

**Atchafalaya Basinkeeper, Gulf Restoration Network, Waterkeeper Alliance, 350 Louisiana, Louisiana Bucket Brigade, Bold Louisiana, Sierra Club Delta Chapter, LA Audubon Council, LCPA-WEST**

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**Re: Comments on Behalf of Atchafalaya Basinkeeper, Gulf Restoration Network, Waterkeeper Alliance, 350 Louisiana, Louisiana Bucket Brigade, Bold Louisiana, Sierra Club Delta Chapter, Louisiana Audubon Council and Louisiana Crawfish Producers Association-West Regarding Joint Permit Application Submitted by Bayou Bridge Pipeline, LLC c/o Perennial Environmental Services, LLC (MVN-2015-02295-WII, WQC 160921-03)**

Dear Mr. Little and Ms. Hill,

This is a comment to Bayou Bridge Pipeline, LLC c/o Perennial Environmental Services, LLC's ("Bayou Bridge Pipeline, LLC" or "the Applicant") application to the Army Corps of Engineers ("the Corps") for a permit to discharge dredge and fill material under Section 404 of the Clean Water Act. 33 U.S.C. § 1344. The permit application is identified as MVN-2015-02295-WII. This comment also addresses Bayou Bridge Pipeline, LLC's application to the Louisiana Department of Environmental Quality ("LDEQ") for a Water Quality Certification ("WQC") pursuant to LRS 30:2074 A(3) and Section 401 of the Clean Water Act. The WQC application is identified as WQC 160921-03.

This comment is prepared and submitted on behalf of the following organizations:

Atchafalaya Basinkeeper ("Basinkeeper"),  
Gulf Restoration Network ("GRN"),  
Waterkeeper Alliance,  
350 Louisiana,  
Louisiana Bucket Brigade  
Bold Louisiana,  
Sierra Club Delta Chapter,  
Louisiana Audubon Council and  
Louisiana Crawfish Producers Association – West ("LCPA").

**Atchafalaya Basinkeeper, Gulf Restoration Network, Waterkeeper Alliance, 350 Louisiana, Louisiana Bucket Brigade, Bold Louisiana, Sierra Club Delta Chapter, LA Audubon Council, LCPA-WEST**

**Atchafalaya Basinkeeper** is a non-profit organization dedicated to protecting and restoring the ecosystem within the Atchafalaya Basin. **Gulf Restoration Network** is a diverse coalition of individual citizens and local, regional, and national organizations committed to uniting and empowering people to protect and restore the natural resources of the Gulf of Mexico. **Waterkeeper Alliance** connects and supports more than 200 local Waterkeeper organizations to provide a voice for waterways and their communities worldwide. **350 Louisiana** is a volunteer climate activist group connecting the Louisiana region to the international climate change movement. The **Louisiana Bucket Brigade** uses grassroots action to create an informed, healthy society with a culture that holds the petrochemical industry and government accountable for the true costs of pollution. **Bold Louisiana** is the Louisiana membership of the Bold Alliance, which works with unlikely alliances of farmers, ranchers, fisherfolk, Tribal nations, and progressives to stop risky fossil fuel and industrial food projects. **Sierra Club** is a national grassroots organization whose mission it is to explore, enjoy and protect the wild places of the Earth; to practice and promote the responsible use of the Earth's ecosystems and resources; and to educate and enlist people to protect and restore the quality of the natural and human environment. Organized in 1989, **LA Audubon Council** has been involved in protecting bottomland hardwoods, wetlands habitat and endangered species. **LCPA** is an organization located on the west side of the Atchafalaya Basin Protection Levee whose purpose is to educate the public and advocate for the right to access navigable waters.

Atchafalaya Basinkeeper, Gulf Restoration Network, Waterkeeper Alliance, 350 Louisiana, Louisiana Bucket Brigade, Bold Louisiana, Sierra Club Delta Chapter, LA Audubon Council and Louisiana Crawfish Producers Association – West reserve the right to rely on all comments to this permit application submitted by any party.

Bayou Bridge Pipeline, LLC requests Section 404 permitting and a Water Quality Certification (“WQC”) for its proposed installation and operation of a 24-inch diameter crude oil pipeline approximately 162.52 miles in length. The pipeline facilities include the proposed 161.40 mainline section beginning south of Lake Charles, Louisiana and terminating near St. James, Louisiana, as well as a proposed 1.12-mile lateral pipeline that would commence at the terminus of the mainline. The project also involves the construction of two pump stations and other ancillary facilities along the pipeline. The project activities include clearing the right-of-way, conducting trenching operations, installing various above and below ground pipelines and components, installing aboveground facilities, and temporarily stockpiling material and performing horizontal directional drilling (HDD) operations. The application further contends that following construction, areas temporarily impacted by the project will be restored to pre-construction grade and allowed to revegetate to the extent allowed under United States Department of Transportation (USDOT) regulations.

The proposed project is described as impacting approximately 453.96 acres of jurisdictional wetlands and 42.14 acres of other waters of the United States. In addition, approximately 158.80

acres of jurisdictional wetlands will be permanently converted to non-forested wetlands within the pipeline right-of-way. Access roads and culverts associated with the project will also permanently impact wetlands and other waters of the United States. Culvert installation will place 21.50 cubic yards of fill material in wetlands and 36.22 cubic yards of fill material in other waters of the United States. While a project of this magnitude is significant in its own right, we are concerned about the additive and multiplicative effects on wetlands and coastal habitats that are already inundated with pipeline projects and the impairments that result.

We respectfully request that the Corps and the LDEQ (1) conduct an Environmental Impact Statement (“EIS”) and (2) hold public hearings to gain further insights into the aforementioned type of wetland destruction. The Applicant’s proposal to purchase credits from a mitigation bank to offset any unavoidable losses to wetland functions caused by project implementation may be inadequate to address the inevitable indirect and cumulative wetland effects that may result from a project of this scale.

## **I. SUMMARY**

The Section 404 permit application for this proposed project is deficient under the law and must be denied. The application fails to satisfy Environmental Protection Agency (“EPA”) regulatory requirements for Clean Water Act (“CWA”) Section 404 permits promulgated pursuant to Section 404(b)(1) of the CWA. *See* 40 C.F.R. § 230.10. Furthermore, the application fails to satisfy the standards set forth in the Corps’ regulations for evaluating the sufficiency of Section 404 permit applications. *See* 33 C.F.R. § 320.4. Finally, the permit application is incomplete and fails to provide necessary information required by the permitting process. Bayou Bridge Pipeline, LLC only offers a topographic map with a line representing the pipeline route. There exists no information regarding how the applicant proposes to cross levee systems and waterways. The public cannot provide meaningful comment without additional information from Bayou Bridge Pipeline, LLC. The WQC for the proposed project cannot be issued for the same reasons.

## **II. DISCUSSION**

- A. Bayou Bridge Pipeline, LLC fails to clearly demonstrate that there are no practicable alternatives to the proposed project that will have less adverse impact on the aquatic ecosystem as required by the Environmental Protection Agency requirements for CWA Section 404 permits.**

The Bayou Bridge Pipeline, LLC permit application must be denied because the application fails to overcome the presumption that dredge and fill materials should not be discharged into navigable waters of the United States. *See* 40 C.F.R. § 230.10. An applicant’s proposal to discharge dredge and fill material must satisfy all the requirements set forth in the Environmental Protection Agency (“EPA”) regulations entitled “Restrictions on Discharge” (hereinafter, “the Restrictions”). 40 C.F.R. § 230.10. If the application does not comply with these EPA regulations, the permit must

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be denied. 40 C.F.R. § 230.10 (“[A]ll requirements in [the Restrictions] must be met.”). Bayou Bridge Pipeline, LLC’s permit application fails to satisfy all the requirements set forth in the Restrictions. Thus, the Corps cannot grant this permit without contravening applicable law.

The intent of the Corps’ regulation is to avoid unnecessary destruction or alteration of Waters of the United States, including wetlands, as well as to compensate for the unavoidable loss of such waters. The regulations require that no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge that would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. An adequate analysis of alternatives must further weigh direct, indirect, secondary and cumulative impacts that take into account aspects of water quality, wildlife and flood protection. *See* 33 C.F.R. § 320.4.

Bayou Bridge Pipeline, LLC’s permit application fails to satisfy the requirement that there be no “practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem.” 40 C.F.R. § 230.10(a). Not only do the Restrictions demand that an applicant demonstrates a lack of practicable alternatives, but for projects that are not “water dependent,” the Restrictions impose a presumption that there *are* practicable alternatives available “unless clearly demonstrated otherwise.” 40 C.F.R. § 230.10(a)(3). An evaluation is accordingly required in every case for use of non-aquatic areas and other aquatic sites that would result in less adverse impact to the aquatic system, regardless of whether the discharge site is a special aquatic site or whether the activity associated with the discharge is water dependent. A permit cannot be issued, in circumstances where an environmentally preferable practicable alternative for the proposed discharge exists.

For proposed discharges into wetlands and other special aquatic sites, the Restrictions require consideration of whether the activity associated with the proposed discharge is “water dependent.” Water dependency is defined as a project that “require[s] access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose.” 40 C.F.R. § 230.10. This proposed project is not water dependent. Pipelines are inherently not water dependent, and the Applicant has not clearly demonstrated that the proposed project is an exception. The basic purpose of the project is to transport crude oil. The applicant has not demonstrated that this instance of crude oil transport requires access or proximity to or siting within aquatic habitat. Without a demonstration of water dependence, it must be concluded that alternatives with less adverse impacts exist. *Id.*

For projects for that are not “water dependent,” the Restrictions specifically presume that alternatives that do not discharge into “special aquatic sites,” which include wetlands, are both available and less likely to result in adverse impact, unless the applicant “clearly demonstrates otherwise.” 40 C.F.R. § 230.10(a)(3); 40 C.F.R. § 230.41. Bayou Bridge Pipeline, LLC’s proposed crude oil pipeline is not water dependent yet it would discharge into wetlands, which are considered special aquatic sites. Therefore, the proposed pipeline is subject to: (1) the presumption that there is a practicable alternative available unless clearly demonstrated otherwise, and (2) the

presumption that these alternatives have less adverse impact to sensitive waters. 40 C.F.R. § 230.10(a). Bayou Bridge Pipeline, LLC has failed to overcome these two presumptions by clearly demonstrating that there are no practicable alternatives that would have less adverse impacts on the Atchafalaya Basin water system and other wetlands. There is no reason or explanation provided by the Applicant concerning why this development must be sited in wetlands to “fulfill its basic purpose.” For these reasons, the Corps and LDEQ must deny Bridge Bayou Pipeline, LLC’s permit application.

The following three subsections explain how Bayou Bridge Pipeline, LLC has failed to overcome these burdens: first, in its consideration of alternative actions; second, in its consideration of alternative routes for the pipeline; and third, in its lack of description of the proposed methods for constructing the pipeline.

### ***1. Alternative Actions Analysis***

In general, the regulations provide that no discharge of dredged or fill material shall be permitted: (1) if there is a practicable alternative to the proposed discharge; (2) if the discharge causes or contributes to violations of applicable water quality standards; (3) if the discharge will cause or contribute to significant degradation of the environment; and (4) unless all appropriate steps have been taken to minimize potential adverse impacts. 40 C.F.R. § 230.10. Bayou Bridge Pipeline, LLC’s permit application does not clearly demonstrate, as required by the Restrictions, that this pipeline is needed and that there are no practicable alternative. 40 C.F.R. § 230.10(a)(3). Because it fails to demonstrate a need for the project, Bayou Bridge Pipeline, LLC has not clearly demonstrated that a no-action alternative is impracticable and improper. In other words, the “no-action” alternative remains practicable.

Bayou Bridge Pipeline, LLC’s permit application fails to clearly demonstrate that it cannot transport crude oil using alternative methods. Because the Restrictions create a presumption that these alternatives may be practicable and less harmful to aquatic ecosystems and special aquatic sites, Bayou Bridge Pipeline, LLC must provide objective data and analyses to support its proposal. 40 C.F.R. § 230.10(a)(3).

Finally, Bayou Bridge Pipeline, LLC fails to consider a pipeline project using an alternative point of origin, point of end, or both. Without such an analysis, Bayou Bridge Pipeline, LLC has not demonstrated that this pipeline project is the only practicable action.

### ***2. Alternative Route Analysis***

Route siting is especially important for two reasons: first, the impact of trenching and laying a pipe is intensely disruptive to wetlands; and second, the destruction and disruption caused by pipeline access roads and the right-of-way are permanent. Just the access roads would be at least 29-feet

wide at all points, providing substantial disruption. Because route selection determines where these impacts will occur, a proper analysis of alternative routes is paramount.

In Attachment 9, the Applicant provides evidence that it has engaged in some form of alternative analysis to determine if less damaging project routes exist. Of the four routes surveyed, one does indeed reduce the amount of wetland impact and the number of major waterbody crossings. In doing so, it has not minimized the need for dredge and fill discharge into wetlands to the maximum extent practicable.

Moreover, the baseline route proposed by Bayou Bridge Pipeline, LLC runs through wetlands and a right-of-way that is already out of compliance with two permits. Lack of enforcement from the Corps has resulted in severe damage to our coast and the Atchafalaya Basin. The message from the Corps should be clear. For a right-of-way to be used to build more pipelines in the future, the right-of-way should first be brought back into compliance. If oil companies refuse to do so, that right-of-way should be deemed out of commission. The many obstacles facing the coast will never be solved until our agencies start enforcing permits and making permittees accountable for their actions. The Corps cannot fulfill its obligations until resources are allocated to ensure applicant compliance with administered permits.

### **3. *Alternative Construction Methods***

In its permit application, Bayou Bridge Pipeline, LLC states that following construction, areas temporarily impacted by the project will be restored to pre-construction grade and allowed to revegetate to the extent allowed under United States Department of Transportation (USDOT) regulations. Because the process of backfilling a trench after a pipe is in place is essential to reducing long-term harm and disruption to the wetlands, it is imperative that the methods for backfilling are scrupulously developed and implemented. The action of trenching, and associated discharge of the dredge material into the wetland, could be one of the most disruptive activities of the proposed project if not properly restored. The process of placing the material back into the trench is thus an essential aspect of reducing the harm caused by the initial disposition of material dredged from the trench. Because this permit application fails to provide any parameters that the inspector will apply in overseeing this process, it is impossible for the Corps to evaluate the effectiveness of the potential backfilling process.

Furthermore, improper backfilling itself can detrimentally impact the wetland ecosystem. Prior backfilling activities in the Atchafalaya Basin along the very same right-of-way that Bayou Bridge Pipeline, LLC proposes to use has drastically reduced the environmental integrity of the Basin. Previous pipeline projects through the Basin have left spoil banks of dredged material adjacent to the pipelines, dramatically altering water flow and sedimentation patterns along the pipeline routes. The spoil bank runs along the pipelines on an east-west trajectory and diverts and impedes the natural north-to-south flow, altering the direction to an east-west flow pattern. Because the water is laden with sediment, the change in the natural flow creates sedimentation along the spoil

banks, which further impairs the north-to-south flow of the water. Bayou Bridge Pipeline, LLC's application does not provide sufficient information regarding how backfill from dredging will be properly restored and must be denied on account of its many deficiencies.

These kinds of considerations that ensure each aspect of a project in the Basin is performed correctly are especially important because previous pipeline projects, including pipelines constructed along the same right-of-way now proposed, were not held to the proper standards. One pipeline company left spoil along the right-of-way and a subsequent permittee placed their pipeline in the remaining spoil bank. Although these actions violated the permit, the pipeline was nonetheless installed and completed. The Corps' crippled enforcement capabilities within the Basin compound these concerns. The Corps does not have a dedicated boat to access, monitor, and otherwise enforce permit compliance for Basin projects. Without a means to ensure that this pipeline would be constructed properly, and without clear standards of construction detailed in the permit application, the Corps cannot form a sufficient basis to evaluate the impacts of the project on which to issue the permit.

**B. Bayou Bridge Pipeline, LLC's permit application must be denied because it is not in the public interest and is therefore inconsistent with the Corps' Section 404 permitting regulations.**

Bayou Bridge Pipeline, LLC's permit application must be denied because it is inconsistent with the Corps' regulations for evaluating permit applications. 33 C.F.R. § 320.4. The Corps' regulations state that the determination of whether to issue a permit will be based on a review of the public interest. 33 C.F.R. § 320.4(a). This review considers the specific facts of the potential permit and the individual and cumulative impacts of the proposed action, weighing the detrimental impacts with the beneficial impacts. *Id.* If this balancing indicates that the project is not in the public interest then the permit must not be issued. *Id.*; 33 C.F.R. § 320.4(b)(4).

***1. Contrary to Public Interest and EPA Regulations***

The Corps' public interest review is informed by the evaluation of the proposed project under the aforementioned EPA Section 404 permit Restrictions, which are discussed above in part A of this comment. The Corps' regulations articulate a clear standard: "For activities involving 404 discharges, a permit will be denied if the discharge that would be authorized by such a permit would not comply with the [EPA's 33 C.F.R § 230.10] guidelines." 33 C.F.R. § 320.4(a)(1). Bayou Bridge Pipeline, LLC's permit application does not meet this standard. Because Bayou Bridge Pipeline, LLC fails to overcome the burden created by the Restrictions and clearly show that there are no practicable alternatives with less adverse impacts to wetlands, the permit must be denied under the Restrictions. *See* 33 C.F.R § 230.10. Accordingly, because the permit application does not comply with the requirements of the EPA Restrictions, it also must be denied under the Corps' public interest review. 33 C.F.R. § 320.4(a)(1); *see also* 33 C.F.R. § 320.4(b)(4) ("In evaluating

whether a particular discharge activity should be permitted, the district engineer shall apply the Section 404(b)(1) guidelines (40 C.F.R. § 230.10(a)(1),(2),(3)).”.

## **2. *Detriment to Public Outweighs Benefits***

In addition to the proposed activity’s inconsistency with the EPA requirements, the Corps’ guidance for public interest review also indicates that this permit must be denied. A balancing of the proposed project’s detriments and benefits shows that the proposed pipeline is not in the public interest so the permit must not be issued. The factors identified by the Corps for the public interest review are diverse and include wetland protection, economics, general environmental concerns, conservation, mineral needs, land use, aesthetics and others. 33 C.F.R. § 320.4(a)(1).

Congress, the Corps and EPA have clearly identified the detriments of dredge and fill projects of the type proposed in this permit application. By devoting an entire permitting program in the Clean Water Act to the disposition of dredge and fill material, Congress signaled its clear recognition that dredge and fill activities may be harmful to the environment and should be conducted with caution. *See* 33 U.S.C. § 1344. Moreover, including this permitting program in the Clean Water Act, the stated goal for which is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” shows that Congress considered the disposed dredge and fill material to be an impairment to our waters. 33 U.S.C. § 1251. This is especially important when the waters at issue are wetlands, like this particular instance. As the Corps’ 404 permitting regulations explain, “[since] most wetlands constitute a productive and valuable public resource, the unnecessary alterations or destruction of which should be discouraged as *contrary to the public interest*.” 33 C.F.R. §320.4(b)(1) (emphasis added). The Corps’ regulations further state that wetlands provide important “biological functions” including general habitat for wildlife, as well as nesting and spawning grounds. *Id.* The applicability of these functions to the Atchafalaya Basin cannot be controverted. *See, e.g.*, 16 U.S.C. §§1451-53 (declaring a national policy to “to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation’s coastal zone for this and succeeding generations” and defining coastal zone to include coastal wetlands).

Unfortunately, the disposition of dredge and fill proposed by Bayou Bridge Pipeline, LLC would likely result in detrimental impacts to the Basin. EPA regulations describe many values that could be lost: “The discharge of dredged or fill material in wetlands is likely to damage or destroy habitat and adversely affect the biological productivity of wetland ecosystems.” 40 C.F.R. § 230.41(b); *see also* 40 C.F.R. § 230.41(b) (“Discharges can also change the wetland habitat value for fish and wildlife.”). But while Congress, the Corps, and EPA have clearly identified the public interest in preserving wetlands and forbidding the destructive effect of discharged dredge and fill material, Bayou Bridge Pipeline, LLC has not clearly identified the public interest in undertaking the proposed project. The benefits are merely to increase the “optionality” of the sale of oil to foreign markets. The purpose of the project, to sell crude oil, is achievable through other ports under the “no action” alternative. The Applicant presumably hopes to realize private economic gains with the project, and this must be taken into consideration in a meaningful way. However, balancing



this economic benefit against the detriments of the project is impossible with the insufficient amount information supplied in the joint permit application.

Bayou Bridge Pipeline, LLC fails to provide basic information upon which the public interest balancing inquiry can be performed as required by 33 C.F.R. § 320.4(a)(1). No mention is made regarding how neighboring residents would benefit from the proposed project. Community members are instead likely to be left with all the unaccounted external costs of the project, including health and environmental impacts, reduced flood protection and attenuation, heightened spill risks and additional costs associated with the climate-disrupting reliance on fossil-fuel infrastructure. Although “mineral needs” is identified as a factor that should be taken into consideration for the public interest balancing (33 C.F.R. § 320.4), Bayou Bridge Pipeline, LLC’s permit application does not demonstrate that this pipeline satisfies a mineral need or how this proposed pipeline would satisfy a mineral need.

**(a) Drinking Water**

The project will travel under Bayou Lafourche, a drinking water source for over 300,000 residents of Louisiana, and a source of water for Agriculture and Industry. The Applicant must be required to obtain a permit from the Bayou Lafourche Fresh Water District before approval of the Water Quality Certification and 404 permit. The Applicant must have a spill control plan and emergency shutoff valves on either side of Bayou Lafourche.

There are many pipelines that run under Bayou Lafourche, and the LDEQ should assess how much risk this critical drinking water supply is already under before certifying a new threat.

**(b) Flood Attenuation and Drainage**

In the past year, nearly every Parish in the state has been flooded by enormous rains from an overheated Gulf of Mexico. In the aftermath of the Gulf Flood of August of 2016, 20 parishes were declared disaster areas, 13 people were lost, and 122,000 filed with FEMA for assistance.<sup>1</sup> Reducing flood storage throughout Acadiana by filling wetlands and constraining north-south flow with a pipeline right of way aggravates flooding issues. These wetlands and waters will only become more valuable for flood attenuation as climate change accelerates, and large rains become more frequent and more intense.<sup>2</sup> This wetland value must not be underestimated.

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<sup>1</sup> Julia O'Donoghue, *Louisiana Flood: 8 things you need to know about the aftermath*, NOLA.com | The Times-Picayune, August 25, 2016.

<sup>2</sup> Van der Wiel, et al. *Rapid attribution of the August 2016 flood-inducing extreme precipitation in south Louisiana to climate change*, Hydrol. Earth Syst. Sci. Discuss., doi:10.5194/hess-2016-448, in review, 2016.

## How has global warming affected **HEAVY RAIN EVENTS** like the one along the Gulf in mid-August?

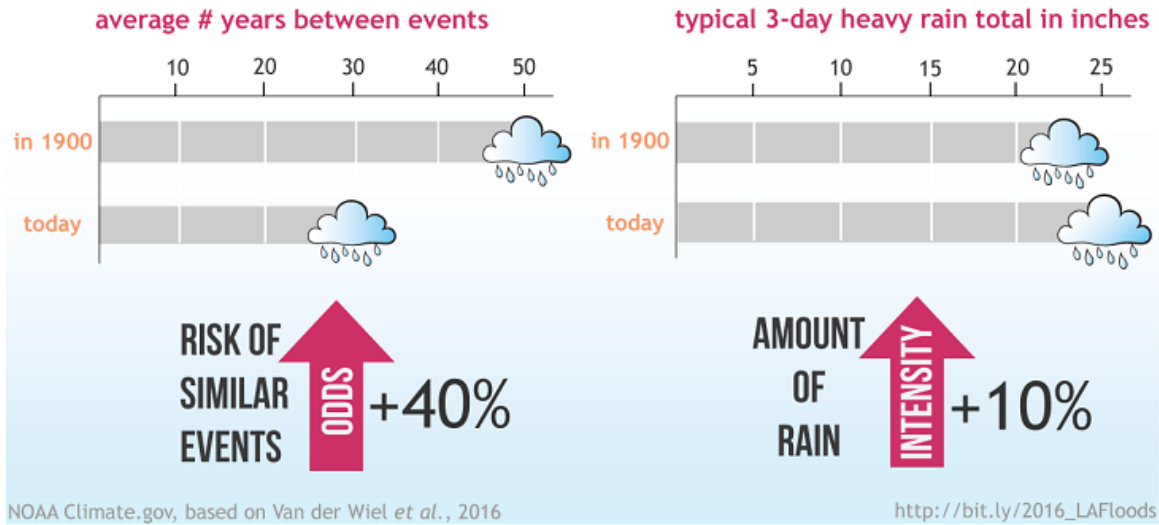


Figure 1.

Models indicate that the return period\* for extreme rain events of the magnitude of the mid-August downpour in Louisiana has decreased from an average of 50 years to 30 years. A typical 30-year event in 1900 would have had 10% less rain than a similar event today, for example, 23 inches instead of 25.

\*Return intervals are statistical averages over long periods of time, which means that it's possible to have more than one "30-year event" in a 30-year period. (NOAA Climate.gov, based on Van der Wiel, et al., 2016.)

The Atchafalaya Basin is critically important for flood control. Since 1932, there has been a net accretion of nearly 2.5 billion cubic meters of sediment in the Basin floodway, converting a substantial amount of open water and cypress swamps to bottomland hardwood forests. The ability of the Atchafalaya Basin to move flood waters is severely diminished due to the increase in accretion. During the most recent flood, Grand River at Bayou Sorrel crested at 10.39' on August 17, 2016, while across the levee inside the floodway it crested at only 7.1' on August 14, 2016 (levels are fluctuating as the Mississippi River rises). Pipeline canals, illegal spoil banks and the lack of enforcement greatly contribute to the accretionary process in the Basin. It is critically important for the sustainability of the Basin floodway that pipeline canals are brought back into compliance before any new permits are granted to use the rights-of-way.

### (c) Safety Violations

This project is ultimately a joint venture of Energy Transfer Partners and Sunoco, where Energy Transfer Partners (ETP) possesses a majority interest. ETP wholly owns Sunoco as well as Southern Union Company.

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Since this merger in 2012, there have been repeated safety violations:

On January 12th, 2012, a Sunoco pipeline ruptured, spilling some 117,000 gallons of gasoline in Wellington, Ohio. Residents were evacuated for a week.

On February 19th, 2013, maintenance on a Sunoco pipeline led to the unexpected release and consequent ignition of crude oil in Wortham, Texas. At least one worker was hospitalized.

On November 28th, 2013, a natural gas pipeline exploded in Hughesville, Missouri. Nearby buildings caught fire and local populations were evacuated. The pipeline is managed by Panhandle Eastern, a subsidiary of Southern Union Company.

On October 13th, 2014, a Sunoco crude oil pipeline ruptured, releasing roughly 168,000 gallons in Caddo Parish. The spill killed fish, reptiles, and other flora and fauna. The very same pipeline also ruptured near Cincinnati, Ohio in March of 2014.

On August 12th, 2016, 7 contractors suffered injuries and severe burns while working on a Sunoco pipeline in Nederland, Texas.

On September 10th, 2016, a Sunoco pipeline ruptured, spilling about 33,000 gallons of crude oil near Sweetwater, Texas. The pipeline was installed just a year prior.

ETP has a joint partnership with Kinder Morgan too, called Florida Gas Transmission Company. This entity has also experienced its share of safety violations:

On February 13th, 2012, a Florida Gas Transmission Company pipeline burst north of Baton Rouge. Residents in the area were evacuated.

On December 26th, 2012, a Florida Gas Transmission Company pipeline ruptured near Melbourne, Florida. The incident suspended operations.

On June 18th, 2013, a Florida Gas Transmission Company pipeline exploded in Washington Parish. Homes were evacuated, and the blast upended and set fire to trees.

On May 17th, 2014, a Florida Gas Transmission Company pipeline ruptured near Port St. John, Florida. Homes were evacuated, traffic was halted, and the incident led to over \$170,000 in property damage.

Bayou Bridge has yet to develop disaster-response plans, despite the inherent vulnerabilities of pipelines and ETP's past incident record.

The proposed pipeline presents the following imbalanced interests: on the one hand, unidentified and uncertain economic gain; and on the other hand, the concrete and quantifiable risks to human health and safety and destruction of wetlands, which are recognized by Congress, the Corps and EPA as valuable public resources that are vital to recreational, environmental and aesthetic integrity of Southern Louisiana.

Accordingly, the proposed project is not in the public interest under the Corps' regulation 33 C.F.R. § 320.4(a), so the permit must be denied.

**C. The Corps' must deny Bayou Bridge Pipeline, LLC's Permit Application and LDEQ cannot lawfully certify this project because the application does not provide sufficient information about essential features of the proposed project.**

**1. *Direct, Indirect and Cumulative Impacts***

Article IX, Section 1 of Louisiana's Constitution provides that "the natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people." (Article IX of Louisiana Constitution).

In its 'Save Ourselves' decision, the Louisiana Supreme Court outlined how state agencies, as public trustees, can implement this constitutional guarantee. All agencies must determine whether a project avoids or minimizes adverse environmental impacts, balances environmental costs and benefits with economic and social factors, and consider whether alternate projects, sites, or mitigating measures would better protect the environment. (452 So. 2d 1152 (La. 1984)).

Given the information available in public documents, it does not appear that the Corps, LDEQ, or the Applicant have fully weighed the costs and benefits relevant to the Project. Direct, indirect, secondary, and cumulative impacts of the proposed wetland fill and clearing remain overlooked. The Applicant must answer the "IT questions."

**(a) Direct Impacts**

The direct impacts of the proposed project are not fully represented. The public notice states that "[t]he proposed project will temporarily impact approximately 453.96 acres of jurisdictional wetlands and 42.14 acres of other waters of the U.S. In addition, approximately 158.80 acres of jurisdictional wetlands will be permanently converted to non-forested wetlands within the pipeline right-of-way". A 75-foot buffer along the pipeline route contains ~942 acres of wetland and waters, according to the USFWS National Wetlands Inventory. Of these, the majority of acres (~781) are forested wetlands.

Impact to streams is listed as acreage, instead of linear feet. This misrepresents and undervalues the ecological values of streams.

Especially when climate is considered, the removal of slow-growing bottomland forests is not a temporary impact, particularly when the project, as projects previous to this, contemplate large indirect hydrological impacts that cause siltation and vast changes to the forest canopy. Although the National Wetlands Inventory is not a USACE Jurisdictional Determination, it is included in analysis of impacts to wildlife and other values. The magnitude of the discrepancy between these evaluations is striking.

**(b) Secondary or Indirect Impacts**

The Code of Federal Regulations recognizes the significance of secondary impacts from wetland destruction by emphasizing that “minor loss of wetland acreage may result in major losses through secondary impacts.” 40 C.F.R. §230.41.

As described above, the pipeline ROW follows, in part, previously permitted and similar rights of way. These rights of way are out of compliance, obstructing north to south flow, causing large indirect impacts to hydrology and wetlands, enough to change the type of wetland. These impacts must be evaluated, as deep swamps are invaluable resources in the basin that are becoming more and more rare as the basin (08080101) is silted in by Old River Control.

We can find some evidence for indirect impacts in the National Wetlands Inventory of the Flat Lake area. The acreage numbers listed here do not stand as an assessment, but as an argument that the scale of these impacts warrants an assessment, and a finding of significance on their own. About 160.9 acres of forested spoils are south of the project, about three quarters of a mile north of Pigeon's Landing (Fig. 2). Another 3155.8 acres in the reach from Bayou Pigeon to Bayou Chene change from an "F" (semi-permanently flooded) to a "C" (seasonally flooded) from one side of the ROW to another (Fig. 2).

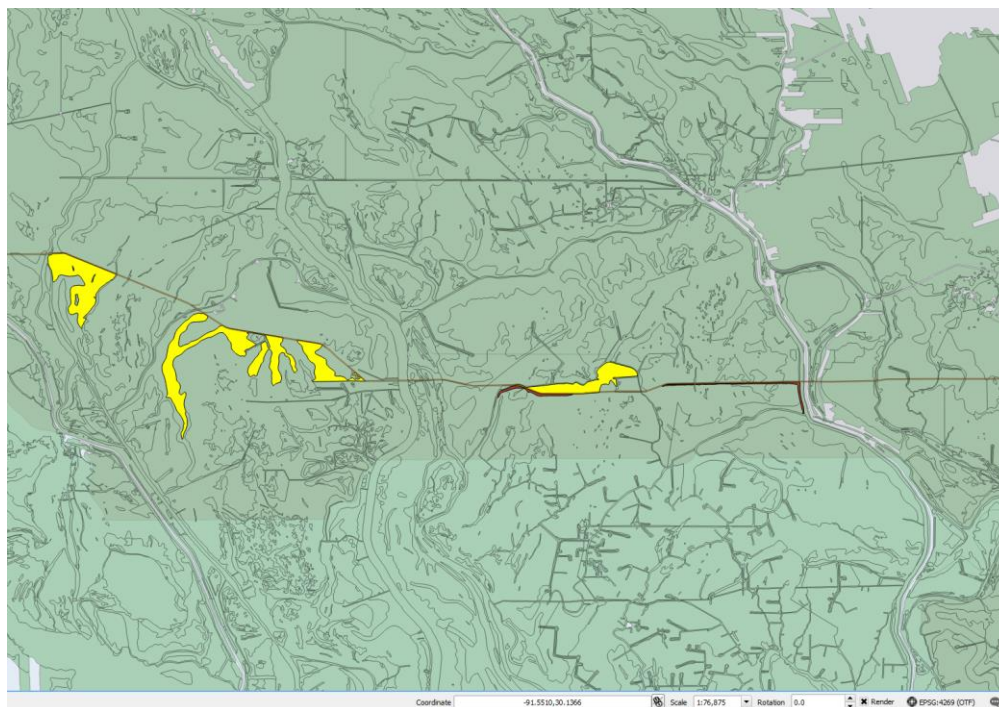


Figure 2. Spoils in red ("PFO1Cs" ~160 acres) within the previously permitted and currently discussed ROW. In yellow, ~3000 acres of "PFO1C" forest adjacent to "PFO1F" forest. Changes in hydroperiod are related to the ROW, as reflected in the NWI hydrological assessment.

### (c) Climate Impacts

As a federal agency, the Corps must consider climate change during its decision-making process.<sup>3</sup> There are many tools available for this evaluation.<sup>4</sup> The climate contribution from Bayou Bridge must be comprehensively quantified, from the point of oil extraction, to the climate costs of construction, to the pumping of oil through the pipe, all the way to the end-use of refined products.<sup>5</sup>

"Activities that have a reasonably close causal relationship to the Federal action, such as those that may occur as a predicate for a proposed agency action or as a consequence of a proposed agency action, should be accounted for in the NEPA analysis. For example, NEPA reviews for proposed resource extraction and development projects typically include the reasonably foreseeable effects of various phases in the process, such as clearing land for the project, building access roads, extraction, transport, refining, processing, using the resource, disassembly, disposal, and reclamation."

<sup>3</sup> See 81 FR 51866 available at

[https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/nepa\\_final\\_ghg\\_guidance.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/nepa_final_ghg_guidance.pdf).

<sup>4</sup> [https://ceq.doe.gov/current\\_developments/GHG-accounting-tools.html](https://ceq.doe.gov/current_developments/GHG-accounting-tools.html).

<sup>5</sup> 81 FR 51866, page 4, page 14, quoted below.

The agency must consider changes in carbon sequestration from loss of forested wetlands. According to CEQ, it is insufficient to merely state the impacts are small.

"A statement that emissions from a proposed Federal action represent only a small fraction of global emissions is essentially a statement about the nature of the climate change challenge, and is not an appropriate basis for deciding whether or to what extent to consider climate change impacts under NEPA. Moreover, these comparisons are also not an appropriate method for characterizing the potential impacts associated with a proposed action and its alternatives and mitigations..."

Impacts of alternatives must be compared, including a no-action alternative. Conversely, the threats posed by climate change to the long-term viability of Bayou Bridge must also be evaluated. The oil industry is known for its liabilities to Louisiana wetlands.<sup>6</sup> According to the NOAA Coastal Flood Exposure Mapper<sup>7</sup>, the project is vulnerable to storm surge along the majority of its length. The project footprint is also vulnerable to heavy Gulf rains that are increasing in likelihood.<sup>8</sup>

## **2. Wetland Mitigation**

The Corps must deny this permit because Bayou Bridge Pipeline, LLC has failed to propose an appropriate compensatory mitigation option. The Corps regulations, at 40 C.F.R. § 230.93(a)(1), explain that "[p]ermit applicants are responsible for proposing an appropriate compensatory mitigation option to offset unavoidable impacts." *Id.* Bayou Bridge Pipeline, LLC's public notice only vaguely mentions its plans to use a mitigation bank to offset any unavoidable wetland functions caused by the project implementation but fails to provide details for this mitigation option. The Corps must ensure that adequate mitigation plan information is included in the public notice "to enable the public to provide meaningful comment on the proposed mitigation," providing exception only for data which is "confidential for business purposes." 40 C.F.R. § 230.94(b). For wetland compensatory mitigation projects, a permittee must submit a mitigation plan that includes site selection criteria, baseline information for impact and compensation sites, ecological performance standards, and monitoring requirements, among other requirements. 33 C.F.R. § 322.4(c)(2)-(14). Because "permit applicants are responsible for proposing an appropriate compensatory mitigation option to offset unavoidable impacts," putting off the mitigation proposal renders the application incomplete so it must be denied. 40 C.F.R. § 230.93(a)(1). The information provided in the permit application on impacts and mitigation is wildly insufficient to allow for meaningful public comments, particularly in regard to impact on wetlands and bottomland hardwoods.

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<sup>6</sup> Catherine Traywick, *Louisiana's Sinking Coast Is a \$100 Billion Nightmare for Big Oil*, August 17, 2016 Bloomberg.

<sup>7</sup> <https://coast.noaa.gov/floodexposure/#/map>.

<sup>8</sup> NOAA Climate.gov, based on Van der Wiel, et al., 2016.

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When addressing harms to the Atchafalaya Basin in relation to the proposed activity, the focus should be on preservation *within the Basin*. There is a lack of mitigation banking in the Basin (Fig. 3). The remaining cypress-tupelo wetland in the Basin faces threats from a rising sea, coastal erosion, and out-of-state landowners whose interests are contrary to the integrity of the Basin. It is imperative that actions are taken within the Basin to permanently protect it for future generations. Rather than paying into a mitigation bank, Bayou Bridge Pipeline, LLC should focus on preserving the unique and valuable areas in the Basin. Bringing the right-of-way back into compliance by removing the spoil banks while their equipment is on site could be a great way to mitigate inside the Atchafalaya Basin and could restore the hydrology for thousands of acres of wetlands. The Corps' regulations state that "compensatory mitigation requirements must be commensurate with the amount and type of impact that is associated with a particular DA permit." 40 C.F.R. §230.93. Because the effects of this pipeline will be on sensitive and valuable wetland areas, a 1:1 mitigation ratio would not commensurate with the type of impact that would result from the pipeline installation.

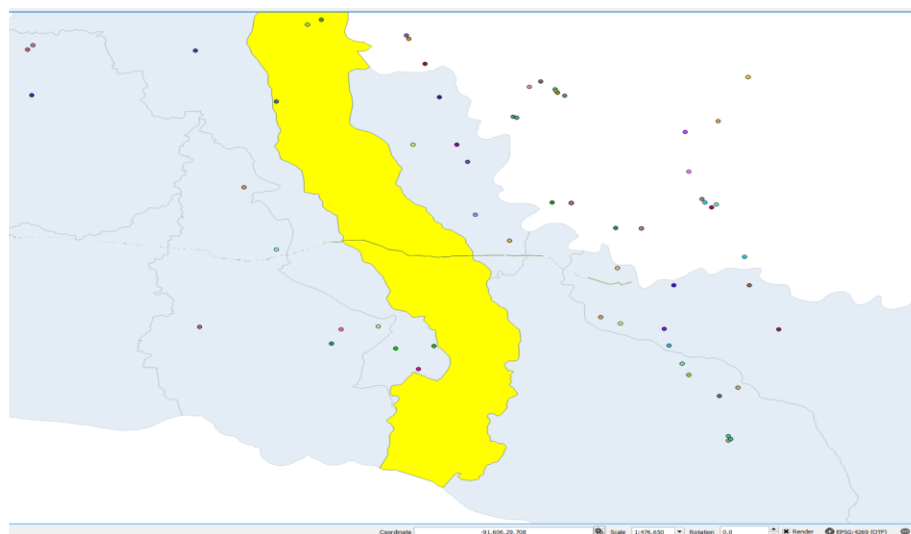


Figure 3. From RIBITS, Nov. 2016. Location of mitigation banks vs the proposed wetland impacts. The Atchafalaya Basin is highlighted.

To assure that minimization and mitigation in the same watershed and for the correct type of wetlands are occurring, we request that, at a minimum, mitigation banks and the avoidance and minimization statement used are included in the permit application. Because this information is not presently provided, the application is incomplete and must be resubmitted with a mitigation plan.

The current system of public notice for Section 404 permitting is also not adequate to fully involve the public. The public notice documents are released to the public for comment before the Corps and the Applicant complete the "avoid, minimize, and mitigate" process. The public therefore does not have an opportunity to comment on the final project proposal, including the mitigation plan.



Although it is realistic to assume that modifications to permits occur in the interim prior to issuance, the public is never provided an opportunity to review the final proposal before wetlands are filled and water quality is altered.

We request additional information in the initial Public Notice commensurate with the standards imposed by law (e.g., mitigation plans, efforts made to avoid impacts, necessity of project location, adequate alternative analysis, environmental assessments, etc.). Because these regulations are not adequately adhered to, the public notice and application at issue is incomplete and due to be denied.

### **3. *National Environmental Policy Act: Environmental Impact Statement***

The Corps cannot grant this permit because it has not prepared an Environmental Impact Statement (“EIS”) for the project pursuant to the National Environmental Policy Act (“NEPA”). 42 U.S.C. § 4332(c). Because the indirect and cumulative effects of this proposed pipeline would be vast, granting a CWA Section 404 permit for the pipeline would be considered a major federal action. An EIS must therefore be prepared prior to such action. *See* 33 C.F.R. § 320.4(j)(4) (explaining that the applicable status of NEPA must be considered and followed in the permitting process).

### **4. *Compliance with Louisiana Water Quality Standards***

The Corps must deny this permit because Bayou Bridge Pipeline, LLC has failed to show that the project does not violate applicable state water quality standards. The Corps’ permitting regulations, at 33 C.F.R. § 320.4(d), state that permit applications that will affect water quality will be evaluated for compliance with applicable effluent limitations and water quality standards. Similarly, the EPA Guidelines, at 40 C.F.R. § 230.10(b)(1), prohibit dredging or discharging fill material if that dredging or discharging should violate “any applicable State water quality standard.” *Id.* Bayou Bridge Pipeline, LLC has not demonstrated in its application that the proposed project will protect the Louisiana state water quality standard.

Applicants desiring the issuance of a state water quality certification are required to submit an application to LDEQ’s Department of Environmental Quality. LA. ADMIN. CODE tit. 33, pt. IX, § 1507(A). The information contained in the application must include, among other things, “the nature of the activity to be conducted by the applicant, including estimates of volume of excavation for dredge and fill activities; . . . the location of the discharge . . . ; the nature of the receiving water, including type (creek, river, swamp, canal, lake or pond), nature (fresh, brackish or salt), and direction or flow: . . . the type of discharge . . . ; and the location of discharges into receiving waters.” *Id.* at (A)(1)(a)-(n). Upon completion of the review process by LDEQ, the Applicant shall publish the public notice “in each parish in which the activity is to be conducted” allowing for a 10-day comment period. *Id.* at (D). The notice shall include, among other details, the activity proposed in the application along with the nature and location of the activity. *Id.* at (D)(1)(c).

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LDEQ cannot lawfully certify the Bayou Bridge Pipeline, LLC's proposed project without identifying applicable water quality standards and water use designations of the various streams and open waters, and then detailing how the project will impact those standards. Bayou Bridge Pipeline, LLC's proposed project would cross 673 streams, temporarily impact 102 streams in the Louisiana Coastal Zone ("LCZ") and 17 areas classified as open waters. The 8 permanent access roads will permanently fill 11 waterbodies, 3 of which are in the LCZ. The Applicant has failed to provide sufficient information for a Water Quality Certification. LDEQ must deny the certification because of the Applicant's failure to determine the applicable standards for the various water bodies, including designated uses and criteria. *See* LA. ADMIN. CODE tit. 33, pt. IX, §§ 1101, 1113(A). LDEQ must also ensure the affected water bodies maintain their recreational uses and support the preservation and propagation of desirable species of aquatic biota and indigenous species of wildlife. LA. ADMIN. CODE tit. 33, pt. IX, § 1109(B). These determinations were not established in the Applicant's cover letter, Attachment 2 - "Waters of the United States" impacted by the proposed Project, or Attachment 3 - Engineering Form 4345.

Bayou Bridge Pipeline, LLC's public notice does not include any specific information pertaining to its water quality certification application. If the Applicant has already presented information pertaining to the volume of excavation for dredge and fill activities in relation to the receiving waters and their classifications, it is only prudent to provide such information to the public to allow for a meaningful comment and review of the WQC application and approval. In conjunction with the inadequate amount of detail regarding the 404 permit application, the lack of communication pertaining to the WQC issued by LDEQ is unacceptable and insufficient for proper comment. This proposed pipeline presents significant environmental issues that require further investigation and disclosure.

In accordance with state law, and in the interest of the public, we formally request that two public hearings be held to consider material matters at issue in Bayou Bridge Pipeline, LLC's certification application. *Id.* at (E)(1)(b), (c). One hearing should be in the town of Henderson, near the Atchafalaya Basin, and the second in the Lafayette area.

## **5. *Enforcement***

The Corps' ability to enforce this permit is limited, due to the regulatory Department of the New Orleans District of the Corps of Engineers lack of a boat and consequent inability to access water and ensure compliance. Since there is no road access to most of the Atchafalaya Basin, enforcement of the permit by the Corps would be impossible. By issuing permits that cannot be enforced, the New Orleans District is failing to respect federal law. This situation incentivizes environmental criminals while penalizing and making it harder for honest individuals and corporations to carry out their business. Because the Corps cannot meaningfully monitor the project and ensure that it complies with the permit, it does not have a basis for granting the permit.

**D. Bayou Bridge Pipeline, LLC’s permit application should be denied because the proposed right-of-way is currently in violation of state and federal law and is causing irreparable harm to the Basin.**

Currently, part of the proposed right-of-way from Bayou Bridge Pipeline, LLC houses other pipelines – including pipelines that were installed in a way that caused a ruinous disruption to the natural water flow in the Basin. An impermeable spoil bank stretches along the right-of-way, acting as a dam and thwarting the natural water flow, which would otherwise run from north-to south. The consequence of the spoil bank’s obstruction is especially detrimental because the water is slow-moving and laden with sediment. Impeding the flow causes the sediment to settle and creates unnatural blockages that destroy the wetland nature of the Basin. Not only do these blockages unnaturally change the fundamental nature of the Basin, but they also hamper navigational, commercial, and recreational activities like fishing. Restoring the water flow through the spoil bank to a north-to-south direction is thus crucial to maintaining the richness of the Basin and its use for aesthetic and recreational activities.

***1. Inconsistency with Federal Standards***

The pipeline right-of-way is out of compliance. Inattention caused and continues to cause severe damage to thousands of acres of wetlands in the Atchafalaya Basin. Any addition of new pipes along this particular right-of-way exacerbates the problem, making it harder to bring it back into compliance and restore the site in the future. Due to half a century of neglect, bringing the right-of-way fully into compliance with the original permit would be a herculean task. Furthermore, because the spoil bank that currently runs along the proposed right-of-way for Bayou Bridge Pipeline, LLC causes harm to the natural flow of the water and creates sedimentation, if permitted to use the right-of-way, the permitted activity will contribute to this impairment of aesthetic, commercial, ecological and recreational values. Even if Bayou Bridge Pipeline, LLC backfills and exports the additional fill material, and thus does not increase the present spoil bank, simply maintaining the present state contravenes the EPA permitting Restrictions because the status quo itself degrades the wetland.

The EPA Restrictions state that no dredge or fill material shall be permitted that will “cause or contribute” to the degradation of the waters of the United States. 40 C.F.R. § 230.10(c). “Degradation” includes “significant adverse effects of discharge of pollutant on recreational [and] aesthetic... values.” 40 C.F.R. § 230.10(c)(4). Because the present spoil bank causes significant adverse effects to recreation and aesthetic values, permitting Bayou Bridge Pipeline, LLC to undertake dredge and fill activities along the right-of-way, even if it backfills the pipeline trench and does not add to the spoil bank, would contribute to the current state of impairment of recreational and aesthetic values. Therefore, unless Bayou Bridge Pipeline, LLC also takes action to alleviate the current impaired condition along the right-of-way, it cannot undertake the proposed action under 40 C.F.R. § 230.10(c).

### **III. Conclusion**

Bayou Bridge Pipeline, LLC's application to the Corps for a permit to discharge dredge and fill materials under Section 404 of the Clean Water Act provides insufficient information to satisfy regulations governing 404 permit applications and approvals. The joint permit application also fails to allow for meaningful public comment on the proposed activity. Additionally, the Applicant's public notice pertaining to its application to LDEQ for a state water quality certification, as is required under Section 404 of the CWA, fails to provide necessary information to allow for public evaluation and proper comment on the impacts the proposed activity will have on receiving waters. Bayou Bridge Pipeline, LLC's lack of evidence regarding its consideration of practicable alternatives to the proposed project, method, and route; its analysis of impact on the wetland and coastal zone area that will be impacted; its balancing the relevant economic and public interests at stake; and the essential features of the proposed activity warrant the denial of its permit application. Moreover, the pipeline right-of-way is out of compliance with at least two of the permits already granted for this right-of-way, causing damage to water quality and valuable wetlands. Permitting an additional pipeline to use this right-of-way would impede efforts to bring this right-of-way back into compliance. In consideration of the resources needed to ensure compliance with and enforcement of permit requirements, we request that this permit be denied.

At the very least, public hearings pertaining to these pertinent and essential details must be held. For the reasons discussed herein, Atchafalaya Basinkeeper, Gulf Restoration Network, Waterkeeper Alliance, 350 Louisiana, Louisiana Bucket Brigade, Bold Louisiana, Sierra Club Delta Chapter, Louisiana Audubon Council and Louisiana Crawfish Producers Association – West insist that the Corps and LDEQ deny Bayou Bridge Pipeline, LLC's permit and certification applications.

Respectfully submitted by,

/s/ Misha Mitchell

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