

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ATCHAFALAYA BASINKEEPER, et al.,)	
<i>Plaintiffs,</i>)	Case: 2:15-cv-6982
)	
v.)	Judge: Nannette Jolivette Brown
)	
U.S. ARMY CORPS OF ENGINEERS, et)	Magistrate Judge: Janis van Meerveld
<i>al.,</i>)	
)	Section: G
<i>Defendants.</i>)	
)	Division: 1

STIPULATED MOTION FOR DISMISSAL

The Parties represent and warrant as follows:

WHEREAS Defendant, the U.S. Army Corps of Engineers, is an administrative agency of the federal government, and the New Orleans District of the U.S. Army Corps of Engineers is responsible for the issuance and management of NOD-13, the regional general permit that is the subject of this suit (“NOD-13”), and Defendant, the Chief of Engineers of U.S. Army Corps of Engineers (in his official capacity) (together with the U.S. Army Corps of Engineers, the “Defendants” or the “Corps”), is responsible for discharging Congress’ commands to “the Secretary” that are the subject of this suit.

WHEREAS Plaintiffs, the Atchafalaya Basinkeeper, the Louisiana Crawfish Producers’ Association-West (“the Crawfishermen”), and the Gulf Restoration Network (“GRN”) are each a non-profit organization with members who use and enjoy the Atchafalaya Basin or other wetland areas subject to the regional general permit NOD-13. And each Plaintiff is, under 33 C.F.R. § 325.3(d)(1), a conservation organization and person interested in the issuance and application of

NOD-13. Plaintiff the Crawfishermen is also a business organization under 33 C.F.R. § 325.3(d)(1).

WHEREAS, the Corps recognizes that the Atchafalaya Basin is one of the last great river swamps left in the nation and includes some of the country's most productive wildlife habitat. It contains unique environmental features including the largest contiguous tract of bottomland hardwoods in the United States.

WHEREAS the Corps originally authorized its Regional General Permit NOD-13 (NOD-13) on March 20, 1981, allowing for the "dredging and the deposition of dredged and/or fill material for construction of oilfield roads, drilling locations, pits, ring levees, and associated facilities in jurisdictional waters of the U.S., including wetlands, within the boundaries of the New Orleans District," and has extended and modified NOD-13 many times.

WHEREAS on December 31, 2012, NOD-13 expired.

WHEREAS after the 2012 expiration of NOD-13, the Corps continued to authorize projects falling within the class of activities allowed under the 2012 NOD-13 permit.

WHEREAS the Corps issued a "Special Public Notice" of a proposed "Time Extension and Modification of (General Permit) NOD-13 for Board Roads and Ring Levees" on August 11, 2014.

WHEREAS the Corps posted the Special Public Notice on the Corps' webpage dedicated to the posting of Public Notices for all Regulatory permits under consideration, located at <http://www.mvn.usace.army.mil/Missions/Regulatory/PublicNotices.aspx>.

WHEREAS, the Corps did not send a copy of the Special Public Notice to local news media, interested parties, concerned business organizations or concerned conservation organizations.

WHEREAS, the Corps of Engineers did not distribute the Special Public Notice to a post office in the vicinity of the area affected by Regional General Permit NOD-13.

WHEREAS on November 24, 2014, the Corps of Engineers issued a final decision titled “Time Extension and Modification of the (General Permit) NOD-13” (“the 2014 Decision”).

WHEREAS the 2014 Decision authorized NOD-13 for a period of five years, one month, and seven days.

WHEREAS the Corps did not prepare an environmental impact statement prior to issuing the 2014 Decision regarding NOD-13.

WHEREAS the Corps has never prepared an environmental impact statement with respect to NOD-13 since the permit’s original authorization in 1982.

WHEREAS on December 22, 2015, Plaintiffs filed this lawsuit against the Corps challenging the Corps’ 2014 Decision regarding NOD-13, claiming that the Corps did so without providing adequate public notice or undertaking the environmental reviews required under the Clean Water Act and the National Environmental Policy Act (“NEPA”). First Am. Compl., 1-2 (ECF No. 12, Mar. 11, 2016). The Plaintiffs also allege that the Corps acted without determining, as 33 U.S.C. § 1344 requires, whether the permit will have “only minimal cumulative adverse effects on the environment” and in violation of the five year limitation on the duration of general permits. The Plaintiffs also allege that the Corps authorized projects under the general permit after the permit had expired and before reissuance. Plaintiffs asked this Court to declare the Corps’ “reissuance of NOD-13” to be illegal, to vacate NOD-13, to enjoin the Corps from authorizing projects under NOD-13 until such time, if any, that the Corps lawfully promulgates NOD-13, and to award the Plaintiffs attorney fees and costs. *Id.* at 19.

WHEREAS, since the Plaintiffs' filing of this suit, the Corps has initiated a reevaluation of NOD-13 under 33 CFR § 325.7 and, on July 4, 2016, published a special public notice of "Reevaluation of General Permit (GP-13) (previously NOD-13) for board roads and ring levees within the New Orleans District" (the "Reevaluation").

WHEREAS, on January 30, 2017, the Corps issued a Special Public Notice concerning the Reevaluation, which stated, in pertinent part, as follows:

As of the date of this Notice, the 2014 NOD-13 is revoked for future use in the Atchafalaya Basin, as designated by USGS Hydrologic Code 08080101. This revocation is limited to the specific geographic area identified above, and this constitutes the public notice required by 33 CFR 325.7(e). The revocation is prospective only, and does not affect the status of permittees or projects previously authorized. Furthermore, until evaluation is complete 2014 NOD-13 is not available to be used for review and authorization of proposed projects elsewhere in the New Orleans District.

(emphasis in original).

WHEREAS, the Corps' January 30, 2017, Special Public Notice concerning the Reevaluation further stated, in pertinent part, as follows:

The following modifications below are proposed for the GP-13 and as attached hereunto.

- 1. Exclusion "k." was added to exclude the use of GP-13 for projects located within the Atchafalaya Basin as defined by USGS Hydrologic Unit Code: 08080101.**

(emphasis in original).

WHEREAS, a copy of the Corps' January 30, 2017, Special Public Notice concerning the Reevaluation can be found at the following internet location:

<http://www.mvn.usace.army.mil/Missions/Regulatory/Public-Notices/Article/1063017/mvn-2007-01994-wqq/>

NOW THEREFORE, the parties hereby stipulate and jointly move that the above-captioned lawsuit be dismissed without prejudice.

Respectfully submitted on February 1, 2017.

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CERTIFICATE OF SERVICE

I certify that, on February 1, 2017, I served a copy of this pleading upon counsel of record through this Court's ECF system.

/s/ Adam Babich
Adam Babich

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U.S. Army Corps of Engineers, et al.,)	Division: 1
<i>Defendants.</i>)	

ORDER GRANTING STIPULATED MOTION FOR DISMISSAL

This Court having considered the parties' Stipulated Motion for Dismissal and being fully advised,

IT IS HEREBY ORDERED that the motion is **GRANTED** and this case is dismissed without prejudice.

NEW ORLEANS LOUISIANA this 1st day of February 2017.

Nannette Jolivet Brown
NANNETTE JOLIVETTE BROWN
UNITED STATES DISTRICT JUDGE