. Quotes from the EIS would also be acceptable since the EIS is a matter of court record.

3. The letter of reply will be composed by Mr. Guizerix, Structural Design Section, utilizing your input. If there are any questions as to how the reply should be formulated, please contact Bob Guizerix on extension 445.

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1 Incl
Ltr dtd 23 Dec 76

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LMNPD-EG (8 Jan 77)
SUBJECT: Environmental Defense Fund Letter Relative to Lake Pontchartrain Hurricane Protection Project

TO C/Engineering Div FROM C/Planning Div DATE 19 Jan 77 CMT 2
Mrs. Eberhardt/jw/486

1. Reference your DF of 8 Jan 77. The inclosed information is suggested as input to a response to the Environmental Defense Fund letter of 23 Dec 76.

2. This information was supplied to the US Attorney's Office at the request of Mr. Boese, was made a part of the INFORMATION PACKAGE, dated 18 Aug 76, relative to the SOWL complaint; and/or was previously furnished in responses to SOWL complaints. It is suggested as a response to the para numbered 1 on the third page of subject letter.

a. At time of the survey report (Nov 1962) our guideline for measuring flood control benefits was the EM 1120-2-100 series. Flood control benefits were divided into two categories, flood damages prevented and enhancement benefits.

b. Flood damages prevented were described as "the difference between these flood damages that are to be expected if the project is not provided and those primary flood damages that are to be expected even if the project is provided."

c. Enhancement benefits were described as follows: "The benefits attributable to the increased or higher utilization of property made possible through provision of flood protection consist of the increase in earning power (net earnings) of land or the equivalent increase in market value thereof that was formerly undeveloped or only partially developed due to the hazard of floods. Evaluation of this benefit will require consideration of past use of the affected property and the probable future uses of the property, both with and without flood control. Care must be taken to exclude that portion of the earning power of property creditable to the additional investments other than for flood control, that must be made in order to realize an increased or higher utilization of the property. This is particularly important when use of land for residential and industrial purposes is involved."

d. If we were to evaluate a project today under current regulations (ER 1105-2-351), we would claim benefits under substantially the same categories. ER 1105-2-351 specifies three major benefit categories, inundation reduction benefits (same as old flood damages prevented), intensification benefits, and location benefits. The last two categories are just refinements of the broader enhancements category of the EM 1120-2-100 series.

e. It should be noted that the market value approach to measuring enhancement benefits takes into consideration the effects of uncertainty, probability of higher use, and the time lapse before particular land parcels are expected to shift to higher use.

f. The Lake Pontchartrain, Louisiana, and Vicinity hurricane protection project survey report (Nov 1962) assumed that development would occur in New Orleans East in the absence of a Corps project. The following information is offered in support of the appropriateness of that assumption.

(1) The first major street plan for the New Orleans East area was adopted by the City Planning Commission (CPC) on 22 June 1954. Subsequently, several revisions were made to this plan.

(2) A protective levee system was installed around some 21,500 acres of New Orleans East by the Orleans Parish Levee Board as a part of the overall protection system for the city of New Orleans. These levees were constructed in 1956.

(3) The prior owner of the property (De Montlusin) retained the firm of Harland Bartholomew and Associates to prepare a comprehensive plan of development for the New Orleans East area in 1957. The plan was completed in September of that year and was submitted to CPC for review. CPC approved the plan in January 1958.

(4) A revised major street plan for the area was presented at a public hearing on 13 August 1958. The final plan, with provisions for three interchanges on Interstate Highway I-10 to facilitate future developments, was approved by the CPC on 23 December 1958.

(5) New Orleans East, Incorporated, purchased the property in January 1959.

(6) In March 1959, New Orleans East, Inc., requested an update of the Harland Bartholomew plan by that firm. The report, entitled "A General Plan-New Orleans East," was published about 1 month later. The report summary states "The elevation of the area is similar to that in most of New Orleans and with the construction of canals and installation of pumps - it can readily be made available for urban development." The report further states that "there is an ample volume of water to serve new development. . . . A complete system of sanitary sewers should serve all areas and four treatment plants will be needed. . . . No difficult problems should be encountered in providing other essential facilities such as gas, electric, and telephone."

(7) The Louisiana State Highway Department let the initial contract for the Highway I-10 construction in that area on 22 April 1959. Construction of the roadway began in 1960.

(8) In late 1959, the decision was made by the developer to build the Village de l'Est subdivision portion of the area. That portion of the overall area was leveed between 1959 and 1963. Commercial construction in this section began in early 1963 and was followed by residential building in early 1964.

(9) The Corps of Engineers did not publish a survey report on the Lake Pontchartrain, Louisiana, and Vicinity hurricane protection project until November 1962. Authorization on this same project was not forthcoming until October 1965, at which time funding was also approved. The first contract was let in April 1967.

g. From the above sequence of events it can be seen that future development was a foregone conclusion, not only in the eyes of the developer, New Orleans East, Inc., but by the community, well in advance of any Corps activities. Considerable planning and construction had been accomplished by local interests prior to, and independent of, any Corps action.

h. The area in Chalmette that can presently be developed lies within the existing system which includes the Mississippi River levee and the Chalmette back levees. Beyond that point, only partial flood protection exists. It is in the currently protected area that future development was projected to occur without the project, in view of the rapid growth experienced in this area during the fifties. With project installation, future urban development beyond the first back levee will be subject to factors such as demographic pressures, economic decisions by private owners, policies of local governing bodies, and the laws and rules, local, state, and Federal, governing development of wetlands at the time development is proposed. The area between the back levee and the project levee will remain open to free interchange with tidal waters through the navigable flood gates on Bayous Bienvenue and Dupre until that time.

i. Generalized urban projections were prepared for the Lake Pontchartrain project area based on recent experienced growth as of the time of the study. Available records indicated that the New Orleans Metropolitan Area had shown continuous growth for each decade since 1800, therefore, the assumption of a continuation of this development was proper in light of the abundance of natural resources and geographical advantages inherent in this area. One has only to review census population figures to visualize rapid development in the remainder of the approximately 17,000 acres in St. Bernard protected by existing back levees. During the decades immediately preceeding the original study, the population of the parish more than quadrupled as it grew from 7,280 in 1940 to 32,186 in 1960. The 1974 population of 57,400 indicated a continuance of a high rate of growth in this area.

LMNPD-EG (8 Jan 77) 19 Jan 77
SUBJECT: Environmental Defense Fund Letter Relative to Lake Pontchartrain Hurricane Protection Project

j. In the Chalmette area, flood damages prevented were claimed on existing development (1962) and on development projected to occur in the future with or without project implementation. All of this future development that would take place even without the project was projected to occur within the confines of the existing back levees. Enhancement benefits were claimed in the Chalmette area only on land lying north of the existing back levees (1962). It was considered that this land would have potential for development only as a result of project implementation.

k. We are in preliminary stages of an economic reanalysis of the Lake Pontchartrain hurricane protection project, utilizing current guidelines. There are indications that flood damages prevented on future developments will be reduced due to Federal Insurance Administration and to current Corps of Engineers regulations. Benefits may be creditable to location and/or intensification.

3. In response to the para numbered 2 on the third page of subject letter, the following response is suggested:

The Lake Pontchartrain hurricane protection project, since its inception, has exhibited overwhelming economic viability. The reanalysis underway will develop project benefits in accordance with current regulations. It is anticipated that the current analysis will reaffirm this favorable position. There is no economically rational justification for interrupting project construction at this time.

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IN REPLY REFER TO
LMNED-DD

27 January 1977

Mr. James T. B. Tripp, Counsel
Environmental Defense Fund
162 Old Town Road

Dear Mr. Tripp:

Thank you for your letter of 23 December 1976 in which you discuss various aspects of the Lake Pontchartrain, Louisiana, and vicinity hurricane protection project.

With respect to your three numbered recommendations, I offer the following:

1. We have no basis for excluding from project economic analyses economic benefits which may accrue as a result of elimination or reduction of flooding in wetlands as long as such benefits have been properly evaluated, and the adverse impacts to such wetlands have been recognized and, to the extent practicable, defined and evaluated.

2. We have no plans to halt construction of the levees mentioned, which are currently providing a significant degree of protection to developed areas in Orleans and St. Bernard Parishes.

3. We believe that this has been done. The levees in the Chalmette area have controlled navigable openings to tidewater at Bayou Bienvenne and Dupre, which openings are closed only during times of hurricane occurrence. The New Orleans East levees contain nonnavigable openings which are so designed that they may be used to provide tidal interchange. There is not yet any agreement as to how these openings in New Orleans East are to be operated. We shall continue to seek the optimum solution.

We trust the foregoing is responsive to your concerns.

Sincerely,

EARLY J. RUSH III
Colonel, CE
District Engineer

CF:
Mr. Robert L. Boese
Assistant US Attorney
Hale Boggs Federal Building
500 Camp St.
New Orleans, LA 70130

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Tuesday, January 25, 1977 The States-News New Orleans

Suit Facing Lake Project?

By LES BRUMFIELD

A national environmental organization has threatened to take legal action to halt or alter construction of segments of the Lake Pontchartrain and Vicinity hurricane protection project.

In letters to officials of the Corps of Engineers in Washington and New Orleans, James T. B. Tipp, a lawyer for the Environmental Defense Fund (EDF), asserts that some of the project's levees are being built to provide "specific flood reduction and land intensification benetits" (improvements) for unoccupied wetlands in New Orleans East and in the Chalmetto area.

"We consider the inclusion of such benefits in the economic analysis for a Corps of Engineers flood control project to be totally inappropirate, illegal, and contrary to express congressional policy," Tripp wrote.

The EDF lawyer's letters, dated December 22, 1976, were addressed to Colonel Early J. Rush III, the Corps' New Orleans District Engineer and to General Drake Wilson, Deputy director of civil works in the Corps' Washington office.

not in letter

Tripp advised Wilson and Rush that "we are seriously considering initiating legal action or joining on-going litigation if action is not taken immediately to alter this project." Save our Wetlands Inc. (SOWL), a New Orleans organization represented by attorney Lake Fontana, has filed suit in Federal District Court against portions of the hurricane project. In a telephone interview, Tripp said he was aware of the SOWL suit and is also aware that St. Tammany Parish officials also have threatened to file suit against the project.

Tripp said no final decision has been made on legal action by EDF. He said he had not heard from Rush or Wilson in the month since he wrote them, and he considered a month a reasonable amount of time.

Tripp said the Lake Pontchartrain project is but one of 18 Corps water resource projects and numerous Soil Conservation Service projects which are causing Louisiana coastal wetlands to deterioritate alarmingly. He said the

EDF would like to see them reevaluated and in some cases redesigned to protect the wetlands. He called deterioration of Louisiana's wetlands "a massive environmental problem of national proportions."

He said his organization in not opposed to those portions of the Lake Pontchartrain project designed to grant additional flood protection to already developed areas of metropolitan New Orleans.

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Mr. Tripp's letter does not mention this.