

COASTAL PROTECTION AND RESTORATION AUTHORITY BOARD
STATE OF LOUISIANA
June 20, 2018

RESOLUTION NO. 2018-06-01

A Resolution Authorizing Action Against the Plaquemines Parish Government Regarding Failure to Issue Permits Relative to the Mid-Barataria Sediment Diversion and Enforcement of the Coastal Master Plan

WHEREAS, pursuant to La. R.S. 49:214.5.2(A)(1), the Coastal Protection and Restoration Authority Board (“Board”) represents the State of Louisiana’s position relative to the protection, conservation, enhancement, and restoration of the coastal area of the state through oversight of integrated coastal protection projects and programs; and

WHEREAS, pursuant to La. R.S. 49:214.6.2, the Coastal Protection and Restoration Authority (“CPRA”) shall implement projects relative to the protection, conservation, enhancement, and restoration of the coastal area of the state through oversight of integrated coastal protection projects and programs consistent with the legislative intent as expressed in La. R.S. 49:214.1 *et seq.*; and

WHEREAS, pursuant to La. R.S.49:214.5.2(A)(6), the Board is vested with the authority to take actions against any entity, including political subdivisions, to ensure and enforce compliance and consistency with Louisiana’s Comprehensive Master Plan for a Sustainable Coast (“Coastal Master Plan”) and prevent actions that unduly and unnecessarily impede integrated coastal protection projects from being implemented consistent with the legislative intent as expressed in La. R.S. 49:214.1 *et seq.*; and

WHEREAS, additionally, the Louisiana Supreme Court has determined that, due to the seriousness of coastal erosion in Louisiana, integrated coastal protection activities fall within the police power of the State, *Avenal v. State*, 03-3521 (La. 10/19/04) 886 So. 2d 1085, 1107, and such police power of the State has been generally described as the State’s “inherent power to govern persons and things, within constitutional limits, for promotion of general health, safety, welfare, and morals.” *Smith & Wesson Corp.*, 00-1132 at p. 17, 785 So. 2d at p. 15; and

WHEREAS, the Mid-Barataria Sediment Diversion (“MBSD”) is a cornerstone Coastal Master Plan project as well as a project in the “Integrated Ecosystem Restoration & Hurricane Protection in Coastal Louisiana: Fiscal Year 2019 Annual Plan” (“Annual Plan”); and

WHEREAS, diversions of Mississippi River water, nutrients, and sediment into adjacent wetlands have a high probability of providing large-scale benefits for the long-term sustainability of deltaic wetlands and the Gulf of Mexico ecosystem and large-scale sediment diversions, such as the MBSD Project, are designed for significant wetland/marsh-building through the transportation of large quantities of mineral sediments via high discharge volumes from the Mississippi River; and

WHEREAS, the MBSD Project would modify the Mississippi River levee on the west side of the River south of New Orleans near River Mile 60.7 just north of Ironton to allow sediment-heavy river waters at the flood stage to be diverted into the Mid-Barataria Basin; and

WHEREAS, CPRA intends for the MBSD Project, if approved for funding, to sustain and rebuild, over the next fifty years, a substantial portion of the State coastal area that has been lost since 1930; and

WHEREAS, the State is committed to developing the MBSD Project in an environmentally sound manner and in compliance with all applicable federal and state laws, rules, and regulations; and

WHEREAS, through the “Louisiana Trustee Implementation Group 2018 Strategic Restoration Plan and Environmental Assessment #3: Restoration of Wetlands, Coastal, and Nearshore Habitats in the Barataria Basin, Louisiana” (SRP/EA), the Louisiana Trustee Implementation Group (TIG) selected marsh creation and ridge restoration plus large-scale sediment diversions as the preferred strategic alternative for wetlands, coastal, and nearshore habitat restoration in the Barataria Basin in order to address damages from the *Deepwater Horizon* Oil Spill and recommended the MBSD Project as one of the projects to immediately carry forward into Phase II restoration planning and associated National Environmental Policy Act (NEPA) analyses in order to determine if the TIG should approve the project for construction funding; and

WHEREAS, the United States Army Corps of Engineers (USACE) and other federal agencies are preparing an Environmental Impact Statement (EIS) under NEPA to evaluate the potential impacts of the MBSD Project and assess ways to monitor, minimize and mitigate the impacts of the Project for purposes of various federal approvals and permits; and

WHEREAS, the MBSD Project has been designated a FAST-41 Act project by the federal government and the State of Louisiana has entered into a Memorandum of Understanding (MOU) with the various federal government agencies involved in the environmental review and authorization processes wherein the parties to the MOU agreed to cooperate to meet a goal of conducting environmental reviews and authorizations for the Project in an efficient and timely manner that will ensure completion as expeditiously as possible in accordance with law; and

WHEREAS, CPRA, through its contractor, must conduct soil-boring activities in close proximity (within 1,500 feet) of the Mississippi River Levee in Plaquemines Parish and that such work is necessary to complete preliminary analysis for engineering and design of the MBSD and provide the environmental analysis necessary to inform the federal EIS and structural planning for the Mid-Barataria Sediment Diversion project; and

WHEREAS, CPRA has submitted requests, dated January 30, 2018 and February 23, 2018, that the Plaquemines Parish Council, acting as the Levee Board for all levee districts located in Plaquemines Parish, issue Letters of No Objection for these soil-boring activities related to the MBSD Project; and

WHEREAS, as of June 20, 2018 neither the Plaquemines Parish Council nor the Plaquemines Parish President have acted on said request in a manner that has resulted in issuance of a Letter of No Objection for these boring activities; and

WHEREAS, Letters of No Objection for these activities have already been issued by both the CPRA and the USACE; and

WHEREAS, La. R.S. 38:226 mandates that once USACE and CPRA have issued their respective Letters of No Objection, the Parish Council, acting as the Plaquemines Parish Levee Board, must perform its “ministerial duty” and issue the requested Letters of No Objection without further delay; and

WHEREAS, the Governor, the Chairman of the Board, the Executive Director of CPRA, and various members of the staff of CPRA and the Governor’s Office of Coastal Activities have communicated and met with Parish Council members and the Plaquemines Parish President on numerous occasions since the request was submitted but the requested Letters of No Objection have yet to be issued to CPRA; and

WHEREAS, the Chairman and the Executive Director sent out a demand letter on June 19, 2018, requesting that the Parish Council immediately perform its ministerial duty and issue the requested Letters of No Objection in their capacity as the Levee Board for Plaquemines Parish Levee Districts; and

WHEREAS, this foundational environmental assessment work for a critical coastal restoration project has now been delayed over four months and preliminary work on the environmental aspects related to the project continues to experience unnecessary delays resulting from the legally unsupportable refusal of the Plaquemines Parish Council as the Plaquemines Parish Levee Board and the Plaquemines Parish President to issue the requested Letters of No Objection and such arbitrary and capricious actions continue to cause irreparable harm to the coastal area and the health, safety, and welfare of citizens of the State of Louisiana in and adjacent to the Barataria Basin, including Plaquemines, Jefferson, Orleans, St. Charles, and Lafourche Parishes; and

WHEREAS, it is necessary for CPRA to continue to move forward with this critical Coastal Master Plan project and avoid any further unnecessary and unwarranted delay; and

NOW THEREFORE, BE IT HEREBY RESOLVED, that the Chairman and the Executive Director of CPRA are directed to continue to attempt to work cooperatively with the Plaquemines Parish Government to resolve this issue in order to ensure that the environmental analysis and planning for the MBSD Project is delayed no further and that the requested Letters of No Objection for the soil boring work are issued, including issuing appropriate demand letters, meeting with Plaquemines Parish Government officials, and negotiating an MOU with the Parish relative to the environmental review process for the Project; and

BE IT HEREBY FURTHER RESOLVED, that should the Letters of No Objection not be issued by June 29, 2018 or the Plaquemines Parish Government continues actions to impede the MBSD or other Coastal Master Plan Projects, the Chairman and the Executive Director of CPRA are delegated the authority and are authorized to take all necessary actions on behalf of the State of Louisiana through the Board and CPRA, including as authorized by La. R.S. 49:214.5.2(A)(6), against the Plaquemines Parish Government, the Plaquemines Parish Council and the Plaquemines Parish President regarding the requests for Letters of No Objection relative to MBSD Project soil borings and other associated issues impeding the progress of or inconsistent with the MBSD Project or any other Coastal Master Project, including but not limited to withholding funds, cancelling or delaying projects within Plaquemines Parish, or civil actions, including the seeking of injunctive relief, mandamus, or any other remedy necessary to ensure compliance with the

Coastal Master Plan and to seek a ruling of the court that CPRA Master Plan projects are not subject to local government permitting or control because of state supremacy over integrated coastal protection; and

BE IT HEREBY FURTHER RESOLVED, that the Chairman and the Executive Director of CPRA are delegated the authority to authorize the Attorney General, as statutory legal counsel for the Board, CPRA legal counsel, or retained counsel provide guidance and, if necessary, file suit and take all necessary actions on behalf of the State of Louisiana through the Board and CPRA against the Plaquemines Parish Government, the Plaquemines Parish Council and the Plaquemines Parish President regarding the requests for Letters of No Objection relative to MBSD Project soil borings and other associated issues that are impeding the progress of or inconsistent with the MBSD Project or any other Coastal Master Project.

This Resolution was declared adopted this 20th day of June, 2018.

I hereby certify that the above is a true and correct copy of a resolution duly adopted by the Coastal Protection and Restoration Authority at its meeting of June 20th, 2018, Baton Rouge, Louisiana, at which a quorum was present.

(Signature)

(Printed name)

(Title)

This ____ day of June, 2018 at Baton Rouge, Louisiana.