

ENVIRONMENTAL DEFENSE FUND

January 8, 1985

Colonel Eugene S. Witherspoon
District Engineer
U.S. Army Corps of Engineers
New Orleans District
P O Box 60267
New Orleans, LA 70160

RE: Lake Pontchartrain, Louisiana and Vicinity Hurricane
Protection Project - Reevaluation Study and
Mitigation Proposal

Dear Colonel Witherspoon:

We have a long standing interest in the Lake Pontchartrain Louisiana and Vicinity Hurricane Protection Project dating back to 1977 and before when I personally participated in a trial before Judge Schwartz in federal court in New Orleans that resulted in the decision in Save Our Wetlands v. Rush, 11 ERC 1123 (E.D. La. Dec. 30, 1977). We have commented on various occasions on aspects of this project. (See EDF Comments, dated March 6, 1984). In June, 1984, Oliver Houck, David Hoskins, a staff scientist in our office here, and I met with Colonel Robert Lee, your predecessor and other members of his staff, to discuss the Lake Pontchartrain project.

In our view, the reevaluation study and the mitigation proposals which have been described to us dramatically underestimate the long term adverse environmental impact of this project. If these long term impacts were properly assessed, we would expect that the New Orleans District would give more serious consideration to an alternative levee along the Maxent Canal. Further, although we would expect that the New Orleans District would object to that alternative on the ground that the present levee around New Orleans East is largely completed, a proper assessment of the impact of the present New Orleans levee alignment and the dimensions of a mitigation proposal which compensates for that loss points to the need for a careful consideration of a levee alignment that provides protection for developed areas only.

New Orleans East at the present time contains somewhat more than 13,000 acres of wetlands. While there may be some small tidal exchange between these wetlands and Lake Pontchartrain, that exchange has largely been severed as a result of, initially, a railroad levee and embankment along the South shore of Lake Pontchartrain and, subsequently, the construction of a levee

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by the New Orleans Levee Board, or other private interests, around much of New Orleans East. While the wetlands in New Orleans East originally were part of the greater Lake Pontchartrain estuarine system, they have gradually been converted into impounded freshwater wetlands. Lake Pontchartrain is an asset of tremendous economic and environmental importance to the New Orleans Metropolitan Region. It is under enormous stress due to wetland loss and pollution. Estuarine rehabilitation of the wetlands of New Orleans East and their reincorporation into the Lake Pontchartrain system would, therefore, have enormous value not only for the wetlands themselves but for Lake Pontchartrain.

The Corps of Engineers seems to take the position that the Hurricane Protection Project is not responsible for severing the New Orleans East wetlands from the Lake Pontchartrain system. It furthermore assumes that the project will do little or no harm to those wetlands since it will simply be adding to an existing levee structure. For this reason, the evaluation study assumes that the Corps mitigation proposal need not compensate for loss of these wetlands. It further assumes that any applicant who receives a permit to fill any of these wetlands must provide mitigation for that loss.

In our view, this underlying assumption is in error. The scope of the project's mitigation evaluation must include a proper consideration of with and without project conditions. It is our understanding that the New Orleans District assumed responsibility for the New Orleans East levee starting in 1965. By the late 1960's, under Corps policy upheld in the Fifth Circuit decision of Zabel v. Tabb, 430 F. 2d 199 (5th Cir.), continued construction of that levee by the New Orleans Levee Board or other private interests would have required obtaining a permit from the New Orleans District under Section 10 of the 1899 Rivers and Harbors Act. As of October 1972, continued construction of that levee would have required obtaining a Clean Water Act Section 404 permit from the New Orleans District. Thus, as of those dates, continued construction or maintenance of the existing levee by the New Orleans Levee Board or any other party could not have proceeded absent Corps of Engineers review and approval.

The Corps of Engineers assumed responsibility for this project as development crept eastward because it recognized that the existing levee was inadequate. In particular, the levee's base was too narrow to provide sufficient strength to withstand nature's storm or hurricane events, the very kind of events against which any such levee is designed to protect.

Without the additions to that levee by the Corps of Engineers since 1965 and, more recently, since the passage of the Clean Water Act in 1972, the New Orleans East levee would, in due time,

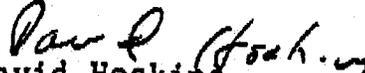
ave been undermined and breached. Any one breach would be sufficient to reestablish the wetlands in New Orleans East as estuarine in character associated with the larger Lake Pontchartrain ecosystem. Further, any such breach would have effectively precluded any possibility of residential development in the New Orleans East area. Indeed, no real estate investor in his right mind would consider a large scale development in the New Orleans East wetlands absent assumption of responsibility for maintaining and upgrading the New Orleans East Levee by the Corps of Engineers with federal funding.

For these reasons, we consider the without project assumption by the Corps of Engineers in the Reevaluation Study and Final EIS and mitigation analysis that the Corps' contribution to the New Orleans East Project has little effect on the New Orleans East wetlands (other than construction related impacts) to be unsupportable. The Corps is capable of conducting meteorological and hydrologic analyses to determine when the levee would be overtopped and breached given 1965 and/or 1972 conditions. The Corps should conduct such an analysis. Armed with this knowledge about without condition characteristics, the Corps could then properly assess what the impact of its project on the wetlands of New Orleans East and Lake Pontchartrain would be and, in turn, what a compensatory mitigation program should look like. Preliminarily, it is our view that the only feasible mitigation program for this project is one that provides for full restoration of all of the remaining wetlands in New Orleans East, coupled with their reintegration into the Lake Pontchartrain ecosystem.

For these reasons, we concur fully with the proposals of Oliver Houck in his letter to Cletis R. Wagahoff, Chief of the Planning Division in your District of December 19, 1984.

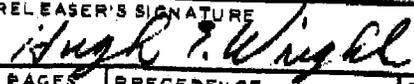
Yours very truly,


James T.B. Tripp
Counsel


David Hoskins,
Staff Scientist

cc:
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(ER 105-1-5)

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SUBJECT				