

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

ATCHAFALAYA BASINKEEPER )  
and LOUISIANA CRAWFISH )  
PRODUCERS ASSOCIATION-WEST, )  
 )  
*Plaintiffs* )

Judge:

v. )

Magistrate:

LIEUTENANT GENERAL THOMAS P. )  
BOSTICK, in his official capacity )  
Chief of Engineers, U.S. Army Corps )  
of Engineers, and the U.S. ARMY CORPS )  
OF ENGINEERS, )  
 )  
*Defendants.* )

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**COMPLAINT**

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For their Complaint, Plaintiffs Atchafalaya Basinkeeper and the Louisiana Crawfish Producers Association-West (“Plaintiffs”) make the following allegations against Defendants Lieutenant General Thomas P. Bostick (“Lieutenant General Bostick”) and the U.S. Army Corps of Engineers (“the Corps”).

**NATURE OF THE CASE**

1. Plaintiffs challenge the Corps’ authorization of a wetland-fill project in the Atchafalaya Basin under a general permit known as New Orleans District General Permit 13 (“NOD-13” or “the General Permit”). The project does not meet the conditions of the General Permit. For example, special condition “u” of that permit allows only temporary roads and requires project sites to be “leveled and restored to as near pre-project conditions as practicable.” The Corps’ authorization, however, allows a “permatized” limestone road and includes no restoration requirement. This unlawful, “permatized” road contributes to blockage of use and

flow of bayous and wetlands in the Atchafalaya Basin. By misapplying the General Permit, the Corps has avoided the individualized consideration and public participation that the Clean Water Act and National Environmental Policy Act require for projects that fill and destroy wetlands. Further, the Corps has failed in its duty to consider cumulative and indirect impacts which degrade the Atchafalaya Basin ecosystem and threaten the Basin's ability to support Louisiana's unique Acadian culture.

### **JURISDICTION**

2. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this case concerns federal questions under the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, the National Environmental Policy Act, 42 U.S.C. § 4321, *et. seq.*, the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. § 2201.

### **VENUE**

3. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1), which provides that "A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity...or an agency of the United States...may...be brought in any judicial district in which (A) a defendant in the action resides, [or] (B) a substantial part of the events or omissions giving rise to the claim occurred."

4. The Corps has a residence in New Orleans through its New Orleans, Louisiana District office, which is within the jurisdiction of this Court.

5. A substantial part of the events giving rise to the claims asserted occurred in New Orleans because the Corps' New Orleans District office made the decision at issue.

6. Venue is also appropriate in this judicial district under 5 U.S.C. § 703 because this is a Court of competent jurisdiction.

**PARTIES**

*Plaintiffs*

7. The Atchafalaya Basinkeeper is a non-profit corporation organized under the laws of Louisiana. The Atchafalaya Basinkeeper meets the definition of a “person” under the Administrative Procedure Act (“APA”). 5 U.S.C. §§ 551(2); 701(b)(2).

8. The Atchafalaya Basinkeeper is a Waterkeeper program under the Waterkeeper Alliance, which is a grassroots advocacy organization consisting of over 200 local Waterkeeper programs dedicated to preserving and protecting the nation’s waters.

9. The Atchafalaya Basinkeeper is committed to protecting and restoring the bayous, wetlands, and greater ecosystems within the Atchafalaya Basin. To this end, the Basinkeeper acts as an advocate for the protection of the Basin by helping to ensure that the state and federal laws and regulations intended to preserve and enhance the Basin’s natural resources and environmental quality are followed. This lawsuit is germane to the Atchafalaya Basinkeeper’s purpose.

10. The Atchafalaya Basinkeeper has approximately 700 members, including recreational and commercial fishermen and crawfishermen, hunters, outdoor recreationists, bird-watchers, and nature photographers who live, work, and recreate in and around the Basin. Its members regularly use the Atchafalaya Basin in pursuit of these interests, including the bayous and wetlands affected by the construction project at issue in this case. The Atchafalaya Basinkeeper’s members intend to continue using the Atchafalaya Basin to further their economic, recreational, cultural, and aesthetic interests in the area and would like to once again use the areas in the Basin that surround the construction project at issue.

11. The Louisiana Crawfish Producers Association-West (“LCPA”) is a non-profit corporation organized under the laws of Louisiana. LCPA meets the definition of a “person” under the APA. 5 U.S.C. §§ 551(2); 701(b)(2).

12. LCPA’s purpose is to protect water quality in the Atchafalaya Basin in order to promote a healthy, thriving habitat for the crawfish, fish, and other wildlife that the Basin supports. The organization is also concerned with protecting and insuring public access to the waters of the United States located in the Basin. To these ends, LCPA helps to ensure that the state and federal laws and regulations intended to preserve and enhance the Basin’s natural resources and environmental quality are followed. This lawsuit is germane to LCPA’s purpose.

13. LCPA has approximately 500 members, including commercial crawfishermen, recreational fishermen, hunters, and nature photographers who live, work, and recreate in and around the Basin. Its members regularly use the Atchafalaya Basin in pursuit of these interests, including the bayous and wetlands affected by the construction project at issue in this case. LCPA members intend to continue using the Atchafalaya Basin to further their economic, recreational, cultural, and aesthetic interests in the area and would like to once again use the areas in the Basin that surround the construction project at issue.

14. The Corps’ authorization of the construction project at issue and the violations alleged in this Complaint have harmed Plaintiffs’ members by impairing their recreational, commercial, and aesthetic enjoyment of the Atchafalaya Basin in the area around the project, as well as by hindering their pursuits of a livelihood and attempts to preserve their Cajun culture. For example, the construction project at issue blocks navigation and fishing access in Bayou Brown and its surrounding wetlands. The Corps’ action causes Plaintiffs’ members to curtail activities that they would otherwise enjoy, derive less enjoyment from other activities, and suffer

reasonable concerns and anxiety about the potential for future harm. Plaintiffs' members have a legally protected interest in the integrity of Atchafalaya Basin wetlands and they are people for whom the aesthetic and recreational values of Atchafalaya Basin wetlands are and will continue to be lessened by the Corps' authorization. These injuries are actual, concrete, and irreparable. They cannot be redressed by monetary damages. The requested relief will redress these injuries.

15. Neither the claims asserted nor the relief requested in this case requires the participation of any of Plaintiffs' members as parties to this lawsuit.

#### *Defendants*

16. Defendant Lieutenant General Bostick is the U.S. Army Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers. Plaintiffs sue Lieutenant General Bostick in his official capacity only. Lieutenant General Bostick is the federal officer responsible for compliance with any injunction that this Court issues.

17. Lieutenant General Bostick, as U.S. Army Chief of Engineers, is responsible for discharging Congress' commands to "the Secretary" in the Clean Water Act § 404, which defines the section's use of "Secretary" as "the Secretary of the Army, acting through the Chief of Engineers." 33 U.S.C. § 1344(d).

18. Defendant U.S. Army Corps of Engineers is an administrative agency of the federal government as defined by the APA. 5 U.S.C. § 701(b)(1).

19. The Corps is the agency responsible for issuing individual and general permits for dredge and fill projects under the Clean Water Act. 33 U.S.C. § 1344.

#### **LEGAL BACKGROUND**

##### *Administrative Procedure Act*

20. The APA provides for judicial review of final agency actions. 5 U.S.C. § 704.

21. Under the APA, “[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.” 5 U.S.C. § 702.

22. The APA authorizes courts to “hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” or “without observance of procedure required by law.” 5 U.S.C. § 706(2).

*The Clean Water Act and the Corps’ Permitting Authority*

23. Section 301 of the Clean Water Act (“CWA”) provides that “the discharge of any pollutant by any person shall be unlawful,” except in compliance with, *inter alia*, section 404 discharge permits for “dredged or fill material.” 33 U.S.C. § 1311.

24. The Clean Water Act defines “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source.” U.S.C. 33 § 1362(12).

25. The Clean Water Act defines “pollutant” to include “dredged spoil . . . rock, [and] sand.” 33 U.S.C. § 1362(6).

26. The term “navigable waters” means the waters of the United States, including “wetlands adjacent to waters.” 33 U.S.C. § 1362; 40 C.F.R. § 230.3(s).

27. Clean Water Act § 404 provides that the Corps “may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites.” 33 U.S.C. § 1344(a).

28. Clean Water Act § 404 provides for general permits “on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only

minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment.” 33 U.S.C § 1344(e)(1).

29. Unlike projects authorized under individual permits, projects authorized under general permits are not subject to individualized public notice and comment requirements prior to authorization. 33 U.S.C § 1344.

*Regional Permit NOD-13*

30. On March 22, 1981, the Corps’ New Orleans District office issued a regional general permit, NOD-13 (“NOD-13” or “the General Permit”), “for dredging and deposits of dredged and/or fill material for construction of oilfield roads, drilling locations, pits, levees, and associated facilities in wetlands of the New Orleans District.” NOD-13 at 1.

31. The General Permit lists nine areas where the Corps may not use it to authorize dredge and fill projects (“Prohibited Areas”) and 28 conditions limiting the scope of projects that the Corps may use it to authorize (“Special Conditions”).

32. The General Permit states that it “does not authorize work...[i]n or within one mile of the boundaries of any national park or monument, wildlife refuge, management area, state park, and established buffer zone at a national park site without approval of the respective park, refuge, management area, or monument manager.” NOD-13 Prohibited Area (a).

33. The General Permit states that it “does not authorize work...[w]ithin any area where the activity is likely to adversely affect federally listed threatened or endangered species, or a species proposed for such designation, or that is likely to destroy or adversely modify the critical habitat of such species.” NOD-13 Prohibited Area (d).

34. The General Permit states that “[r]oads, ring levees, and appurtenances authorized by this General Permit may not connect with other fill authorized by this General Permit nor may

they be within one-half mile of an existing or restored road approved by this General Permit, unless the use of such existing facilities is determined to be the least damaging practicable alternative by the New Orleans District.” NOD-13 Special Condition (e).

35. The General Permit requires any authorized road fills and/or drilling pads to be temporary and removed when the related well is abandoned, stating: “[r]oad fills and/or drilling pads in wetlands constructed with native material shall be degraded when the locations which they were installed to serve are abandoned. The material shall be deposited to the extent practicable into the borrow areas from which it was excavated and the area leveled and restored to as near pre-project conditions as practicable. If the road fills and/or drilling pads in wetlands were constructed with hauled-in material, that material shall be removed from the site and hauled to a non-wetland area, with the project site being leveled and restored to as near pre-project conditions as practicable.” NOD-13 Special Condition (u).

*National Environmental Policy Act*

36. The National Environmental Policy Act requires that “all agencies of the Federal Government shall. . . include in every recommendation or report on proposals for. . .major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official” on the environmental impacts of, and alternatives to, the proposed action. 42 U.S.C. § 4332(2)(C). This detailed statement is known as an Environmental Impact Statement. 40 C.F.R. § 1508.11.

37. “Major Federal action includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly.” *Id.* § 1508.18.

38. “Federal actions” include “[a]pproval of specific projects, such as construction . . . activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision.” *Id.* § 1508.18(b)(4).

39. To determine whether an Environmental Impact Statement is necessary, agencies may conduct an Environmental Assessment to “[b]riefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.” *Id.* § 1508.9(a)(1). An Environmental Assessment must “include brief discussions of the need for the proposal, of alternatives . . . [, and] of the environmental impacts of the proposed action and alternatives . . . .” *Id.* § 1508.9(b).

40. The Environmental Impact Statement must include consideration of direct, indirect, and cumulative environmental impacts of the proposed action. *Id.* §§ 1508.25(a); 1508.7; 1508.8.

41. A “cumulative impact” is “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” *Id.* § 1508.7.

42. “After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall . . . [r]equest comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested [in] or affected” by the proposed action. *Id.* § 1503.1(a)(4).

**FACTUAL BACKGROUND**

*The 2012 Wetlands Dredge and Fill Project*

43. On or about August 20, 2012, Expert Oil & Gas, LLC submitted an application (the “2012 Project Application”) to the Corps for a Clean Water Act § 404 dredge and fill permit to “build an 800’ long access road with (512’ x 22’) of new wetland impact, and a 300’ x 300’ ring levee” in order to access a potential oil well site located on wetlands purported to be owned by A. Wilbert’s Sons (the “2012 Project”). 2012 Project Application at 2.

44. The 2012 Project Application stated, “If the well is successful, the access road will be permatized with limestone.” *Id.*

45. The 2012 Project is located in the Atchafalaya Basin, in Iberville Parish, approximately 3.9 miles southwest of Ramah, Louisiana, starting at a point approximately 500 feet south of Interstate-10.

46. On August 24, 2012, the Corps authorized the proposed 2012 Project under NOD-13, allowing the permittee to “clear, excavate, and place fill for the construction of an 800-foot access road, and 300’ x 300’ drill pad with ring levee. . . . Approximately 2.32 –acres of wetlands will be permanently impacted with the placement of 267-cubic yards of native material and 178-cubic yards of limestone.” Memorandum for the Record, Department of the Army Memorandum Documenting Nationwide Permit/Regional General Permit Verification, Applicant: Expert Oil & Gas, LLC, Aug. 24, 2012 (hereinafter “Corps’ Authorization”) at 1.

47. The Corps refers to the 2012 Project as MVN 2009-01149 CM.

*The Atchafalaya Basin and the History of the Site*

48. The Atchafalaya Basin is a watershed in Central Louisiana that extends 140 miles north from the Gulf of Mexico. The region encompasses nearly one million acres of swamps,

bayous, bottomland hardwoods, and backwater lakes. The U.S. Congress has recognized the Atchafalaya Basin as a nationally important landscape of distinct natural, cultural, and historic value. Atchafalaya National Heritage Area Act, Pub. L. No. 109–338 (Section B), 120 Stat. 1783 (2006); National Park Service: National Heritage Areas, <http://www.nps.gov/history/heritageareas/FAQ/> (last visited March 12, 2014).

49. In the early 1970s, the Federal Highway Administration built Interstate-10 as a raised east-west road that crossed the Atchafalaya Basin.

50. The Interstate-10 construction required dredging a path through the Atchafalaya Basin along the Interstate-10 route. The dredged spoil was placed at the sides of the route, leaving gaps so that those spoil banks did not block the natural flow of the crossing bayous.

51. On completion of Interstate-10, Bayou Brown and the east fork of Bayou des Glaises each continued to flow naturally between spoil banks and remained as they were before Interstate-10's construction—each about 60 feet wide and navigable by boat.

52. On or about June 27, 2000, the Corps used the General Permit to authorize construction of a temporary east-west access road using wooden boards laid over the Interstate-10 spoil banks to access and construct a ring levee and drill pad for oil exploration in wetlands purported to be owned by A. Wilbert's Sons (the "2000 Project").

53. The oil well was not successful and the permittee abandoned the site in about 2000.

54. At the time of abandonment, the 2000 Project's access road had been reinforced with limestone, *i.e.* permatized. The reinforced road blocked the flows of Bayou Brown and the east fork of Bayou des Glaises. Two 30-inch culverts allowed some of Bayou Brown's flow to

pass under the road, but did not allow for boats to cross. The reinforced road prevented navigation of Bayou Brown by boat between the north and south sides of Interstate-10.

55. The 2000 Project authorization under the General Permit required restoration of the project site “to as near pre-project conditions as practicable.” This was never done.

56. At the time of authorization of the 2012 Project, the 2000 Project’s east-west access road remained intact. It blocked flow and navigation in Bayou Brown and the east fork of Bayou des Glaises. The drill pad area from the 2000 Project remained cleared, compacted, above the level of the surrounding wetlands, and not restored to the condition of the surrounding forested wetlands.

57. Upon information and belief, at the time of this Complaint, the condition of the 2000 Project’s east-west access road and drill pad area remains unrestored and not “to as near pre-project conditions as practicable.”

58. The 2012 Project overlaps the site area of the abandoned 2000 Project. The 2012 Project’s north-south access road connects to the 2000 Project’s east-west access road. The 2012 Project’s north-south access road runs through the abandoned 2000 Project drill pad area to a new drill pad approximately 500 feet south of the 2000 Project drill pad area.

59. The 2012 Project requires access via the 2000 Project east-west access road, but its authorization does not include that east-west road.

60. During construction of the 2012 Project, the 2000 Project’s east-west access road culverts at Bayou Brown were rebuilt and replaced.

61. The 2012 Project Application’s “Proposed Well Location Map” indicates that the drill pad location blocks Bayou Brown.

*Clean Water Act Violations*

*Misapplication of the General Permit to the Project*

62. The 2012 Project is in waters of the United States. Corps' Authorization at 1.
63. Bayou Brown is a navigable water.
64. Bayou Brown is a water of the United States.
65. The wetlands adjacent to and connecting with Bayou Brown are waters of the United States.
66. The Sherburne Wildlife Management Area, a part of the greater Atchafalaya National Wildlife Refuge, is in the Atchafalaya Basin.
67. The Sherburne Wildlife Management Area is a wildlife management area within the meaning of the General Permit.
68. The 2012 Project is approximately 0.75 miles from the Sherburne Wildlife Management Area.
69. Upon information and belief, the Corps' did not obtain approval from the Sherburne Management Area authorities for the 2012 Project.
70. The Corps' Authorization under the General Permit violates the Clean Water Act because the General Permit "does not authorize work...[i]n or within one mile of the boundaries of any...wildlife refuge, [or] management area...without approval of the respective...manager." NOD-13 Prohibited Area (a).
71. Upon information and belief, the Corps' administrative record fails to reflect any consideration of or reason for disregarding the terms of NOD-13 Prohibited Area (a).
72. The U.S. Fish and Wildlife Service has designated Iberville Parish, Louisiana as part of the critical habitat of the Louisiana Black Bear, which is listed as "Threatened" under the

Endangered Species Act (“ESA”). Designation of Critical Habitat for the Louisiana Black Bear, 74 Fed. Reg. 10,350 (March 10, 2009).

73. The 2012 Project, located in Iberville Parish, is in Louisiana Black Bear critical habitat.

74. The Corps’ Authorization under the General Permit violates the Clean Water Act because the General Permit “does not authorize work within...any area where the activity is likely to adversely affect federally listed threatened or endangered species...or that is likely to destroy or adversely modify the critical habitat of such species.” NOD-13 Prohibited Area (d).

75. The Corps’ Authorization stated that compliance with the ESA was “Not Applicable.” Corps’ Authorization at 2.

76. The Corps did not explain its conclusion that compliance with the ESA was “Not Applicable” to the 2012 Project.

77. Upon information and belief, the Corps’ administrative record fails to reflect any consideration of or reason for disregarding the terms of NOD-13 Prohibited Area (d).

78. The 2012 Project attaches directly to the road and drill pad area constructed in the 2000 Project, which the Corps also authorized under the General Permit.

79. Upon information and belief, the Corps did not make a determination that the use of existing facilities was the least damaging practicable alternative.

80. The Corps’ Authorization under the General Permit violates the Clean Water Act because the General Permit prohibits roads and ring levees authorized under the permit from “connect[ing] with other fill authorized by this General Permit [or being built] within one-half mile of an existing or restored road approved by this General Permit, unless the use of such

existing facilities is determined to be the least damaging practicable alternative by the New Orleans District.” NOD-13 Special Condition (e).

81. Upon information and belief, the Corps’ administrative record fails to reflect any consideration of or reason for disregarding NOD-13 Special Condition (e).

82. The 2012 Project Application proposed a permanent access road to the well. It stated that “[i]f the well is successful, the access road will be permatized with limestone.” 2012 Project Application at 2.

83. The Corps’ Authorization permitted the construction of this access road “permatized with limestone” and noted, “[a]pproximately 2.32 acres of wetlands will be permanently impacted with the placement of 267-cubic yards of native material and 178-cubic yards of limestone.” Corps’ Authorization at 1.

84. The Corps’ Authorization did not consider or require removal of the permanent road.

85. The Corps’ Authorization under the General Permit violates the Clean Water Act because NOD-13 Special Condition (u) prohibits permanent access roads.

86. Upon information and belief, the Corps’ administrative record fails to reflect any consideration of or reason for disregarding NOD-13 Special Condition (u).

87. The Corps’ Authorization states, “[t]his project complies with all terms and conditions of [General Permit] NOD-13 including any applicable regional conditions.” Corps’ Authorization at 4. The Corps did not provide any evidence or explanation to support this finding on compliance with the General Permit’s terms and conditions.

*NEPA Violations*

88. The Corps' decision to authorize the 2012 Project is a major federal action that has a significant impact on the human environment.

89. The Corps did not conduct an Environmental Assessment to determine whether the 2012 Project has significant impacts on the human environment.

90. The Corps did not make a finding of no significant impacts for the 2012 Project.

91. The Corps did not complete an Environmental Impact Statement for the 2012 Project.

92. The environmental impacts of the 2012 Project are outside the scope of any Environmental Assessment or Environmental Impact Statement completed for the General Permit.

93. The 2012 Project, as proposed, did not meet the terms and conditions of the General Permit.

94. The 2012 Project has significant adverse impacts on the environment.

95. The Corps' failure to take these significant adverse impacts into account before authorizing the 2012 Project violates NEPA.

96. The 2012 Project, together with existing and potential dredge and fill projects in the Atchafalaya Basin, has significant cumulative impacts on the environment.

97. The Corps' failure to take these significant cumulative impacts into account before authorizing the 2012 Project violates NEPA.

98. The Corps' failure to engage in the required NEPA analyses denied Plaintiffs their opportunity to comment on and participate in the decision-making process for the 2012 Project.

**CAUSES OF ACTION**

*First Cause of Action:  
Failure to Comply with Clean Water Act*

99. The Corps' decision to authorize the 2012 Project under the General Permit is arbitrary, capricious, an abuse of discretion, unwarranted by the facts, otherwise not in accordance with law, and violates 5 U.S.C. § 706(2)(A) because the decision violates the Clean Water Act and violates the restrictions of the General Permit. The Corps failed to provide a rational connection between the facts found and the choice made, failed to consider important aspects of the problem, failed to offer an explanation for the decision consistent with evidence before the agency, and failed to offer a plausible explanation.

100. The Corps' decision to authorize the 2012 Project under the General Permit lacks substantial support in the administrative record.

101. The Corps' decision to authorize the 2012 Project without public notice and participation required for issuance of an individual permit under Clean Water Act § 404 is without observance of procedure required by law, and violates 5 U.S.C. § 706(2)(D).

*Second Cause of Action:  
Failure to Consider Environmental Impacts (NEPA)*

102. The Corps' failure to consider whether the 2012 Project would significantly impact the quality of the human environment is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, unwarranted by the facts, and violates 5 U.S.C. § 706(2)(A).

103. The Corps' failure to conduct an Environmental Assessment or to complete an Environmental Impact Statement on the 2012 Project is arbitrary, capricious, an abuse of

discretion, otherwise not in accordance with law, unwarranted by the facts, and violates 5 U.S.C. § 706(2)(A) because it violates the National Environmental Policy Act.

104. The Corps' decision to authorize the 2012 Project without the public notice and participation required for any Environmental Assessment or Environmental Impact Statement is without observance of procedure required by NEPA and violates 5 U.S.C. § 706(2)(D).

*Third Cause of Action:  
Failure to Consider Indirect and Cumulative Impacts (NEPA)*

105. The Atchafalaya Basin is an endangered resource. The Basin's viability as an ecosystem and its ability to support Louisiana's Acadian culture are under pressure from industrialization, logging, barriers to public access, and disruption to natural movement, distribution, and quality of water.

106. The Atchafalaya Basin is suffering the proverbial death by a thousand cuts, as the Corps approves "smaller" projects that add up, connect, and build on one another to extend destruction to natural wetlands.

107. Roads such as the oil exploration road at issue here are "permatized," connected to other roads, and used for logging operations that destroy cypress wetlands.

108. Blocked access to local fisherman, such as that created by the road at issue acting in connection with other similar roads, become permanent and facilitate conversion of natural fishing areas to private hunting and fishing clubs, with artificial water features substituted for the Basin's natural hydrologic flow. These areas are lost to traditional Acadian fisherman and often fail to function as viable parts of the Atchafalaya Basin ecosystem.

109. Much of the ongoing threat to the Atchafalaya Basin is rooted in the cumulative and indirect effects of roads and spoil banks that disrupt the natural hydrology in the Basin.

110. These cumulative impacts threaten Louisiana's Acadian culture, which relies on access to the Basin's wetlands for fishing.

111. The Corps issued the approval that the Plaintiffs challenge here without considering indirect and cumulative environmental impacts of its decision and other, similar decisions.

112. The Corps issued its approval without gauging the devastation to the Basin's ecosystem from this project, combined with similar projects, and without assessing the threatened destruction of Plaintiffs' members' and their neighbors' culture and livelihoods.

113. The Corps' failure to consider the cumulative impacts of the 2012 Project in light of past, present, and reasonably foreseeable future actions is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, unwarranted by the facts, and violates 5 U.S.C. § 706(2)(A).

**PRAYER FOR RELIEF**

WHEREFORE, PLAINTIFFS pray for judgment as follows:

- A. An order declaring the Corps' Authorization illegal and invalid;
- B. An order vacating the Corps' Authorization and the associated approval of construction for the 2012 Project under the General Permit;
- C. An order enjoining the application of the General Permit to the 2012 Project;
- D. An award of costs of litigation (including reasonable attorney fees) in accordance with 28 U.S.C. § 2412; and
- E. Any other relief this Court may deem appropriate.

Respectfully submitted on March 20, 2014,

s/ Laura Lucas Cottingham

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Laura Lucas Cottingham, Student Attorney

s/ Elizabeth Livingston de Calderón

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*Counsel for the Atchafalaya Basinkeeper and the Louisiana  
Crawfish Producers Association-West*

**Supervising attorney's introduction of student practitioner pursuant to Local Rule  
83.2.13, with attached Dean's certification and clients' written consent**

Undersigned counsel respectfully introduces law student practitioner Laura Lucas Cottingham to this Court pursuant to Local Rule 83.2.13. This student practitioner is duly enrolled in Tulane Law School, a law school approved by the American Bar Association. The student practitioner has completed five full-time semesters of legal studies and has taken the oath

set forth in Local Rule 83.2.13. As the student practitioner's supervising attorney, I approve of her appearance in this case. Further, a Dean's certification relating to the student practitioner is attached as Exhibit A. The clients' written statements of consent to appearances by student practitioners on their behalf have been filed as Exhibit B.

Respectfully submitted on March 20, 2014,

TULANE ENVIRONMENTAL LAW CLINIC

s/ Elizabeth Livingston de Calderón

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