

Comite River Diversion Canal Project Task Force

**Minutes of Meeting
2015 Interim
January 13, 2015**

I. CALL TO ORDER

Representative Valarie Hodges, Chairwoman of the Comite River Diversion Canal Project Task Force, called the meeting to order at 10:04 a.m. in Room 1, in the State Capitol in Baton Rouge, Louisiana. The secretary called the roll.

II. ROLL CALL

LEGISLATIVE MEMBERS PRESENT:

Representative Valarie Hodges, Chairwoman

LEGISLATIVE MEMBERS ABSENT:

Senator Bodi White, Vice Chairman

NON-LEGISLATIVE MEMBERS PRESENT:

Mr. Chip Kline
Mr. Christopher Knotts
Mr. Jerry Passman
Mr. Brandon Rogillio
Mr. Tom Stephens
Mr. Jeff Taylor
Mr. Jerry Thibeau

NON-LEGISLATIVE MEMBERS ABSENT:

Mr. Al Bargas
Ms. Jeanne Stroda

STAFF MEMBERS PRESENT:

House:

Kim Callaway, Attorney
Jared Evans, Attorney
Angelique R. Mozee, Committee Secretary
James Bullock, Sergeant at Arms
Jerry Miceli, Sergeant at Arms

Senate:

Glenn Arton, Sergeant at Arms

III. OPENING REMARKS

Representative Hodges advised the task force that this was the last meeting under House Concurrent Resolution No. 51. She commended the members and staff for their participation and hard work during all task force meetings.

Representative Hodges gave an overview of the task force goals for the record. She stated that the mission was to discover and remove the impediments for completing the project, study it, and make recommendations and actions that would be necessary to complete the construction of the Comite River Division Canal Project, which the task force accomplished.

IV. PRESENTATIONS AND BRIEFINGS

Department of Transportation and Development

Mr. Chris Knotts, Department of Transportation and Development (DOTD), 1201 Capitol Access Road, Baton Rouge, Louisiana 70804, (225) 379-3015, spoke for information only. He narrated a PowerPoint presentation entitled, "Comite River Diversion Canal Project" and provided a handout, Exhibit A, which is included in the committee records.

Mr. Knotts discussed from his presentation updated DOTD responsibilities, the five functional elements, summary of advanced acquisition parcels, DOTD plan of action, the responsibilities of the project management, real estate project manager, location and survey section, the utilities relocation section, environmental assessment and mitigation section.

Representative Hodges and Mr. Knotts discussed Function Elements I, mitigation banks, a letter sent to the U.S. Army Corps of Engineers in Washington, D.C., by former DOTD Secretary Sherri LeBas, McHugh Swamp in Function Elements III and IV, and the time frame for closure on the McHugh Swamp project.

Mr. Knotts and Mr. Rogillio discussed the time frame for acquisition of land of McHugh Swamp for mitigation approval. Mr. Knotts explained the Army Corps of Engineers' process on land mitigation, how it becomes mitigated property, and the steps in which DOTD acquires the property to receive mitigation credit.

Mr. Rogillio and Mr. Knotts discussed the work-in-kind clause and how the existing Project Cooperation Agreement does not allow for purchase of credits from mitigation banks.

U.S. Army Corps of Engineers

On behalf of Bobby Duplantier, designee and project manager for the U.S. Army Corps of Engineers, Mr. Mark Wingate, manager, project management branch for the U.S. Army Corps of Engineers (no card provided), spoke for information only. Mr. Wingate introduced Jasmine Smith, project manager for the Corps (no card provided) to the task force. He stated that she was attending the meeting for Bobby Duplantier who was on a project assignment in Washington, D.C.

Mr. Wingate addressed Mr. Rogillio's question regarding whether a state can provide mitigation bank acquired credits from a bank and get in-kind credit. Mr. Wingate stated that the Comite River project was authorized in 1992 by Congress. The laws that were in place did not allow the sponsors to provide in-kind services. He stated that the sponsor can either provide cash to the project or provide Lands Easements, Right-of-Way, Relocations, and Local Disposal (LERRD), to get a mitigation credit for the value of the land.

Representative Hodges and Mr. Wingate continued to discuss the difference between mitigation credits and in-kind services. Mr. Wingate explained that if the Department of Transportation and Development (DOTD) used monies they currently have to purchase a service, which is mitigation credit, the U.S. Army Corps of Engineers (Corps) cannot accept it because it would be an in-kind service. But, if DOTD wants to take their own money and acquire land, then the Corps can accept it as a credit because it would be considered a LEERD and the law at that time allowed the acceptance. Mr. Wingate stated that there is a process to go through if DOTD wanted to provide funds to the federal government to acquire mitigation bank credits. He said it would be considered a gratuitous offering.

Mr. Knotts asked what is the term for "advance of cash" that was done for Lily Bayou. Mr. Wingate explained what advance of cash means and gave a scenario on how the non-sponsor advances the cash to the administration up to the requirements in accordance to the Project Cooperative Agreement (PCA). Mr. Wingate stated if the non-federal sponsor provided more cash it would be considered a gratuitous offering because it is not required. Representative Hodges asked if this would satisfy the mitigation requirements and cost shares. Mr. Wingate said yes to the mitigation requirements, but it would not count for the cost shares.

Mr. Wingate stated the credits that the Corps would acquire on the federal side using state money would advance the project. The mitigation bank credits would be seen as appropriate and would be accounted towards the project, but the Corps would not be reimbursing or crediting the state for dollars they would provide to them.

Representative Hodges asked Mr. Wingate if the task force should look at legislation to change the PCA that would revise the work-in-kind clause. Mr. Wingate advised the task force to draft legislation that would allow in-kind services creditable on the Comite River project and revise the

in-kind credit. Representative Hodges suggested that the task force should make a recommendation to Congress.

Mr. Knotts asked Mr. Wingate if he believed that the work-in-kind legislation is an earmark or an enabling legislation. Mr. Wingate stated that he should discuss this matter with the congressional delegation.

Mr. Knotts and Mr. Wingate discussed the status of the \$5 million reprogramming request for the Comite River project. Mr. Wingate stated that the request is at the Office of Management and Budget (OMB) being reviewed. Mr. Knotts and Mr. Wingate continued to discuss the intent of the \$5 million and how it would be used to acquire and satisfy mitigation requirements for the next construction contract and Lily Bayou.

Representative Hodges made a statement in reference to mitigation land and the six-month time span for federal legislation to be implemented and enacted for McHugh Swamp.

Mr. Knotts stated that in order to satisfy the mitigation requirements, DOTD will continue to work on the one mitigation land issue they have and that the Amite River Basin Commission is still pursuing Profit Island.

Mr. Knotts asked Mr. Wingate once the mitigation requirements are satisfied, how does the project progress from the federal side. Ms. Smith stated if they receive the federal dollars, the next construction feature will be Highway 61. She said that the Corps has finished with the specs and is waiting for construction dollars. Ms. Smith stated that they want to construct in two phases and the cost for Highway 61 will be \$23 million. She said the next construction package the Corps has that is close to completion is Highway 964 project.

Mr. Knotts and Ms. Smith discussed the issuing of right-of-way for Highway 61. Mr. Knotts asked if the Corps provided DOTD with the document that would allow them to expropriate for the right-of-way. Ms. Smith stated that she would have to research it and get back with him.

Mr. Knotts and Mr. Wingate discussed the process on how the Corps sends the right-of-way request to the non-federal sponsors. Mr. Wingate advised Mr. Knotts that when the Corps request right-of-way, they have the construction money in hand for that particular project. He assured Mr. Knotts that he would get the official request for right-of-way to him.

Representative Hodges asked if there is anything the task force can do on a state level to expedite the \$5 million. Mr. Wingate advised Representative Hodges to continue to work with the Congressional delegation to expedite these funds.

Amite River Board of Commissioners

Mr. Dietmar Rietschier, Amite River Basin Commissioners, 3535 South Sherwood Forest Boulevard, Suite 135, Baton Rouge, Louisiana 70815, (225) 296-4900, spoke for information only. He narrated a presentation that was requested by Representative Hodges and Senator White and provided a handout, Exhibit B, which is included in the committee records.

Representative Hodges asked Mr. Rietschier and Mr. Bankston to give the status of expropriation for Profit Island.

Mr. Larry Bankston, Amite River Basin Commissioners, 8708 Jefferson Highway, Baton Rouge, Louisiana 70809, (225) 766-3800, spoke for information only.

Mr. Bankston stated that they are examining expropriation of the property. He said they have drafted and submitted to the Department of Wildlife and Fisheries a rough draft of the Cooperative Endeavor Agreement (CEA), in which the Department of Wildlife and Fisheries will take over the management of the mitigation area. Mr. Bankston said that once the land is acquired for mitigation the U.S. Army Corps of Engineers (Corps) does the design work, planning, and other preparations for Profit Island.

Mr. Bankston stated that the Amite River Basin Commission (ARBC) sent a letter to the Corps requesting a manual to instruct them on mitigation. He said they are working with the Corps to arrive at a CEA, as it relates to the City Parish to be approved by the Department of Wildlife and Fisheries.

Mr. Bankston stated that the ARBC distributed two handouts to the committee for their review. He explained that ARBC prepared a summary/status report of the work they have done that includes the Advanced Acquisition that showed the status of each of the 17 properties, and Mitigation Area III, which is McHugh Swamp.

He stated that ARBC sent letters to landowners who live in the McHugh Swamp area, asking if they are interested in being willing sellers. Mr. Bankston stated that ARBC believes there is a significant number of acreage in McHugh Swamp to satisfy the 135 Average Annual Habitat Units requirements.

Mr. Bankston said that ARBC has received notices from sellers that were interested in selling. They prioritized the larger tract owners, have title commitments, and have actual appraisal that has been done in McHugh Swamp. He stated that this information has been posted to a website for DOTD to access for their review.

Excavated Material

Mr. Bankston advised the task force that they have met with the East Baton Rouge Parish Landfill to supply dirt for a cover, if the dirt meets the requirements. He stated that the information concerning the quality and level of the dirt has been supplied to the East Baton Rouge Parish consultant of the landfill to examine. Mr. Bankston said that this could be a potential long term contract with the city of Baton Rouge to provide these services.

Mr. Bankston advised the task force that the other issue they should consider in the report is the discussion, determination, and elimination of Brooks Lake Closure project feature. He stated that the major property owners at the terminus of the canal is the State Police training facility and the Leroy Hardy family, who owns the other side of the canal.

Mr. Bankston stated that ARBC has not received an approval from the Corps for not buying the whole property, but instead they are looking to get a flowage easement. He said if the ARBC gets the flowage easement as opposed to purchasing the property out right, it would be a substantial savings for ARBC.

Mr. Bankston stated that Brooks Lake is on part of the property where Louisiana State Police has a facility in which trucks are prohibited to travel through the property due to security procedures. He stated that they looked into other routes to get to Brooks Lake to avoid Louisiana State Police property. He said if Brooks Lake is eliminated the ARBC can move forward.

Mr. Bankston stated that the Corps needs to eliminate Brooks Lake closure, which would be an additional cost savings to the Comite project, and eliminate the need for ARBC to deal with Louisiana State Police. He agreed that the task force should seek congressional delegation assistance on work-in-kind, legislation, and increasing the project limit.

Representative Hodges mentioned a letter that was sent to the Corps. She asked Mr. Wingate if he knew the time frame on a response to those three questions submitted in the letter. Mr. Wingate stated that he thinks there was a reporting requirement that came out in the public record across the nation for sponsor stakeholders to submit projects of interest to the Corps. He stated that he is not sure of a response the Corps was providing, but the intent was to inform the public record on what potential projects may be out there, or new language legislation that was required, but he did not know the time frame on the response from the Corps. Mr. Bankston clarified that it was a public notice requirement on December 5th, but no response was needed from the Corps.

Representative Hodges asked Mr. Bankston the status of the letter sent to the Corps from the Department of Transportation and Development in reference to the closure of Brooks Lake.

Mr. Bankston stated that the Department of Transportation and Development (DOTD), jointly addressed the letter with the ARBC and East Baton Rouge Parish (EBRP), that was mailed on December 2, 2014. He said that the letter addressed the elimination of the Brooks Lake closure feature, the use of non-federal resources for work-in-kind, and the changing of the Federal-Non-federal funding ratio from 75/25% to 65/35%.

Mr. Wingate stated that Brooks Lake was a feature of the Comite River project that was authorized by Congress in 1992. He said it was a feature of the study that they thought was needed to derive certain benefits. He also stated if the Corps decides not to construct Brooks Lake, he suggests that they do a technical analysis for the Corps to decide whether to construct or eliminate Brooks Lake. He said the Corps will not construct Brooks Lake any time soon due to limited funds, and that the Corps' focus is to acquire mitigation and getting the mitigation credits.

Mr. Wingate stated that he wanted DOTD, as a sponsor, to send an official request stating when it is appropriate for the consideration of eliminating Brooks Lake. He said without that request or the

Mr. Knotts stated that he sent Mr. Duplantier an email last year advising the Corps to review if Brooks Lake was necessary. He was told that the matter was being reviewed. He stated in order to move the process forward DOTD will send the official request.

Mr. Wingate advised Mr. Knotts that he will follow up to see if the Corps have enough analysis to complete the task. He stated since the funds are limited, the Corps will be focusing on mitigation, Profit Island, and securing their program request in order to use the \$5 million to get the mitigation credits. He said if Brooks Lake is not required, the Corps will remove it from their books.

Mr. Knotts stated that DOTD and the Corps should be in agreement that Brooks Lake is not a necessary feature. He said that Highway 61 is a more complex construction element and that their focus and funds should be applied to that project.

Floodplain Management Plan

Representative Hodges asked has the Corps met with the task force for the project coordination team to review the floodplain management plan. Ms. Smith stated that Mr. Duplantier met with the task force in November, reviewed the plan, and determined that it needed to be updated. Ms. Smith stated that the Corps plans to work with Mr. Rietschier to provide them with the necessary information, along with a recent approved plan to use as a guideline to develop the ARBC new floodplain plan.

Representative Hodges asked Mr. Rietschier if they have contracted with a firm to do the floodplain plan. Mr. Rietschier stated that they have a contract with Gulf Engineers and Consultants. He said it would take two or three months to complete. Mr. Rietschier stated upon completion that ARBC will visit with the community that is affected by the floodplain in the Comite Basin and present the

plan to the local government for the approval.

Representative Hodges asked Mr. Rietschier about the excavated material and the status of the feasibility study. Mr. Rietschier stated that they have not done a feasibility study and suggested that they do a marketing analysis on when the construction material is needed.

Representative Hodges asked Ms. Smith if she had any updates in reference to the Corps doing a feasibility study and the selling of the excavated materials. Ms. Smith stated in reference to selling the excavated materials, the Corps does not have any use for the material in that area for a project. She said it is the responsibility of the non-federal sponsors.

Mr. Thibeau discussed using the funds from the sale of the excavated material that is unrestricted, and use it on the lower end of the basin. He stated as the law is written, all monies on the taxes go through the Comite River Diversion. He said they are in talks with the Pontchartrain Levee District to partner with the Amite River Basin Commission to correct and move more water down the rear of the Amite River Diversion Canal.

Dr. John Day

Dr. John Day, 11843 Port Hudson Pride Road, Zachary, Louisiana 70791, (225)773-7165, spoke for information only. He narrated a PowerPoint presentation entitled, "Impact of the Comite River Diversion Canal on Upper Comite River" and provided a handout, Exhibit C, which is included in the committee records.

V. PUBLIC COMMENTS

Diane Womack

Ms. Diane Womack, landowner, 21900 MacHost Road, Zachary, Louisiana 70791, (225) 654-6641, spoke for information only.

Ms. Womack gave an overview of her 19 years of service with the city of Zachary, Inspection Department, the Planning and Zoning Commission, and the growth of Zachary for the past 15 years.

Ms. Womack stated in working with the Inspection Department, they followed the Community Rating System Program (CRS) to help mitigate some of the flooding issues that occurred with the rapid growth. She said they found that the city of Zachary was approximately a 45% flood zone, and that once the Comite River Canal fills to capacity, White Bayou, Cypress Bayou, and Copper Mills Bayou water flows through Zachary which causes flooding.

Ms. Womack stated that the Comite River project is very crucial to the city of Zachary and she thanked the task force for moving it forward.

Angie Knaps

Ms. Angie Knaps, 2209 Debra Drive, Baker, Louisiana 70714, (225) 775-3106, spoke for information only. Ms. Knaps stated that she is a retired floodplain administrator with the city of Zachary with 29 years of service. She currently serves as a floodplain consultant.

Ms. Knaps gave an overview on the procedures, policies, and requirements that the city of Zachary implemented regarding elevations, new technology, and map changes during her tenure. She stated as a floodplain manager in consulting, she has spoken with homeowners and insurance agents about the increased cost of flood insurance. She said in Livingston Parish the flood insurance increased to \$5,000 and in Central the flood insurance increased to \$4,000.

Ms. Knaps stated that in the city of Zachary, their base elevation level is 90 feet. She said the flood problems comes from the back waters when the Amite and Comite are inundated with water and reaches its capacity. Ms. Knaps stated that re-routing the water would assist them tremendously, and as a city they have done everything to follow the floodplain guidelines. She said it is very important that the Comite River project reach its completion.

Paul Frey

Mr. Paul Frey, Louisiana Landowners Association, 8982 Darby Avenue, Baton Rouge, Louisiana 70806, spoke for information only. Mr. Frey thanked Mr. Rogillio for representing the Louisiana Landowners Association on the task force and advised the members of the task force of their hard work on the Comite River Diversion Project.

He stated that the Louisiana Landowners Association has been in existence since the early 1970's, and they believe in protection of private property rights. He stated that the property owners are faced with the threat of expropriation, and in some cases quick take authority expropriation.

He stated that the Louisiana Landowners Association has gone on record during the legislative session as being opposed to any extension of quick take authority for any entities. He stated they understand that the Department of Transportation and Development (DOTD) has the authority and has passed that authority on to the Amite River Basin Commission (ARBC). He said in regards to expropriation, the Landowners Association feels it should only be done when necessary.

Mr. Frey explained if the state would take some of the state funds, and instead of work-in-kind, pass those dollars to the Corps. He said those dollars would be used to purchase mitigation credits and not expropriated property.

Mr. Knotts stated that to his knowledge, the only entity that would be expropriating, only when necessary, is the ARBC through an agreement with DOTD. He stated that it was originally thought that DOTD expropriation authority did not extend to this, but the agreement is DOTD will let ARBC

expropriate only when necessary. He also stated that mitigation land can never be expropriated.

Mr. Frey stated that Louisiana is losing a lot of land, including his members who own coastal property where land corrosion is seen along the rivers. Mr. Frey encouraged the task force to continue to seek sellers to move the project forward without the taking of landowners' property.

VI. CLOSING REMARKS

Representative Hodges advised the task force to review the drafted final report and resolution for the upcoming 2015 legislative session. She said if they had any ideas, feedback or recommendations, to please submit them by the January 15, 2015, deadline for submission to the legislature.

Representative Hodges stated that this will be the last task force meeting under House Concurrent Resolution No. 51. She said that the task force will contact the congressional delegation for a meeting to discuss moving the Comite River Diversion Canal Project forward.

Representative Hodges commended the U.S. Army of Corps of Engineers for their hard work and dedication to the project.

Mr. Knotts made a motion to adjourn.

VII. ADJOURNMENT

The meeting was adjourned at 11:46 a.m.

Respectfully submitted,

Valarie Hodges, Chairwoman
Comite River Diversion Canal Project Task Force

Date approved: _____