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SENATE
STATE OF LOUISIANA

COMMITTEES
Commerce, Consumer Protection and
International Affairs, Vice Chairman
Education
Finance
Judiciary C
Select Committee on
Homeland Security, Chairman

August 22, 2016

President Barack Obama
Governor John Bel Edwards
Senator John A. Alario, Jr., President of the Senate
Representative Taylor Barras, Speaker of the House of Representatives
Senator J. P. Morrell, Chairman, Senate Revenue and Fiscal Affairs
Representative Neil Abramson, Chairman, House Ways and Means Committee
Shawn Wilson, Secretary of the Department of Transportation and Development

RE: **Louisiana Comite River Diversion Canal Project**

Dear President Obama and Gentlemen:

The recent and ongoing flooding in the greater Baton Rouge area has resulted and is still causing, some of the worst destruction of home and businesses, with loss of life, in our history. The above referenced project, which was first authorized in 1994, if completed, could have diverted untold billions of gallons of water to the Mississippi River and probably spared thousands of houses and businesses, or at the very least, would have lessened the terrible impact of the event.

The Comite Diversion Canal Project was first included (*state funding*) in Act 45 (HB2) of the 1994 Regular Session. Twenty-two years have passed and the project is still not complete, very little work has been done, and our constituents have not seen a shovel of dirt turned to dig the canal even though they have been paying local taxes as well as state and federal taxes for these past twenty-two years.

This project has never been a priority to the Corps of Engineers and if we don't stay ahead of the project it will never be funded and completed.

This is the **second catastrophic flood event** in the Comite and Amite Basin in thirty-three years. The Final Report of the Comite River Diversion Canal Task Force clearly reminds us it is not a question of "If" but "When" another major rain event will occur in the basin.

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Senator Bodi White

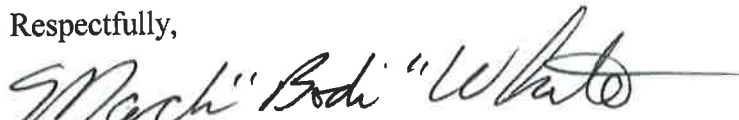
Louisiana Comite River Diversion Canal Project

There is a flood plan for the basin and the Diversion Canal is the main component. As a life-long resident of East Baton Rouge Parish and resident of the Central community for sixty years. As I pass my constituent's homes every day coming home from meetings of the Louisiana Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP), I see hundreds of homes that were flooded last week that could have been avoided if the canal would have diverted water from the Comite River to the Mississippi river.

Enclosed for your information is a letter from the Executive Director of Louisiana's Amite River Basin Drainage and Water Conservation District to Mr. Shawn Wilson, Secretary of the Louisiana Department of Transportation and Development dated June 30, 2016 regarding the Comite Diversion Canal Project and Capital Outlay/Bonds. Also enclosed is the Final Report of the Comite River Diversion Canal Task Force.

On behalf of the citizens of my district and the other impacted citizens of Louisiana, I urge your favorable consideration and request a representative of the Office of the President to contact me in the next ten (10) days to discuss how this project can be put back on track and to take action to complete the Comite River Diversion Canal Project as expeditiously as possible.

Respectfully,



Senator Mack "Bodi" White
Louisiana Senate, District 6
(225) 342-2438

cc: Capital Region Legislative Delegation Members
Coastal Restoration and Protection Authority



June 30, 2016

Mr. Shawn Wilson, Secretary
Louisiana Department of Transportation & Development
1201 Capitol Access Road
Baton Rouge, Louisiana 70802

Re: Comite Diversion Canal Project
Capital Outlay/Bonds

John Bel Edwards
Governor

Dietmar Rietschier
Executive Director

Board of Commissioners

Ben B. Babin
Ascension Parish
President

Jerry Thibeau
Ascension Parish
Vice President

David Hoover
Finance Chairman

Kenneth Welborn
East Baton Rouge Parish

William "Carey" Jenkins
East Baton Rouge Parish

Anthony "Tony" Rouchon
East Feliciana Parish

Larry N. Thomas
East Feliciana Parish

James A. Little
Livingston Parish

Vacant
St. Helena Parish

Willie George Lee
St. Helena Parish

Lionel L. Bailey, Sr.
St. James Parish

Terry Louque
St. James Parish

Donald E. Thompson
Member-at-Large

Toni B. Guitrau
Executive Secretary

Dear Mr. Wilson:

As you know we were able to place the Comite River Diversion Canal Project back into the Capital Outlay Program for FY 2016-17. LADOTD should be receiving a memorandum from the Division of Administration (DOA) with instructions regarding this funding. We were able to keep the funding request of \$15,000,000 in Priority 2 and \$ 72,000,000 in Priority 5.

Traditionally, the DOA submits recommendations for reauthorized Lines of Credits to the Bond Commission in July and new Lines of Credit in September/October. However, in view of the current State Revenue outlook and its impact on the State Capital Outlay bond capacity, we need to be paying special attention to make sure that we be included in the bond issue.

At this particular time, the way we see it, LADOTD needs at least \$2,000,000 to fulfill our present land purchase obligations. Chris Knotts can provide a better insight into this issue. In the long run, ideally we would like to have all of the \$15,000,000 in Priority 2, but this might be unrealistic in the present financial environment.

In terms of strategy, ARBC is committed to make contributions for the utility relocations to allow the construction of the KCS RR Bridge and the US Hwy 61 Bridge. This work can only proceed if we are successful in getting the necessary federal funds for construction. At this time we do not need any additional mitigation lands until another construction feature is planned for implementation, which is years in the future. We would ask that you make every effort to secure some funds for the continued purchasing of property.

If you have any questions I can be reached at the office at 225-296-4900.

Sincerely,

Dietmar Rietschier
Executive Director

Cc: Chris Knotts DOTD
Ben Babin ARBC
ARBC Legislative Delegation

Comite River Diversion Canal Task Force Final Report

Pursuant to HCR No. 51 of the 2014 Regular Legislative Session

Submitted to the House Committee on Transportation, Highways, and Public Works and the Senate Committee on Transportation Highways, and Public Works

Submitted on Thursday, January 15, 2015

Prepared by the House Committee on Transportation, Highways, and Public Works

COMITE RIVER DIVERSION CANAL PROJECT

Purpose

The Comite River has flooded to catastrophic levels in recent times. To combat future flooding, a 12 mile long diversion channel from the Comite River to the Mississippi will be constructed to divert flood waters and protect low-lying areas. Additionally, the project calls for the construction of guide levees, the Lilly Bayou control structure, four drop structures at the intersections of the diversion channel with McHugh Road, Bayou Baton Rouge, Cypress Bayou, White Bayou, and other highway and railroad bridges.

Once completed, the authorized project will reduce stages on the Comite River from the diversion point to the confluence with the Amite River; on the Amite River from confluence with the Comite River near Denham Springs to Port Vincent, Louisiana; on Hurricane Creek and Roberts Canal; and on White's, Cypress, and Baton Rouge Bayous that will be intercepted by the diversion canal.

The principal parties involved in this project are the U.S. Army Corps of Engineers (Corps), which has federal authority over the project through the Water Resources and Redevelopment Act, and the Amite River Basin Commission (ARBC), the Louisiana Department of Transportation and Development (DOTD), and East Baton Rouge City-Parish (EBR), which have non-federal authority over the project.

Location

The Comite River is a right bank tributary of the Amite River in northeastern East Baton Rouge Parish and northwestern Livingston Parish. The Comite River Basin comprises approximately 348 square miles and includes portions of Wilkinson and Amite Counties in Mississippi and East Feliciana Parishes in Louisiana. The canal project is located between the Comite and the Mississippi Rivers north of the town of Baker and south of the town of Zachary in East Baton Rouge Parish.

Comite River Diversion Canal Task Force

The Comite River Diversion Canal Task Force was created by HCR No. 51 of the

2014 Regular Session of the Louisiana Legislature by Representative Valarie Hodges and Senator Bodi White. The task force is charged with meeting and making recommendations on actions necessary to complete the construction of the Comite River Diversion Project, including strategies to comply with mitigation requirements and right of way acquisitions. HCR 51 requires the task force to submit its recommendations to the House Committee on Transportation, Highways, and Public Works, and the Senate Committee on Transportation, Highways, and Public Works by January 15, 2015.

The task force is composed of the following members: (1) an appointee of the Speaker of the House of Representatives, who is a member of the House of Representatives and represents the district directly impacted by the project (Valarie Hodges); (2) an appointee of the President of the Senate, who is a member of the State Senate and represents the district directly impacted by the project (Bodie White); (3) an appointee of the Louisiana congressional delegation representing the congressional district in which the project is located (Alvin Bargas); (4) an appointee of the secretary of the Department of Transportation and Development (Christopher Knotts); (5) an appointee of the executive director of the Coastal Protection and Restoration Authority (Chip Kline); (6) an appointee of the chairman of the task force who is a former member of the Amite River Basin Drainage and Water Conservation District board of commissioners (Jeff Taylor); (7) an appointee of the chairman of the task force who is a current member of the Amite River Basin Drainage and Water Conservation District board of commissioners (Jerry Thibeau); (8) an appointee of the director of the Department of Public Works of East Baton Rouge Parish (Tom Stephens); (9) an appointee of the Louisiana Realtors Association who is a realtor in the area impacted by the project (Jeanne Stroda); (10) an appointee of the Louisiana Landowners Association who is a landowner in the area impacted by the project (Brandon Rogillio); and (11) an appointee of the Louisiana Home Builders Association who is a homebuilder within the area impacted by the project (Jerry Passman).

Purpose of Task Force

There have been many obstacles deterring the completion of this project. This task force was formed to discover and remove the impediments to get the project back on track. The main obstacle at this point has been the inability of all parties to purchase mitigation land. No mitigation land has been purchased in the last two years despite having the money on hand, which is not acceptable. The task force was created to conclusively find a way to move forward with mitigation land. This report details some of the solutions to these obstacles.

The Flood of 1983 cost approximately 344 million dollars in damages, which has the same buying power as \$822 million in 2014, without taking into consideration all the new developments in the area throughout the years. It is not a matter of if we will have another devastating flood, but a matter of when. This task force urges the CORPs, DOTD, and ARBC to make this project a priority. The completion of this project is of utmost importance due to the magnitude of the potential disasters to homes, loss of life, loss of property, and exorbitant flood insurance cost. All involved parties must not lose sight of the urgency at hand since the completion of this project

would mitigate many of these factors, if not all.

Task Force Meetings

The task force met on September 11, September 29, November 6, 2014 and on January 13, 2015 at the Louisiana State Capitol. Per HCR 51, Representative Hodges served as chair and Senator White served as Vice Chair of the task force. At all meetings, the Corps, the federal sponsor, was represented by the project managers for the Comite River Diversion Canal project, Bobby Duplantier and Jasmine Smith. The non-federal sponsors were the DOTD, represented by Christopher Knotts, chief of the Public Works and Water Resources Division; EBR Department of Public Works, represented by Tom Stephens, chief design engineer; and the ARBC, represented by its Executive Director, Dietmar Rietschier.

DEVELOPMENTS AND STATUS UPDATES

At the November 6, 2015 meeting, Chris Knotts and Dietmar Rietschier testified that the two groups came to an agreement on a revised cooperative endeavor agreement (CEA). Under this third CEA, ARBC will exercise its expropriation authority to mitigate any losses or damages that might be associated with acquisitions. If construction were ongoing, given the quicktake authority that ARBC has, ARBC would be able to defeat any type of title issue that might arise.

Further, ARBC will be putting up fifty percent of all money used in future acquisitions. As a result, DOTD will provide ARBC with proposed acquisitions, including all title documents, purchase agreements, and acts of sale, affording ARBC the opportunity to comment on the process. The information below provides an update on components of the project.

Title Insurance

With the current process, title insurance will not be needed and has been deemed unnecessary by DOTD. Title insurance policies were acquired for all previous acquisitions by insurance companies. When the initial purchases for this project occurred, the Corps acquired title insurance as well. Per a new agreement, if DOTD decides it does not want to acquire title insurance, ARBC will acquire indemnification from DOTD in the event that there is some failure on the part of the title searches. Since ARBC is the holder, they would be held harmless under any new acquisition for which title insurance was not also acquired.

Mitigation Banks

The Corps, in coordination with DOTD, is pursuing mitigation bank credits pending funding. DOTD is currently in the process of acquiring mitigation credits for impacts at Lilly Bayou. It is the responsibility of the non-federal sponsor to acquire lands, easements, rights of way, relocations, and disposal sites (LERRDs). The acquisition and maintenance of mitigation lands is also a non-federal responsibility under LERRDS. DOTD would like to pursue the acquisition of mitigation credits from

a qualified mitigation land bank and receive work-in-kind credit towards the project. However, the current Project Cooperative Agreement (PCA) does not contain a work-in-kind clause allowing the non-federal sponsor to receive credit for mitigation bank credit acquisition.

The task force is recommending to our congressional delegation that the PCA be amended to allow work-in-kind which would allow land acquisition for mitigation banks which toward project costs. Until the PCA is amended, DOTD has two possible options to satisfy the mitigation requirements of the project: 1) enter into a CEA with the Corps whereby DOTD provides funding for the public purpose of satisfying the mitigation requirements subject to Article 7, Section 14 of the state constitution and 2) acquire and maintain mitigation lands as required by the LERRDS through amicable sellers.

Profit Island

ARBC is proceeding with this acquisition. The Nature Conservancy will be performing the improvements- cut down trees, plant certain trees, herbicides, etc. A third of the island will need mitigation. The expected maintenance cost, under a fifty-year maintenance agreement, will be determined very soon. The responsibility of the ARBC ends at acquisition, at which point the responsibility then shifts to the Corps.

At the same time, ARBC is also working on expropriation of the island. This process is amicable and should be more expedient than previous mitigations. The owners are willing sellers but expropriation is the only method available to the ARBC at this time. ARBC is attempting to first, solve the immediate mitigation and construction problem with the Corps. Second, ARBC is currently in discussions with the Department of Wildlife and Fisheries to perform the maintenance of the island. Currently, East Baton Rouge Parish is supposed to perform maintenance under the most recent PCA but has indicated that they are not equipped to perform maintenance at the Profit Island location. The Corps studies shows that there is little difference in the costs between mitigation banks and other projects being discussed.

Flood Plain Management Plan

This plan looks at the existing conditions and forecasts how the conditions will look once the Comite River Diversion Canal project is completed. Once the product is put into place, then projections are changed to existing conditions, which then becomes the new base line. Then, predictions are once again made as conditions improve. However, the plan is not required to be implemented at the local level until the project is completed. ARBC nor the Corps can go to local entities, such as East Baton Rouge Parish or the City of Zachary, requesting implementation. This plan is a tool for local entities to use under their own guidelines.

Further, the Federal Emergency Management Agency implements the flood insurance program and provides the flood plain management maps, which are periodically updated based on development and land use change. The more development, the more land is taking away from low-lying areas. FEMA does not consider proposed projects, such as the Comite River Diversion Canal, in making their

agreement with the Corps, whereby DOTD provides resources, for a public purpose, subject to the provision of Article 7, Section 14 of the state constitution.