

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

OUACHITA RIVERKEEPER, INC., *et al.*,)
)
 Plaintiffs,) Civil Action No. 12-cv-803 (CKK)
)
 v.)
)
 LIEUTENANT GENERAL THOMAS P.)
 BOSTICK, Commanding General and Chief)
 of Engineers, U.S. Army Corps of)
 Engineers, *et al.*,)
)
 Defendants.)

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 7(h) of the Local Rules of the U.S. District Court for the District of Columbia, Plaintiffs, the Ouachita Riverkeeper and Save the Ouachita, respectfully move this Court for Partial Summary Judgment that the Corps violated the Administrative Procedure Act when it authorized a project that will destroy over 16.62 acres of forested wetlands under a general permit that can allow no more than 0.5 acres of such destruction and that Plaintiffs have standing to prosecute this suit. As grounds for their Motion, the Plaintiffs state that there are no genuine issues of material fact relevant to this Motion and the Plaintiffs are entitled to judgment as a matter of law. The Plaintiffs have submitted a Memorandum in Support of this Motion.

Wherefore: This Court should GRANT the Plaintiffs summary judgment that the Corps' authorization of the El Dorado Water Utilities Pipeline Project violated the Administrative Procedure Act and that Plaintiffs have standing to prosecute this suit, VACATE the Corps' decision authorizing the El Dorado Water Utilities Pipeline Project under nationwide permits

Nos. 7 and 12, and ENJOIN the Defendant-Intervenors from constructing the El Dorado Water Utilities Pipeline Project under the authority of nationwide permits Nos. 7 and 12.

Respectfully submitted on September 27, 2012,

TULANE ENVIRONMENTAL LAW CLINIC

s/ Adam Babich

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel of record by electronic means on September 27, 2012. I further certify that a copy of the pleading shall be provided by U.S. Mail to counsel for any party who does not receive electronic notification of filings.

s/ Adam Babich

Adam Babich, D.C. Bar 382747

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Engineers, et al.,)	
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<i>Defendants.</i>)	

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiffs the Ouachita Riverkeeper and Save the Ouachita respectfully submit this Memorandum in Support of their Motion for Partial Summary Judgment:

- 1) That the Defendants violated the Administrative Procedure Act when they authorized a project that will destroy over 16.62 acres of forested wetlands under a general permit that can allow no more than 0.5 acres of such destruction;
- 2) That Plaintiffs have standing to bring this action;
- 3) Vacating the Defendants’ decision authorizing the El Dorado Water Utilities Pipeline Project under nationwide permits Nos. 7 and 12; and
- 4) Enjoining the Defendant-Intervenors from constructing the El Dorado Water Utilities Pipeline Project under the authority of nationwide permits Nos. 7 and 12.

Introduction

The U.S. Army Corps of Engineers (the “Corps”) violated its own regulations when it authorized a pipeline project that will destroy at least 16.62 acres of forested wetlands under a

Clean Water Act § 404 general permit that can apply only when such losses are less than half an acre. Because the Corps' decision is illegal on its face, there is no need for an extensive evaluation of the record to resolve this case. By ignoring the half-an-acre limitation of the applicable general permit, the Corps has violated the law and, accordingly, its decision must be vacated.

The general permit at issue in this case, nationwide permit No. 12, limits its authorization to “[a]ctivities required for the construction . . . of utility lines . . . in waters of the United States, ***provided the activity does not result in the loss of greater than 1/2 acre of waters of the United States.***” Reissuance of Nationwide Permits, 72 Fed. Reg. 11,092, 11,182 (March 12, 2007) (emphasis added).” Here, however, the Corps authorized a project that “will impact approximately 16.62-acres of palustrine wetlands.” Corps’ Project Evaluation, dated July 30, 2010, p. 1 (*Project Description*), attached at Exhibit A (the “Corps Evaluation”). The 16.62 acres of “loss of wetlands functions and services,” *see id.*, included at least twenty-eight wetland areas, thirteen of which are each—standing alone—larger than half an acre, *see* USACE Section 404 Permit Application for El Dorado Water Utilities Pipeline to Ouachita River, dated June 11, 2010 (the “Application”), attached in relevant parts at Exhibit B,¹ *Mitigation Plan*, Table 2 (*Wetland Areas Requiring Mitigation*), Ex. B at 14. Subsequently, the Corps authorized an addendum to the project that modified the pipeline route, increasing wetland impacts to 23.65 acres, including 38 wetland areas, twenty of which are each—standing alone—larger than half an acre. *See*

¹ A copy of the complete Application is available at http://www.tulane.edu/~telc/assets/pdfs/6-14-10_Permit_App_for_El_Dorado_Pipeline.pdf .

Corps Letter, dated July 18, 2012, (the “Modified Authorization”), attached, with relevant enclosures, at Exhibit C² p. 1, 4, 9.

Although the Corps’ initial decision recognized the loss of 16.62 acres of wetlands, it apparently tried to circumvent the Clean Water Act permit’s limitations by requiring “mitigation” of the lost acres. *See* Corps’ authorization letter, dated July 30, 2010, at 1, attached at Exhibit D (“This authorization is contingent upon the successful completion of the [proposed] mitigation.”); Corps Evaluation (*Project Description*), Ex. A (the applicant “proposes to mitigate for the loss of wetland functions and services by purchasing 163.0 mitigation credits or 36.98 acres from [a mitigation bank]”). But “[t]he acreage of loss of [wetlands] is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation” 72 Fed. Reg. at 11,196 (emphasis added). In short, mitigating for the loss of 16.62 acres or 23.65 acres could not somehow validate the Corps’ application of a permit that may only be used for wetlands losses of half an acre or less.

By authorizing the project under a general permit that does not apply, the Corps circumvented the public notice and participation requirements that the Clean Water Act requires for individually permitted projects that destroy wetlands. Unlike general permits, individual wetlands destruction permits can only be granted “after notice and opportunity for public hearings.” 33 U.S.C. § 1344(a). Here, therefore, the Corps failed to provide notice and an opportunity for public hearing, denying members of the public the opportunity to exercise their legal right to participate in the Corps’ decision.

² A copy of the Modified Authorization with a complete set of enclosures is available at http://www.tulane.edu/~telc/assets/pdfs/5-22-12_permit_modification_application.pdf .

Jurisdiction

This Court has jurisdiction over the subject matter of this case pursuant to its federal question jurisdiction under 28 U.S.C. § 1331, because the Plaintiffs sue under the Administrative Procedure Act (APA), 5 U.S.C. § 701, *et seq.* and the Declaratory Judgment Act, 28 U.S.C. § 2201 concerning Defendants' agency actions under the Clean Water Act, 33 U.S.C. § 1251, *et seq.* and the National Environmental Policy Act, 42 U.S.C. § 4321, *et. seq.* Plaintiffs are entitled to bring this suit under the Administrative Procedure Act, which provides that “[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.” 5 U.S.C. § 702.

Factual Background

On July 30, 2010, the Corps issued an authorization and verification letter for a pipeline project³ (the “Proposed Project”) that would run through at least 37 wetland areas and damage 16.62 acres of wetlands (the “Authorization”). *See* Ex. D. The Corps relied on general permits to authorize the Proposed Project, specifically nationwide permit No. 12 for the pipeline and nationwide permit No. 7 for a diffuser⁴ that would be built into the Ouachita River. *See id.* With its Authorization, the Corps also issued a project evaluation, dated July 30, 2010 (the “Corps Evaluation”). *See* Ex. A.

According to the Application: “[t]he purpose of the [Proposed Project] is to connect three industries and El Dorado Water Utilities to a combined pipeline in order to transport treated wastewater to a discharge point at the Ouachita River.” Application, § 19 (*Project Purpose*), Ex.

³ The El Dorado Water Utilities Pipeline Project, Corps identification no. MVK-2009-1236.

⁴ A diffuser is an outfall structure built into the riverbed and through which pipeline contents discharge into the river.

B at 6. The Proposed Project's "pipeline will cover approximately 23.5 miles and will require a 50 ft wide right-of-way clearing." Application, § 18 (*Nature of Activity*), Ex. B at 6. The "right-of-way will require complete vegetation clearing along the entire length of the pipeline."

Application, Cover Letter, dated June 14, 2010, Ex. B at 1.

The Application identifies 16.62 acres of wetlands as impacted and requiring mitigation. Of the twenty-nine wetlands areas that the Application identifies as requiring mitigation, thirteen are each individually larger than half an acre. Application, *Mitigation Plan*, Ex. B. at 14. The Application explains that the Proposed Project will convert "a large amount of Bottomland hardwood forest and Pine Flatwood wetlands to an emergent wetland [and] will reduce habitat for wildlife and increase evapotranspiration, thus increasing levels of run-off in the watershed." Application, *Mitigation Plan*, Ex. B at 9. Also, "new different fill material [will be] placed below the [ordinary high water] level" during construction. Application, § 21 (*Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards*), Ex. B at 6. "[F]orested wetlands will sustain permanent impact" as a result of the Proposed Project. Application, § 18 (*Nature of Activity*), Ex. B at 6.

The Corps Evaluation recognized that 16.62 acres of wetland would be lost:

The proposed pipeline will impact approximately 16.62-acres of palustrine wetlands. [The applicant] proposes to mitigate for the loss of wetlands functions and services by purchasing 163.0 mitigation credits or 36.98-acres from the Lower Cut-Off Creek Mitigation Bank, prior to construction

Corps Evaluation (*Project Description*), §§ 7-10, Ex. A. The Corps accepted the applicant's plan to offset the wetlands losses by mitigation and concluded a "net loss" of "0.0 acres." *Id.* .

Applying the nationwide permits, the Corps explained: "This authorization is contingent upon the successful completion of the [proposed] mitigation." Authorization, Ex. D at 1.

On July 18, 2012, the Corps issued its Modified Authorization, which became “a part of the original authorization,” approving a revised pipeline route that increased adverse wetland impacts by 7.05 acres to a total of 23.65 acres of wetlands. *See* Ex. C at 1, 4, 9. The applicant indicated it would purchase an additional 78 credits from a mitigation bank to offset the increased losses from the modified pipeline route. *See id* at 4, 9.

The Corps did not engage in the procedures that must accompany individual authorizations of wetlands dredge and fill activities. For examples, the Corps did not conduct or require an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act, *see* 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1508.9, 1508.11, to determine whether the Proposed Project has a significant impact on the human environment. In addition, the Corps did not require public notice for the Proposed Project and did not provide an opportunity for public participation in the permitting process.

Standard of Proof on Summary Judgment

Summary judgment is appropriate when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The Corps and any intervenor “may not rest upon . . . mere allegations or denials,” but rather it “must set forth specific facts showing that there is a genuine issue of material fact for trial.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); *Edmond v. American Educ. Services*, 823 F. Supp. 2d 28, 35 (D.D.C. 2011). Otherwise, summary judgment should be entered. Fed. R. Civ. P. 56.

Argument

I. THE COURT SHOULD VACATE THE CORPS DECISION.

On its face, the Corps decision to approve the Proposed Project's 23.65 acres of wetlands destruction under a general permit that can allow no more than 0.5 acres of such destruction is unlawful and should be set aside under the Administrative Procedure Act (the "APA"). The APA scope of review provisions state that a court "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2).

Here, the Corps decision is unlawful because *1*) it is undisputable that the Proposed Project's 23.65 acres of wetland losses is more than the half acre limit that nationwide permit No. 12 can allow; and *2*) it is undisputable that the Corps' use of mitigation to offset the 23.65 acres cannot legitimize the Corps' decision because that permit prohibits the use of mitigation to determine whether a project meets its half-acre wetlands loss limit.

A. The Corps Cannot Legally Authorize 23.65 Acres of Wetlands Destruction under a General Permit for 0.5 Acres.

- i. A Nationwide General Permit Can Only Apply for a Single and Complete Project that Meets the Permits Terms and Conditions.

Under Clean Water Act § 404, the Corps may allow limited wetlands destruction using an individual or a general permit. 33 U.S.C. § 1344(a), (e). General permits cut down on procedural requirements and may be issued for "any category of activities involving discharges of dredged or fill material . . . that . . . are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment." 33 U.S.C. § 1344(e)(1). "Nationwide Permits (NWP) are a type of general permit issued by the Chief of Engineers" 33 C.F.R. § 330.1(b). A nationwide permit can only authorize an activity "if that activity and the permittee satisfy all of the NWP's terms and conditions," 33 C.F.R. § 330.1(c). Such an activity must be a "single and complete project." 33

C.F.R. § 330.6(c). A “single and complete project means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers.”

33 C.F.R. § 330.2(i). Any “single and complete project must have independent utility.”

Reissuance of Nationwide Permits, 72 Fed. Reg. 11,092, 11,197 (March 12, 2007).

ii. The El Dorado Pipeline Project Does Not Meet Nationwide Permit No. 12’s Terms and Conditions.

The Proposed Project’s 23.65 acres of wetlands losses does not meet the terms and conditions of nationwide permit No. 12. Under its terms, nationwide permit No. 12 applies to “[a]ctivities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, *provided the activity does not result in the loss of greater than 1/2 acre of waters of the United States.*” *Id.* at 11,182 (emphasis added).⁵

The terms of NWP No. 12 are decisive, despite the fact that the Corps used nationwide permit No. 12 in conjunction with nationwide permit No. 7. Generally, “[t]he use of more than one NWP for a single and complete project is prohibited.” *Id.* at 11,194. However, the Corps may authorize a single project under more than one nationwide permit “when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit.” *Id.* Here, the Corps used NWP No. 12 for the pipeline portion of the project and NWP No. 7⁶ for the diffuser in the Ouachita River at the end of the pipeline. Because nationwide permit No. 7 has no specified acreage limit, to lawfully

⁵ NWP No. 12’s terms define utility line as, among other things, “any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose” 72 Fed. Reg. 11,092, 11,182 (March 12, 2007). The phrase also applies “to pipes conveying drainage from another area.” *Id.*

⁶ Under its terms, nationwide permit No. 7 applies to “[a]ctivities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is” in compliance with Section 402 of the Clean Water Act. 72 Fed. Reg. at 11,182.

proceed under the nationwide permits, the project could not exceed the 0.5 acreage of limit of nationwide permit No. 12, which has the “highest specified acreage limit.”

For the Proposed Project, the Corps Evaluation confirms a loss of 16.62 acres of wetlands - far exceeding the half acre limitation of nationwide permit No. 12. The Corps did not re-evaluate the project for the additional 7.05 acres of impacts under its Modified Authorization. *See* Ex. C at 1-2. A project results in loss if there are “[w]aters of the United States⁷ that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody.” 72 Fed. Reg. at 11,196. Loss also “includes the linear feet of stream bed that is filled or excavated.” *Id.*

The Corps Evaluation explains that the proposed pipeline “will impact approximately 16.62 acres of palustrine wetlands. [The applicant] proposes to mitigate *for the loss of wetland functions and services* by purchasing 163.0 mitigation credits or 36.98 acres from the Lower Cut-Off Creek Mitigation Bank, prior to construction,” Corps Evaluation (*Project Description*), Ex. A (emphasis added). The Application supports this finding of “loss” at several instances. *See, e.g.,* Application, *Mitigation Plan*, Ex. B. at 9 (The Proposed Project will convert “a large amount of Bottomland hardwood forest and Pine Flatwood wetlands to an emergent wetland

⁷ It is beyond dispute that the wetlands at issue in this case qualify as waters of the United States. Based on the applicant’s wetlands delineation, the Corps’ July 30, 2010, Preliminary Jurisdictional Determination Form (the “PJD Form,” attached at [Exhibit E](#).) identified “waters in the review area” as 16.62 acres of wetlands. The fine print on the PJD Form explains, among other things, that “accepting a permit authorization . . . or undertaking any activity in reliance on any form Corps permit authorization based on a preliminary [jurisdictional determination] constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of United States, and precludes any challenge to such jurisdiction.” *See* Ex. E. Accordingly, it is undisputable for this suit that the wetlands at issue qualify as waters of the United States.

[and] will reduce habitat for wildlife and increase evapotranspiration, thus increasing levels of run-off in the watershed.”); Application, § 21 (*Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards*) (“new different fill material [will be] placed below the [ordinary high water] level” during construction), Ex. B at 6; Application, § 18 (*Nature of Activity*) (“[F]orested wetlands will sustain permanent impact” as a result of the Proposed Project.), Ex. B at 6.

In short, the Corps unlawfully authorized a project with recognized losses of 23.65 acres of jurisdictional wetlands under a general permit that cannot authorize more than 0.5 acres of such loss.

B. Mitigation of Loss Cannot Justify the Corps’ Decision.

The Corps cannot circumvent the limits of nationwide permit No. 12 by letting the applicant buy mitigation credits to offset the loss of over half an acre of wetlands on the Proposed Project site cannot salvage the decision. “The acreage of loss of waters of the United States . . . is not a net threshold that is calculated after considering compensatory mitigation . . .” 72 Fed. Reg. at 11,196. Indeed, the nationwide permits’ conditions expressly address – and prohibit – the use of mitigation to sidestep the terms of a nationwide permit:

Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWP. For example, **if an NWP has an acreage limit of 1/2 acre, [compensatory mitigation] cannot be used to authorize any project resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters.**

Id. at 11,193; NWP General Condition 20(e) (emphasis added).

Nonetheless, the Corps authorized the Proposed Project based on the applicant’s proposal to “mitigate for the loss of wetlands functions and services” totaling 16.62 acres “by purchasing 163.0 mitigation credits or 36.98 acres from the Lower Cut-Off Creek Mitigation Bank, prior to

construction,” Corps Evaluation (*Project Description*), Ex. A. See Corps’ Authorization, Ex. D at 1 (“This authorization is contingent upon the successful completion of the [proposed] mitigation.”). Indeed, it was this offset that allowed the Corps to find no “net loss” from the Proposed Project. See Corps Evaluation, Ex. A at §§ 7-10 (finding “7. total requested impacts: 16.62 acres; 8. total permitted impacts: 16.62 acres; 9. total mitigated: 36.98 or 163-credits; 10. net loss: 0.0 acres”). Similarly, the Corps’ Modified Authorization followed the applicant’s assertion that it would “purchase 78 additional credits from the Lower Cutoff Creek Mitigation Bank for the additional impacts.” Ex. C at 4, 9. But because the Corps cannot permissibly rely on mitigation to determine that the threshold limitations of nationwide permit No. 12 were met, its decision is illegal.

C. The Corps’ Misapplication of Nationwide Permit No. 12 Circumvents the Statutory Protections Required for Individually Permitted Projects.

By misapplying nationwide permit No. 12 to a project that does not qualify, the Corps unlawfully avoided the Clean Water Act’s public participation provisions for the individual permitting process. Unlike general permits, where the public is only guaranteed participation at the promulgation stage, individual permits require the Corps to provide public notice and an opportunity for public participation before the agency may authorize a project. 33 U.S.C. §§ 1344(a), (e). And, indeed, in this case, the Corps did not provide any public notice of its proposed authorization and verification on the Proposed Project under nationwide permit No. 12. Accordingly, the Corps’ decision was arbitrary, capricious, an abuse of discretion, not in accordance with law, and without observance of procedure required by law, and must be vacated.

Similarly, by misapplying nationwide permit No. 12, the Corps’ unlawfully avoided NEPA’s environmental review requirements. NEPA requires that “major Federal actions significantly affecting the quality of the human environment” include “a detailed statement by

the responsible official” on the environmental impacts of, and alternatives to, the proposed action, *i.e.* an Environmental Impact Statement. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.11. For nationwide permits, the Corps performs the required analysis for each category of activity at the time it promulgates each nationwide permit. See 72 Fed. Reg. at 11095; *Ohio Valley Environmental Coalition v. Hurst*, 604 F.Supp.2d 860, 868 (S.D.W.Va. 2009). But where the nationwide permit does not apply, the normal requirements of NEPA apply.

II. PLAINTIFFS HAVE STANDING TO BRING THIS ACTION.

Plaintiffs have standing to prosecute this action because their members have suffered and will suffer aesthetic, economic, and recreational injuries that are traceable to the Corps’ authorization of the Proposed Project under nationwide permits Nos. 12 and 7, and redressable by this Court’s ability to grant declaratory and injunctive relief.

A. Plaintiffs Meet The Constitutional Requirements For Standing.

When an organization asserts standing to sue a party in the courts of the United States, the organization must “ha[ve] a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy.” *Sierra Club v. Morton*, 405 U.S. 727, 732 (1972). “An association has standing to bring suit on behalf of its members when [**A**] its members would otherwise have standing to sue in their own right, [**B**] the interests at stake are germane to the organization's purpose, and [**C**] neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Friends of the Earth v. Laidlaw Env'tl. Serv.*, 528 U.S. 167, 181 (2000). For individual standing in a member’s own right, “a plaintiff must show (1) it has suffered an “injury in fact” that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged

action of the defendant; and 3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Id.* at 180-81.

1. Plaintiffs’ Members Have Standing to Sue in Their Own Right.

a. *The Corps’ Arbitrary and Capricious Approval of the El Dorado Pipeline Injures Plaintiffs’ Members.*

Plaintiffs’ members suffer injury because the installation of the pipeline that the Corps has permitted will destroy wetlands that Plaintiffs’ members have enjoyed for years and would continue to enjoy in the future, but for the pipeline. In environmental cases, plaintiffs suffer injury in fact when “they use the affected area and are persons ‘for whom the values of the area will be lessened’ by the challenged activity.” *Laidlaw*, 528 U.S. at 183 (quoting *Sierra Club v. Morton*, 405 U.S. 727, 735 (1972)); *Friends of The Earth, Bluewater Network Div. v. U.S. Dept. of Interior*, 478 F. Supp. 2d 11, 16 -17 (D.D.C. 2007). An “injury in fact” may be physical, economic, aesthetic or recreational. *Laidlaw*, 528 U.S. at 813-14. For example, “the desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purposes of standing.” *Id.* at 183 (quoting *Lujan v Defenders of Wildlife*, 504 U.S. 555, 562-63 (1992)); see *Friends of The Earth*, 478 F. Supp. 2d at 16-17 (finding standing to challenge permit for Off Road Vehicle use in national parks where member declarant testified to “specific [Off Road Vehicle]-caused damage . . . which has in turn diminished his enjoyment of those parks.”)

Kent Stegall, the president of Save the Ouachita and a member of the Ouachita Riverkeeper, is an outdoorsman who has been hunting and fishing in the wetlands along the pipelines route throughout his lifetime. Stegall Declaration ¶¶ 2, 13, 17, 18, attached at Exhibit F. Mr. Stegall lives in El Dorado, Arkansas and owns property on the Ouachita Rover, near the pipeline route. *Id.* at ¶ 14. He plans to continue hunting and fishing in these areas, but the

wetlands destruction that the pipeline will cause will impair his recreational and aesthetic enjoyment of these activities. *Id.* at ¶ 19 (“Part of my enjoyment . . . comes from tracking the patterns of natural animal activity. I am concerned that construction and operation of the proposed pipeline will disrupt the presence of game in the area and disturb my enjoyment of participating in this recreation.”) Mr. Stegall also suffers “concern[s] that spills and leaks from the proposed pipeline will disturb [his] enjoyment of fishing and hunting in the impacted areas. *Id.* at ¶ 20. He explains, “I worry that any fish or game I might catch may be contaminated [and that] the habitat supporting the fish and game will be destroyed.” *Id.*

Similarly, Ralph Shane Calaway, a member of Save the Ouachita hunts, hikes, and fishes in the wetlands on and near the proposed El Dorado pipeline route. Calaway Declaration, attached at Exhibit G at ¶ 3, 9. He plans to continue these activities in the area, which he has done since he was a boy, but is concerned that the clear cutting of the wetlands and potential for leaks for the pipeline “will disturb [his] enjoyment of the area’s beauty, wildlife, and wetland ecosystem.” *Id.* at ¶ 9. Indeed, the Application’s assertion that it will “reduce habitat for wildlife,” among other things shows that Mr. Stegall’s and Mr. Calaway’s concerns about their recreational and aesthetic enjoyment of the area are reasonable. *See Application, Mitigation Plan*, Ex. B at 9 (“[t]he project will convert “a large amount of Bottomland hardwood forest and Pine Flatwood wetlands to an emergent wetland [and] will reduce habitat for wildlife and increase evapotranspiration, thus increasing levels of run-off in the watershed.”)

b. Plaintiffs’ Injuries Are Fairly Traceable to the Corps’ Authorization of the Proposed Project.

The plaintiffs’ injuries are fairly traceable to the Corps’ decision, since it is the Corps’ decision that authorizes destruction of the wetlands at issue. *See Friends of The Earth*, 478 F. Supp. 2d at 20 (finding injuries fairly traceably to federal agency action “where the agency [was]

in a position to directly regulate and even proscribe [the] activity [directly causing the injury] because “agency action is a ‘substantial factor’ in the third party’s decision to engage in the activity at issue.”).

c. This Court Can Redress the Injuries that Plaintiffs’ Members Suffer by Ordering Declaratory and Injunctive Relief.

This Court can redress Plaintiffs’ members’ injuries because it has the authority to vacate and enjoin Corps authorization of the El Dorado pipeline. 5 U.S.C. § 702.

2. The Interests Plaintiffs Seek to Protect Are Germane to the Organizations’ Purposes.

Plaintiffs meet the second requirement for organizational standing because they have an interest in protecting the Ouachita River and the wetlands of its watershed, and the interests they seek to protect with this lawsuit are germane to this purpose. The purpose of the Ouachita Riverkeeper “is to protect and restore the Ouachita River, its watershed, and the surrounding wetlands along its entire length through Arkansas and into Louisiana for existing and future generations.” Declaration of Cheryl Slavant, ¶ 5, attached at Exhibit H. Likewise, Save the Ouachita’s purpose “is to protect and restore the Ouachita River, its watershed, and the surrounding wetlands for existing and future generations.” Stegall Decl., Ex. F at ¶ 5.

3. This Case Does Not Require the Participation of Individual Members of the Plaintiff Organizations.

Because this action does not seek monetary damages or particularized relief limited to a single person or group, it does not require the participation of individual members of Plaintiffs as parties. *See Hunt v. Washington State Apple Adver. Comm’n*, 432 U.S. 333, 334 (1977); Therefore, no genuine issue of material fact remains as to whether the claims asserted or relief requested can be “properly resolved in a group context.” *Hunt*, 432 U.S. at 344.

B. Plaintiffs Meet Prudential Standing Requirements.

In addition to Article III standing requirements, the federal courts have developed a “prudential” standing requirement that “a plaintiff’s grievance must arguably fall within the zone of interests protected or regulated by the statutory provision or constitutional guarantee invoked in the suit.” *Bennett v. Spear*, 520 U.S. 154, 162 (1997). This test seeks to “exclude only those whose interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit.” *Nat’l Ass’n of Home Builders v. U.S. Army Corps of Eng’rs*, 539 F. Supp. 2d 331, 342 (D.D.C. 2008) (citations omitted). “In determining whether [plaintiffs] have standing under the zone-of-interests test to bring their APA claims, we look . . . to the substantive provisions of the [underlying statute], the alleged violations of which serve as the gravamen of the complaint. *Bennett*, 520 U.S. at 175 (looking to the substantive provisions of the Endangered Species Act, on which petitioners based their APA claim).

Here, the Plaintiffs base their APA claims on violations of the Clean Water Act and NEPA. The Clean Water Act states its purpose is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251. NEPA states its purpose is, among other things, “to promote efforts which will prevent or eliminate damage to the environment and biosphere.” 42 U.S.C. § 4321. Thus, the environmental interests Plaintiffs seek to protect in this lawsuit challenging the Corps’ administration of Clean Water Act wetlands destruction permits fall squarely within the “zone of interests” of the Clean Water Act and NEPA. Having satisfied the “zone of interests” requirement for APA and prudential standing, there is no bar to this Court’s adjudicating Plaintiffs’ claims.

Conclusion

For the foregoing reasons, this Court should GRANT Plaintiffs the Ouachita Riverkeeper's and Save the Ouachita's Motion for Partial Summary Judgment that the Corps violated the Administrative Procedure Act when it authorized a project that will destroy over 16.62 acres of forested wetlands under a general permit that can allow no more than 0.5 acres of such destruction and that Plaintiffs have standing to bring this action, VACATE the Defendants' authorization of the El Dorado Water Utilities Pipeline Project under nationwide permits Nos. 7 and 12, and ENJOIN the Defendant-Intervenors from constructing the El Dorado Water Utilities Pipeline Project under the authority of nationwide permits Nos. 7 and 12.

Respectfully submitted on September 27, 2012,

TULANE ENVIRONMENTAL LAW CLINIC

s/ Adam Babich

Adam Babich, D.C. Bar 382747

Elizabeth Livingston Calderon, La. Bar 31443

Tulane Environmental Law Clinic

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New Orleans, LA 70118

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Email: ababich@tulane.edu

*Counsel for the Ouachita Riverkeeper and
Save the Ouachita*

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel of record by electronic means on September 27, 2012. I further certify that a copy of the pleading shall be provided by U.S. Mail to counsel for any party who does not receive electronic notification of filings.

s/ Adam Babich

Adam Babich, D.C. Bar 382747

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

OUACHITA RIVERKEEPER, INC., <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	Civil Action No. 12-803 (CKK)
)	
v.)	
)	
LIEUTENANT GENERAL THOMAS P.)	
BOSTICK, Commanding General and Chief)	
of Engineers, U.S. Army Corps of)	
Engineers, et al.,)	
)	
<i>Defendants.</i>)	

**STATEMENT OF MATERIAL FACTS IN SUPPORT OF
PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 7(h) of the Local Rules of the U.S. District Court for the District of Columbia, Plaintiffs the Ouachita Riverkeeper and Save the Ouachita respectfully submit the following statement of material facts for which there are no genuine issues in support of their Motion for Partial Summary Judgment. It is beyond dispute that:

1. On June 15, 2010, El Dorado Utilities (a Defendant-Intervenor in this action) submitted an application (the “Application”) for an individual permit under Clean Water Act § 404 to dredge and fill waters of the United States as part of the proposed El Dorado Pipeline Project (the “Proposed Project”). *See* Application, attached, in relevant parts, at Exhibit B to Pls.’ Mem. Supp. Summ. J.

2. The Proposed Project “will impact approximately 16.62-acres of palustrine wetlands.” Corps’ Project Evaluation, dated July 30, 2010, p. 1 (*Project Description*), (the “Corps’ Project Evaluation,” attached at Exhibit A to Pls.’ Mem. Supp. Sum. J.).

3. The “loss of wetlands functions and services” for 16.62 acres, *see id.*, includes at least twenty-eight wetland areas, thirteen of which are each—standing alone—larger than half an acre, *see Application, Mitigation Plan, Table 2 (Wetland Areas Requiring Mitigation)*, Ex. B to Pls.’ Mem. Supp. Summ. J., p. 14.

4. The Proposed Project’s “pipeline will cover approximately 23.5 miles and will require a 50 ft wide right-of-way clearing.” *Application, § 18 (Nature of Activity)*, Ex. B to Pls. Memo. Supp. Summ. J., p. 6.

5. The Proposed Project’s “right-of-way will require complete vegetation clearing along the entire length of the pipeline.” *Application Cover Letter*, dated June 14, 2010, Ex. B to Pls. Mem. Supp. Summ. J., p. 1.

6. On July 30, 2010, the Corps authorized and verified the Proposed Project (the “Authorization,” attached at Exhibit D to Pls.’ Mem. Supp. Summ. J.).

7. The Corps made its “authorization . . . contingent upon the successful completion of the mitigation as described in [the application’s] mitigation plan.” *Authorization*, Ex. D to Pls.’ Mem. Supp. Summ. J., p.1.

8. The Proposed Project’s mitigation plan “proposes to mitigate for the loss of wetland functions and services by purchasing 163.0 mitigation credits or 36.98 acres from [a mitigation bank].” *Corps’ Project Evaluation, (Project Description)*, Ex. A to Pls.’ Mem. Supp. Summ. J.

9. The Corps’ Project Evaluation for the Proposed Project, Ex. A to Pls’ Mem. Supp. Summ. J., explained the Corps’ mitigation calculation, as follows:

- a. “7. Total Impacts Requested: 16.62 Acres Forested Scrub Shrub”
- b. “8. Total Impacts Permitted: 16.62 Acres

- c. “9. Total Mitigated: 36.98 Acres or 163-Credits”
- d. “10. Net Loss: 0.00 Acres”

10. The Corps applied nationwide permit No. 12 to authorize the pipeline portion of the project.

11. The Corps applied nationwide permit No. 7 to authorize the diffuser portion of the project that would be built into the Ouachita River.

12. On July 18, 2012, the Corps approved a modification of the Proposed Project, which became “a part of the original authorization” (the “Modified Authorization,” attached at Exhibit C to Pls.’ Mem. Supp. Summ. J, p. 1.

13. The Modified Authorization approved a pipeline route change that increased adverse wetland impacts by 7.05 acres to a total of 23.65 acres of wetlands. Modified Authorization, Ex. C to Pls.’ Mem. Supp. Summ. J., p. 4, 9.

14. The pipeline developer agreed to purchase an additional 78 credits from a mitigation bank to offset the increased losses from the modified pipeline route. *Id.*

15. The Corps did not conduct or require an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act to determine whether the Proposed Project has a significant impact on the human environment.

16. The Corps did not require public notice for the Proposed Project and did not provide an opportunity for public participation in the permitting process.

17. The Proposed Project will injure the Plaintiffs members’ enjoyment of the areas in and around the Proposed Project’s pipeline route.

18. The lack of public notice and opportunity for public participation in the Corps’ decision-making on the Proposed Project injures Plaintiffs’ members.

19. These injuries are fairly traceable to the Corps' authorization and verification of the Proposed Project under nationwide permit Nos. 12 and 7.

20. This Court may redress the injuries of Plaintiffs and their members through the relief requested.

Respectfully submitted on September 27, 2012,

TULANE ENVIRONMENTAL LAW CLINIC

s/ Adam Babich

Adam Babich, D.C. Bar 382747

Elizabeth Livingston Calderon, La. Bar 31443

Tulane Environmental Law Clinic

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*Counsel for the Ouachita Riverkeeper and
Save the Ouachita*

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel of record by electronic means on September 27, 2012. I further certify that a copy of the pleading shall be provided by U.S. Mail to counsel for any party who does not receive electronic notification of filings.

s/ Adam Babich

Adam Babich, D.C. Bar 382747

July 30, 2010

ORM No. MVK-2009-1236

Applicant Name: EI Dorado Water Utility

Evaluator Name: Miller

Nationwide Permit NW-7 NW-12

Compliance Location: El Dorado Ar. 33.25899 -92.68701 33.29122 - 92.46931

Project Description: EI Dorado Water Utilities propose to construct a wastewater pipeline running from El Dorado, AR. to the Ouachita River. The propose pipeline will transport treated wastewater from the City of El Dorado and three industrial users, (Lion Oil Co., Great Lakes Chemical Corp, and El Dorado Chemical Co), discharging into the river approximately 1.5-miles downstream of the H.K. Thatcher Lock and Dam. The pipeline will cover a length of approximately 23.5 miles and require a 50-ft wide cleared right-of-way. An effluent diffuser will be installed at the pipeline terminus on the bottom of the Ouachita River. The diffuser will ensure rapid mixing of wastewater with river water. The propose outfall structure will temporarily impact approximately 0.05-acre of Other Waters 10/404. **The Arkansas Department of Environmental Quality has issued an NPDES Permit and is good thru March 31, 2012.** The proposed pipeline will impact approximately 16.62-acres of palustrine wetlands. **EDWU proposes to mitigate for the loss of wetland functions and services by purchasing 163.0 mitigation credits or 36.98-acres from the Lower Cut-Off Creek Mitigation Bank, prior to construction. This project complies with NW-7 and NW-12.**

1 .Authority under which this permit is covered:

- a. 10
- b. 404
- c. 10/404 XXX

2 Have copies of the application been sent to the following:

NA: MISSISSIPPI

YES: ARKANSAS

YNA: LOUISIANA

Yes: The Arkansas Department of Environmental Quality has issued an NPDES Permit and is good thru March 31, 2012.

YES: U.S. Fish and Wildlife Service. Letter dated November 15, 2005, No impacts to T&E species. Water quality concerns were fully

considered.

YES: State Historical Preservation Office (SHPO). Letter Dated July 14, 2010, comments were fully considered, and EDWU has agreed to archeological monitoring during construction.

NA: ___ N/A: National Marine Fisheries Service (where applicable)

Date Faxed:

3. **No:** Did any agency representative call within 15 calendar days to say that they intend to provide substantive, site-specific comments? **See above.**

Date Called: ___/___/___ By Whom:

4. **Yes:** Did you receive any substantive site-specific comments from the agencies listed in 3. above? **See above.**

Date Rec'd: ___/___/___ From: _____

5. **Yes: The resource agency comments were fully considered.**

6. Does the submitted mitigation plan reduce the adverse environmental effects to a minimal level? The mitigation proposal must be approved prior to commencing work. Yes ___ No: NA

- 7. **TOTAL IMPACTS REQUESTED: 16.62 ACRES Forested Scrub Shrub**
- 8. **TOTAL IMPACTS PERMITTED: 16.62 ACRES**
- 9. **TOTAL MITIGATED: 36.98 ACRES or 163-Credits**
- 10. **NET LOSS: 0.00 ACRES**

If Mitigation Required where is mitigation being required: Lower Cut-Off Creek Mitigation Bank. 2.23 to 1 ratio.

11. CORPS BRANCHES NOTIFIED (as applicable):

i. OD-N (Navigation) NA

Approved by: _____

Date: _

ii. OD-M (Levees) NA

Approved by: _____

Date: _____

iii. OD-PM (Project Planning) NA

Approved by: _____

Date: _____

iv. OD-RE (Real Estate) NA

Approved by: _____
Date: _____

v. OD-ED-D (River Stabilization) NA

Approved by: _____
Date: _____

Miller
6/22/10

El Dorado Water Utilities

500 NORTH WASHINGTON • P. O. BOX 1587 • EL DORADO, AR 71731 (870) 862-6451

June 14, 2010

Mr. Tony Lobred
U.S. Army Corps of Engineers
Vicksburg District
ATTN: CEMVK – OD-F
4155 East Clay Street
Vicksburg, MS 39183-3435

RE: USACE Section 404 Permit Application for El Dorado Water Utilities Pipeline to the
Ouachita River - MVK-2009-1236
GBMc No. 3007-03-200

Mr. Lobred:

Enclosed please find a copy of the section 404 permit application package for a joint pipeline construction project planned to take place in El Dorado, AR. This 404 permit application is submitted to you as a pre-construction notice as we believe the project may be within the limits of NWP 7 and 12. Wetland delineation was performed along the pathway of the proposed pipeline (the pipeline) which will transect the north, east, and south parts of the City of El Dorado, AR and generally head northeast to terminate in the Ouachita River just south of the City of Calion, AR.

The purpose of the proposed pipeline is to connect three industries and the City of El Dorado through a pipeline which will transport treated wastewater to the Ouachita River. The pipeline will cover a length of approximately 23.5 miles and require a 50 foot wide cleared right-of-way. The right-of-way will require complete vegetation clearing along the entire length of the pipeline. An effluent diffuser will be installed at the pipeline terminus on the bottom of the Ouachita River. The diffuser will ensure rapid mixing of wastewater with river water.

The application package includes Eng Form 4345, a complete jurisdictional determination (which has been under review in your office since March), a mitigation plan, a layout plan of the diffuser including dimensions, and several detailed maps including aeriels and soils maps of the pipeline route and wetlands associated with it. Endangered species clearance from the U.S Fish and Wildlife service has been granted. A letter from the Arkansas Historic Preservation Program (AHPP) outlining their recommendations is included in this submittal. A section 106 field survey has been completed and the most recent correspondence with the SHPP is also included.

No significant discharge of sediment will occur during the construction of the pipeline. Topography will be returned to pre-construction contours upon project completion. No permanent wetland loss

MVK-2009-1236

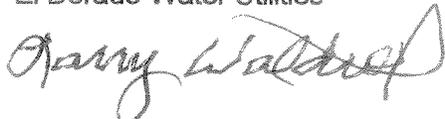
Mr. T. Lobred
June 14, 2010
Page 2

will occur. Installation of the effluent diffuser will require fill below the normal high water level in the Ouachita River. A detailed description of diffuser is provided with the submittal.

Please review this Section 404 permit application package. We feel that the information provided in this letter and accompanying attachments should be sufficient to issue a permit. However, should you require additional information please do not hesitate to contact us as soon as possible, so that we may promptly provide you with such information.

Thank you for your attention to this matter. Should you require additional information or have any questions, please do not hesitate to contact me at (870) 862-5026 or Greg Phillips of GBMc & Associates at (501) 847-7077.

Respectively Submitted,
El Dorado Water Utilities

A handwritten signature in black ink, appearing to read "Larry Waldrop", written in a cursive style.

Larry Waldrop
General Manager

Enclosures

USACE Section 404 Permit Application for El Dorado Water Utilities Pipeline to Ouachita River

Prepared for:

**El Dorado Water Utilities
500 North Washington
El Dorado, AR 71730**

Prepared by:

**GBM^c & Associates
219 Brown Lane
Bryant, AR 72022**

June 11, 2010

CONTENTS

ENG Form 4345-Application for Department of the army Permit (33 CFR 325)

FIGURE

Figure 1 – Pipeline Final Route

APPENDICES

Appendix Aa - Jurisdictional Determination

A1) Figures

A2) USACOE Field Forms

Appendix Ab – Jurisdictional Determination of Alternate Route

Attachment 1 - Figures

Attachment 2 - Field Forms

Attachment 3 – Photos

Appendix B Mitigation Plan

Wetland Identification Tables

Appendix C Arkansas Heritage Letter

T & E Letter

Appendix D Diffuser Specs

Appendix E Adjoining Landowners

APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT (33 CFR 325)		OMB APPROVAL NO. 0710-0003 Expires December 31, 2004	
<p>The public burden for this collection of information is estimated to average 10 hours per response, although the majority of applications should require 5 hours or less. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Service Directorate of Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003), Washington, DC 20503. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. Please DO NOT RETURN your form to either of those addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.</p>			
<p>PRIVACY ACT STATEMENT</p> <p>Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404; 33 USC 1344; marine Protection, Research and Sanctuaries Act, 33 USC 1413, Section 103. Principal Purpose: Information provided on this form will be used in evaluating the application for a permit. Routine Uses: This information may be shared with the Department of Justice and other federal, state, and local government agencies. Submission of request information is voluntary, however, if information is not provided the permit application cannot be evaluated nor can a permit be issued.</p> <p>One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.</p>			
<p>(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)</p>			
1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETED
<p>(ITEMS BELOW TO BE FILLED BY APPLICANT)</p>			
<p>5. APPLICANT'S NAME El Dorado Water Utilities Contact: Larry Waldrop, General Manager</p>		<p>8. AUTHORIZED AGENT'S NAME AND TITLE (an agent is not required) GBM^c & Associates Contact: Greg Phillips, Senior Scientist</p>	
<p>6. APPLICANT'S ADDRESS 500 North Washington El Dorado, AR 71730</p>		<p>9. AGENT'S ADDRESS 219 Brown Lane Bryant, AR 72022</p>	
<p>7. APPLICANT'S PHONE NOS. W/AREA CODE</p> <p>a. Residence N/A</p> <p>b. Business 870-862-6451</p>		<p>10. AGENT'S PHONE NOS. W/AREA CODE</p> <p>a. Residence N/A</p> <p>b. Business (501) 847-7077</p>	
<p>11. STATEMENT OF AUTHORIZATION</p>			
<p>I hereby authorize <u>GBM^c & Associates</u> to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.</p>			
 APPLICANT'S SIGNATURE		<p><u>4/15/12</u> DATE</p>	
<p>NAME, LOCATION AND DESCRIPTION OF PROJECT OR ACTIVITY</p>			
<p>12. PROJECT NAME OR TITLE (see instructions): Ouachita Joint Pipeline Construction</p>			
<p>13. NAME OF WATERBODY, IF KNOWN (if applicable) See Attached Jurisdictional Determination</p>		<p>14. PROJECT STREET ADDRESS (if applicable) NA</p>	
<p>15. LOCATION OF PROJECT</p> <p><u>Union</u> COUNTY <u>AR</u> STATE</p>			
<p>16. OTHER LOCATION DESCRIPTIONS, IF KNOWN, (see instructions):</p>			
<p>17. DIRECTIONS TO THE SITE: The pathway of a proposed pipeline (the pipeline) which will originate in the north, east, and south parts of the City of El Dorado, AR and generally travel northeast to terminate in the Ouachita River just south of the City of Calion, AR. Northeast starting coordinates are 33°15'33.33", 92°41'12.86". See figures in Appendix A1.</p>			

18. NATURE OF ACTIVITY (Description of project, include all features)

Plans have been created for the construction of a wastewater pipeline which will connect the El Dorado Water Utilities and three industries, then transport treated wastewater from the joint pipeline group to the river. The proposed pipeline (the pipeline) will originate in the north, east, and south parts of the City of El Dorado, AR and generally head northeast to the Ouachita River entering just south of the City of Calion, AR (See Figure 1). The pipeline will cover approximately 23.5 miles and will require a 50 ft wide right-of-way clearing. Wetland delineations (Appendix Aa and Ab) were performed along the pipeline in order to determine if any waters of the U.S would be impacted during construction. The majority of wetlands will be directionally bored, stream channels not associated with wetlands, will likely be trenched. Topography in all waters of the U.S (wetlands and streams) will be returned to pre-construction contours and stabilized upon completion of construction activities. Only forested wetlands will sustain permanent impact and that from mechanized land clearing of the right-of-way only. An effluent diffuser will be installed at the eastern terminus of the pipeline on the bottom of the Ouachita River (see figures). Some fill and dredging will be required for diffuser installation.

19. PROJECT PURPOSE (Describe the reason or purpose of the project, see instructions)

The purpose of the project is to connect three industries and El Dorado Water Utilities to a combined pipeline in order to transport treated wastewater to a discharge point at the Ouachita River. This combined pipeline will reduce the amount of discharge points into small streams in the El Dorado area and provide better protection for aquatic life. The diffuser will be located on the river bottom and will provide rapid mixing of wastewater with river water.

USE BLOCKS 20-22 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

20. REASONS(S) FOR DISCHARGE

In order to install the diffuser (Appendix D) an area must be trenched at the connection point of the Ouachita River in order to set the pipe in the bottom of the river. During construction of the diffuser only incidental amounts of fill may be discharged into the Ouachita River.

During construction of the diffuser site materials and rip rap will be used as backfill to replace the soil removed during trenching. During mechanized clearing of the pipeline right-of-way an incidental amount of topsoil may be disturbed by logging equipment. Topography may be slightly altered during construction but will immediately be returned to original contours upon completion of the project. Appropriate BMP's will be applied for sediment and erosion control (silt fence, fiber rolls, seeding and mulching, etc.) to minimize impacts along the entire length of the pipeline with special attention provided in and near waters of the U.S.

21. TYPE(S) OF MATERIAL BEING DISCHARGED AND THE AMOUNT OF EACH TYPE IN CUBIC YARDS

During diffuser installation a trench will be dug to hold the diffuser, and anchors will be placed along the pipe and protected by riprap. Bottom contours will be returned to preexisting conditions, however, new different fill material is placed below the OHW level.

22. SURFACE AREA IN ACRES OF WETLANDS OR OTHER WATERS FILLED (see instructions)

There will be no permanent fill in waters of the U.S for the linear portion of the pipeline. The anchors and protective rip rap for the diffuser will fill approximately 150 cubic yds below the OHW level, but will not alter bottom contours. The diffuser nozzles will protrude approximately 2.3 feet above the river bottom (Appendix D).

See attached jurisdictional determination along with the mitigation report (Appendix A and B, respectfully).

23. IS ANY PORTION OF THE WORK ALREADY COMPLETE? YES NO IF YES, DESCRIBE THE COMPLETED WORK

24. ADDRESSES OF ADJOINING PROPERTY OWNERS, LESSEES, ETC., WHOSE PROPERTY ADJOINS THE WATERBODY (if more than can be entered here, please attach a supplemental list).

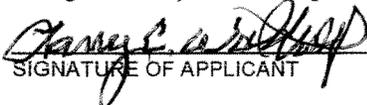
See Appendix E

25. LIST OF OTHER CERTIFICATIONS OR APPROVAL/DENIALS RECEIVED FROM OTHER FEDERAL, STATE OR LOCAL AGENCIES FOR WORK DESCRIBED IN THIS APPLICATION.

AGENCY	TYPE APPROVAL	IDENTIFICATION NUMBER	DATE APPLIED	DATE APPROVED	DATE DENIED

ADEQ	NPDES Discharge Permit	AR0049743		4/1/07	
ADEQ	Construction Permit	AR 0049743C		4/1/07	
ADEQ	NPDES Discharge Permit	AR 0050296		8/1/08	

26. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.


SIGNATURE OF APPLICANT

4/15/10
DATE

SIGNATURE OF AGENT

DATE

The application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 11 has been filled out and signed.

18 USC Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

Appendix B
Mitigation Plan

Mitigation Plan for Ouachita Pipeline. El Dorado, Arkansas, Union County

1. Mitigation Goals and Objectives

- a. Impact site Description –The pipeline will cover approximately 23.5 miles and cross a total of 38 wetland areas (See Figures in Appendix Aa and Ab). Only 29 of these wetland areas will be impacted in ways to require mitigation efforts. Nine wetlands identified along the pipeline occur in existing cleared right-of-ways for other utilities and will not require additional land clearing. The wetland areas were initially delineated according to hydric soil types, and then were further classified into three different forest types in order to simplify calculation of mitigation credits (Bottomland hardwood wetlands, Pine Flatwood wetlands, and Scrub-Shrub wetlands). All vegetation along a 50 ft wide right-of-way will be cleared during construction and the right-of-way will be maintained as an herbaceous layer. Preexisting topography shall be maintained so hydrology and soils will be unaltered. Additional information is available in the jurisdictional determination report for the project.
- b. Aquatic Resource Concerns –The conversion of a large amount of Bottomland hardwood forest and Pine Flatwood wetlands to an emergent wetland will reduce habitat for wildlife and increase evapotranspiration, thus increasing the levels of run-off in the watershed. Significant stream crossings and wetland areas will be directional bored and topography in all water of the U.S will be returned to pre-construction contours such that no wetland loss occurs. The surrounding watersheds should receive minimal impact upon the completion of the pipeline.
- c. Mitigation Site Description – Credits from a mitigation bank will be purchased. The mitigation bank will provide the credits needed for sites disturbed (through vegetation change) along the pipeline path.

2. Impact Site Baseline Information (Existing Environment)

A detailed spreadsheet giving starting and ending coordinates for each of the 38 wetland areas in the Palustrine wetland classification system are included along with this package. Each wetland requiring mitigation (29 areas) assessed using the Charleston Method as necessary, based on the dominant forest type and surrounding environment.

Maps of the site are included with the jurisdictional determination portion of this permit package.

Aerial photographs of the site are included with the jurisdictional determination portion of this permit package.

- b. Classification System –
 - i. (Bottomland Hardwood wetlands)- Areas containing predominantly old-growth oak forests. Largely associated with floodplain wetlands of streams and slough areas. Eight wetland areas were mitigated according to Bottomland Hardwood classification.
 - ii. (Pine Flatwood wetlands)- Areas consisting of predominantly Needle leaved evergreen species (pines). These areas are often largely associated with mixed bottomland hardwood species, but contain a larger percentage of needle leaved species. This forest type is usually found on slightly higher

topography than bottomland hardwood forests. Thirteen of the known wetland areas fell in this forest type.

- iii. (Scrub/Shrub wetlands)- These areas are predominantly composed of shrub species and scrub oak species. These areas are normally located in low-lying areas that remain inundated the majority of the growing season. These areas are sometimes formed when bottomland hardwoods are clearcut and allowed to naturally regenerate. Some common species found in these areas are buttonbush, willow oak, water oak, and wax myrtle. Eight of the wetland areas along the pipeline route were found in these areas.

- c. Area of Impact – A total of 16.6 acres of wetland will be impacted equivalent to 155.71 credits. A summary of the required mitigation credits is provided in the following tables.

Bottomland Hardwood wetlands

Factor	Area 36	Area 37	Area 31	Area 30	Area 28	Area 6	W3	W5
Lost Type	3	3	3	3	3	3	3	3
Priority Category	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Existing Condition	2.5	2.5	2.5	2.5	2.5	1	2.5	2.5
Duration	2	2	2	2	2	2	2	2
Dominant Impact	1	1	1	1	1	1	1	1
Cumulative Impact	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
Sum of r factors	9.8	9.8	9.8	9.8	9.8	8.3	9.8	9.8
Impacted Area	1.74	1.48	0.12	0.54	0.52	0.47	0.76	0.23
RXAA=	17.05	14.50	1.18	5.29	5.10	3.90	7.45	2.25

Pine Flatwoods

Factor	Area 33	Area 32	Area 29	Area 27	Area 26	Area 25	Area 20
Lost Type	2	0.2	2	2	2	2	2
Priority Category	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Existing Condition	2.5	2	2	2.5	2.5	2.5	2
Duration	2	2	2	2	2	2	2
Dominant Impact	1	1	1	1	1	1	1
Cumulative Impact	0.8	0.8	0.8	0.8	0.8	0.8	0.8
Sum of r factors	8.8	6.5	8.3	8.8	8.8	8.8	8.3
Impacted Area	0.92	0.19	0.88	0.15	0.16	0.16	0.84
RXAA=	8.10	1.24	7.30	1.32	1.41	1.41	6.97

Factor	Area 16	Area 34	Area 23	Area 17	Area 18	Area 19
Lost Type	3	2	3.0	2	2	2
Priority Category	0.5	0.5	0.5	0.5	0.5	0.5
Existing Condition	2.5	2.5	1.0	2	2	2
Duration	2	2	2.0	2	2	2
Dominant Impact	1	1	1.0	1	1	1
Cumulative Impact	0.8	0.8	.4	0.8	0.8	0.8
Sum of r factors	9.8	8.8	7.9	8.3	8.3	8.3
Impacted Area	0.69	1.04	.37	0.41	0.24	0.56
RXAA=	6.76	9.15	2.92	3.40	1.99	4.65

Scrub/Shrub wetlands

Factor	Area 22	Area 12	Area 3	Area 1	Area 4	Area 5	W1	W2
Lost Type	2	3	3	3	3	3	3	3
Priority Category	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Existing Condition	0.1	2	2.5	2	0.1	0.1	2.5	2.5
Duration	2	2	2	2	2	2	2	2
Dominant Impact	1	1	1	1	1	1	1	1
Cumulative Impact	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
Sum of r factors	6.4	9.3	9.8	9.3	7.4	7.4	9.8	9.8
Impacted Area	0.47	1	0.41	0.78	0.31	1.3	0.47	0.23
RXAA=	3.01	9.30	4.02	7.25	2.29	9.62	4.61	2.25

- d. Assessment Method – The Charleston Method was utilized to assess impacts.
- e. Hydrology – Sources of water vary for the wetland systems identified along the pipeline route. The riverine wetlands identified on the eastern terminus of the pipeline are largely in the flood plain of the Ouachita River and receive water during high water. For the Palustrine wetlands the sources of water vary from a series of small unnamed tributaries, run-off from rain events and direct rainfall. Many of the wetlands are in flood plains of small streams and receive a significant portion of their water from seasonal flooding. Union county Arkansas receives 54 inches of rain, on average, annually with the majority falling in the spring. The driest month is typically August which still receives approximately 3.2 inches of rainfall, on average each year. The growing season runs from March thru November during normal years.
- f. Vegetation – Most of the pipeline route runs through either coniferous or deciduous forests. Wetland habitats are dominated by deciduous and/or coniferous trees. Dominates are willow oak , black gum, sweet gum, loblolly pine black willow and bald cypress. The under story, was dominated by shrub samplings of the same species and lizards tail, privets, wax myrtle and green briar.
- g. Soils –The wetlands along the pipeline route fall in one of four soil types (OfA, GyA, BbA, UnA). After examining these soil types in the field, each was confirmed to contain the hydric properties listed by the NRCS. Each soil type is poorly drained and appears on the hydric soils list. Each soil type is explained in detail in the jurisdictional determination provided with this package.
- h. Wildlife usage – Provides habitat for a myriad of species including common mammals (White-Tailed Deer, Raccoon, Bobcat, Coyote and Eastern Fox Squirrel), reptiles/amphibians (Box Turtle, Cottonmouth Water Moccasin, Timber Rattlesnakes and Leopard Frogs), and birds (Wood Ducks, King Fisher, Piliated Woodpecker and Common Flicker). No federally listed endangered, threatened or candidate species are present, according to the US Fish and Wildlife Service, along the pipeline route.
- i. Historic/Current landuse – Land uses along the pipeline route vary from industrial and residential in and near the city of El Dorado to entirely forest throughout rural parts of Union County. The dominant land use has always been, and continues to be forest throughout the region between El Dorado and the Ouachita River. Wetland habitats

vary, but are dominated by Bottomland Hardwood Forest, Pine Flatwoods and Shrub/Scrub. Much of the timber in the region, both coniferous and deciduous, is harvested periodically by timber companies.

- j. Current Owner – See Appendix E for a list of land owners along the pipeline route.
- k. Watershed Context/Landuse – The majority of wetlands identified along the pipeline route fall in the Ouachita River watershed. Larger sub-watersheds influenced by the pipeline include Bayou de Loutre, Flat Creek, Mill Creek, Salt Creek and Boggy Creek. The watershed is dominated by urban land uses in the western quarter of the pipeline route, in and near the City of El Dorado. Immediately to the east of El Dorado dominant land use changes to forest (mostly coniferous) and continues in such a manner to its terminus at the Ouachita River. Impacted wetland areas occur almost entirely in forested areas or already cleared right of ways for industrial activities. A few wetlands, as noted in the tables in Section 2.c of this plan, are bordered by residential areas or road ways in or near the City of El Dorado.

3. Mitigation site Selection/Justification

Objectives – To provide mitigation through purchased bank credits of similar wetland type (restored forested wetland credits (>50% of area) will be utilized to the extent possible) as close in proximity to the impact site as possible. A total of 155.71 credits will be purchased from a designated mitigation bank in the Vicksburg District. Appropriate BMP's for sediment and erosion control (silt fence, fiber rolls, seeding and mulching) will be utilized to minimize impacts on the 16.6 acres of cleared wetland and the surrounding un-impacted wetland. A native wetland seed mixture will be applied to the impacted site, upon completion of the right-of-way, to promote rapid establishment of the emergent wetland plant species.

- 4. Mitigation Work Plan – **None** (Mitigation bank credits being utilized)
- 5. Performance Standards - **None** (Mitigation bank credits being utilized)
- 6. Site protection and maintenance - **None** (Mitigation bank credits being utilized)
- 7. Monitoring Plan - **None** (Mitigation bank credits being utilized)
- 8. Adaptive Management Plan - **None** (Mitigation bank credits being utilized)
- 9. Financial Assurances - **None** (Mitigation bank credits being utilized)

Table 1. All Wetland Areas Identified

ID	Soil_Type	Length_ft	Acres	long	lat	Forest Type
1	OfA	677.0	0.78	92 40.895' W	33 15.370' N	S/S
2	GyA	242.4	0.28	92 40.866' W	33 15.339' N	S/S
3	GyA	354.0	0.41	92 40.602' W	33 15.086' N	S/S
4	GyA	267.0	0.31	92 39.867' W	33 15.076' N	S/S
5	BbA	1134.6	1.30	92 38.499' W	33 14.905' N	S/S
6	BbA	407.8	0.47	92 38.088' W	33 14.659' N	BH
7	OfA	221.2	0.25	92 37.140' W	33 14.053' N	S/S
8*	GyA	336.1	0.39	92 37.098' W	33 12.243' N	BH
9*	GyA	662.1	0.76	92 37.513' W	33 12.079' N	PF
10*	BbA	1224.0	1.40	92 38.928' W	33 11.455' N	BH
11*	BbA	223.0	0.26	92 39.405' W	33 11.293' N	BH
12	OfA	870.0	1.00	92 40.336' W	33 11.584' N	S/S
13	GyA	1301.7	1.49	92 41.499' W	33 11.232' N	S/S
14	GyA	1752.6	2.01	92 40.948' W	33 11.199' N	PF
15	OfA	902.1	1.04	92 40.773' W	33 11.178' N	PF
16	OfA	600.0	0.69	92 40.162' W	33 11.105' N	BH
17	GyA	358.4	0.41	92 39.856' W	33 10.702' N	PF
18	OfA	212.5	0.24	92 39.933' W	33 10.888' N	PF
19	GyA	490.4	0.56	92 39.961' W	33 10.965' N	PF
20	OfA	729.1	0.84	92 39.960' W	33 11.086' N	PF
21	BbA	411.7	0.47	92 34.897' W	33 13.309' N	S/S
22	BbA	411.5	0.47	92 34.679' W	33 13.399' N	S/S
23	GyA	326.0	0.37	92 34.160' W	33 13.556' N	S/S
24	BbA	539.2	0.62	92 33.774' W	33 13.798' N	S/S
25	BbA	270.8	0.16	92 33.061' W	33 14.320' N	PF
26	BbA	278.8	0.16	92 32.816' W	33 14.499' N	PF
27	OfA	131.4	0.15	92 32.636' W	33 14.630' N	PF
28	OfA	454.7	0.52	92 31.876' W	33 15.151' N	BH
29	BbA	762.7	0.88	92 30.666' W	33 15.911' N	PF
30	BbA	466.8	0.54	92 30.280' W	33 16.154' N	BH
31	BbA	105.6	0.12	92 30.064' W	33 16.289' N	BH
32	GyA	161.8	0.19	92 29.691' W	33 16.523' N	PF
33	GyA	93.3	0.11	92 29.218' W	33 16.821' N	PF
34	GyA	908.6	1.04	92 28.968' W	33 16.977' N	PF
35	GyA	789.0	0.91	92 28.661' W	33 17.170' N	S/S
36	GyA	1517.1	1.74	92 28.383' W	33 17.344' N	BH
37	UnA	1290.2	1.48	92 28.197' W	33 17.488' N	BH
W1	Bibb	--	0.47	--	--	S/S
W2	Bibb	--	0.23	--	--	S/S
W3	WarS	--	0.76	--	--	BH
W4	Amy	--	2.49	--	--	BH
W5	GyA	--	0.23	--	--	BH
		Total Acreage	28.99			

*Wetlands crossed on original route no longer being crossed in final route plan.

W1-W5 - New wetlands being crossed in final route plan.

Table 2. Wetland Areas Requiring Mitigation

ID	Soil_Type	Length_ft	Acres	long	lat	Mitigation Credits
1	OfA	677.0	0.78	92 40.895' W	33 15.370' N	7.25
3	GyA	354.0	0.41	92 40.602' W	33 15.086' N	4.02
4	GyA	267.0	0.31	92 39.867' W	33 15.076' N	2.29
5	BbA	1134.6	1.30	92 38.499' W	33 14.905' N	9.62
6	BbA	407.8	0.47	92 38.088' W	33 14.659' N	3.90
12	OfA	870.0	1.00	92 40.336' W	33 11.584' N	9.30
16	OfA	600.0	0.69	92 40.162' W	33 11.105' N	6.76
17	GyA	358.4	0.41	92 39.856' W	33 10.702' N	3.40
18	OfA	212.5	0.24	92 39.933' W	33 10.888' N	1.99
19	GyA	490.4	0.56	92 39.961' W	33 10.965' N	4.65
20	OfA	729.1	0.84	92 39.960' W	33 11.086' N	6.97
22	BbA	411.5	0.47	92 34.679' W	33 13.399' N	3.01
23	GyA	326.0	0.37	92 34.160' W	33 13.556' N	2.92
25	BbA	270.8	0.16	92 33.061' W	33 14.320' N	1.41
26	BbA	278.8	0.16	92 32.816' W	33 14.499' N	1.41
27	OfA	131.4	0.15	92 32.636' W	33 14.630' N	1.32
28	OfA	454.7	0.52	92 31.876' W	33 15.151' N	5.10
29	BbA	762.7	0.88	92 30.666' W	33 15.911' N	7.30
30	BbA	466.8	0.54	92 30.280' W	33 16.154' N	5.29
31	BbA	105.6	0.12	92 30.064' W	33 16.289' N	1.18
32	GyA	161.8	0.19	92 29.691' W	33 16.523' N	1.24
33	GyA	93.3	0.11	92 29.218' W	33 16.821' N	8.10
34	GyA	908.6	1.04	92 28.968' W	33 16.977' N	9.15
36	GyA	1517.1	* 1.74	92 28.383' W	33 17.344' N	17.05
37	UnA	1290.2	1.48	92 28.197' W	33 17.488' N	14.50
W1	Bibb	--	0.47	--	--	4.61
W2	Bibb	--	0.23	--	--	2.25
W3	WarS	--	0.76	--	--	7.45
W5	GyA	--	0.23	--	--	2.25
Total Wetland Acreag			16.62	Total Credits		155.69



DEPARTMENT OF THE ARMY

VICKSBURG DISTRICT, CORPS OF ENGINEERS
4155 CLAY STREET
VICKSBURG, MISSISSIPPI 39183-3435

REPLY TO
ATTENTION OF:

July 18, 2012

Operations Division

SUBJECT: Permit Modification for the Construction of the
El Dorado Water Utility Pipeline Project, Located in Union
County, Arkansas

Mr. Larry Washington
El Dorado Water Utility
500 North Washington Street
El Dorado, Arkansas 71730

Dear Mr. Washington:

I refer to your recent request to modify your Department of the Army permit (subject above) to reflect the changes as described in your letter and as shown on the enclosed maps (enclosure 1).

The requested modification of the subject permit is hereby approved. Please retain this letter and enclosure with your permit file, since it will become a part of the original authorization. Also, the Special, General, and Regional Conditions of the Permit still apply to your modified project (enclosure 2).

This authorization for the proposed modification was based upon a preliminary determination that there may be jurisdictional areas on the property subject to regulation pursuant to Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act. An appeals form has been enclosed for your review (enclosure 3).

The Vicksburg District Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete the Customer Service Survey found on our web site at <http://per2.nwp.usace.army.mil/survey.html>. If it is more convenient for you, please complete and return the enclosed postage-paid post card (enclosure 4).

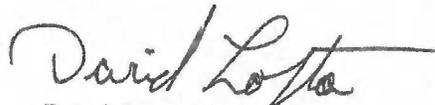
-2-

Please be advised that any deviation from the plans or location of the modified work must be approved by this office prior to the commencement of any work.

Thank you for advising us of your plans. If you change your plans for the proposed work, or if the proposed work does not comply with the conditions of these Nationwide Permits, please contact Mr. Mike Miller, telephone (601) 631-5499, fax (601) 631-5459, or e-mail address: regulatory@usace.army.mil. In any future correspondence concerning this project, please refer to identification no. MVK-2009-1236.

I am forwarding a copy of this letter to Mr. Greg Phillips, Senior Scientist, GBMC and Associates, 219 Brown Lane, Bryant, Arkansas 72022; and Ms. Loretta Reiber, Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.

Sincerely,



David Lofton
Chief, Permit Section
Regulatory Branch

Enclosures

219 Brown Lane

Bryant, AR 72022

(501) 847-7077

(501) 847-7943 fax



May 22, 2012

Mr. David Lofton
 U.S. Army Corps of Engineers
 Vicksburg District
 ATTN: CEMVK – OD-F
 4155 East Clay Street
 Vicksburg, MS 39183-3435

RE: Revised Route addendum to USACE Section 404 Permit for El Dorado Water Utilities Pipeline to the Ouachita River - MVK-2009-1236
 GBMc No. 3007-03-200

Mr. Lofton:

On July 30, 2010 the USACE Vicksburg District Office authorized the construction of the El Dorado Water Utilities Pipeline Project in El Dorado (Union County), Arkansas under NWP 12 and 7. During the final topographic and cultural resources surveys, the joint pipeline group determined that changes in the route would be necessary to accommodate a historical site, surface obstructions, and previously unidentified underground features. The new route was finalized on or about April 27, 2012. There was a new section of the new route (hence forth referred to as the revised route) that intersected wetlands and/or channels that had either not previously been delineated, or had not been delineated in the area near the intersection with the revised pipeline right-of-way (ROW). In addition, there were several locations the revised route transected a wetland that had already been delineated and permitted, but the route shifted enough that the linear distance of the wetland crossing needed to be revised.

This letter provides an overview of the project and additional information that should allow the USACE to re-issue a permit authorization covering the revised route. This letter serves as an addendum to the permit application that was submitted in June 2010 and resulted in the permit authorization from the USACE of July 30, 2010 (USACE Tracking No. 2009-1236).

Overview

The El Dorado Water Utilities Pipeline Project (the Project) consists of the construction of an underground force main pipeline and collection lines from the El Dorado Water Utilities' North and South Wastewater Treatment facilities, plus three industries (Lion Oil Company, Great Lakes Chemical Corporation, El Dorado Chemical Company) to convey up to 20 million gallons per day of treated effluent to a multi-port subsurface diffuser installed in the Ouachita River below the H. K. Thatcher Lock and Dam.

The network of collection lines and trunk lines is approximately 28 miles in total length. The pipeline will be constructed of bell and spigot PVC pipe and ranges from 12-inches for the smallest collection line up to 30-inches in diameter for the common trunk line. A lift station will be constructed at each of the five connections to the network to provide sufficient head to transport treated water to the Ouachita River without the need for supplemental lift. No wetlands or WOUS impacts occur at the proposed lift station construction areas. The pipeline will be installed by trench excavation except in areas of inundation, where the pipeline will be installed underground by horizontal directional drilling. Horizontal directional drilled and pipeline segments underneath highway/railroad crossings will be constructed using fusion welded high density polyethylene (HDPE) pipe. The minimum ground cover over the top of the pipeline will be 3'. In WOUS identified in the submitted report the construction area will be returned to pre-existing contours and elevation and thus no permanent loss as defined by the USACE (dredging or placement of fill) will occur.

The multi-port diffuser outfall structure will be constructed of fusion welded HDPE tapering from 36-inches to 8-inches in diameter and will extend approximately 80 feet from the top of bank into the Ouachita River. The diffuser will be embedded approximately 4 feet below the floor of the river and will be protected from scour by the placement of 18-inch stone around the diffuser. Ten HDPE risers with 6-inch diameter discharge nozzles will extend two feet above the floor of the river. The area excavated for the placement of the diffuser

Mr. David Lofton
May 22, 2012
Page 2

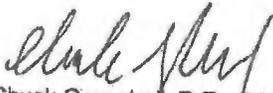
and embedment will be restored to pre-existing contours; no dredge or permanent fill will occur in the Ouachita River. A warning sign will be installed at the river's edge noting the presence of the underwater structure.

The Project route follows existing rights-of-way where possible to minimize the impact of construction. The pipeline will have a 30' permanent easement for the entire length that will be cleared as necessary and maintained. An additional 20' temporary construction easement has been acquired to facilitate equipment/material access during installation of the pipeline. Upon completion of construction, all areas impacted by the operations will be revegetated and restored in accordance with the requirements of the Arkansas Department of Environmental Quality permit for construction activities. For USACE permitting purposes, a 50' wide impact was conservatively assumed even though the temporary easement areas will not be maintained and will eventually revert to their preconstruction habitat.

The construction activities authorized by Permit MVK-2009-1236 and proposed by this submittal result in no permanent loss of wetlands. However, the clearing and establishment of a permanent 30' ROW will result in the conversion of forested wetlands to emergent vegetation or scrub/shrub wetlands for which compensatory mitigation is necessary. MVK-2009-1236 authorized the conversion of 16.6 acres of wetlands (14,479 linear feet, 50' wide corridor) for installation of the Ouachita Pipeline. Compensatory mitigation was provided for the Project in the form of 163 credits acquired from the Lower Cutoff Creek Mitigation Bank to offset the conversion of the 16.6 wetland acres from forested to emergent vegetation (PFO to PSS). However, the pipeline ROW described in the submittals for MVK-2009-1236 (June 2010) has been adjusted as indicated in Section 1.0 and will now result in impacts (but no permanent loss) to a total of 23.65 acres of wetlands, or an increase of 7.05 acres. El Dorado Water Utilities has entered an agreement to purchase 78 additional credits from the Lower Cutoff Creek Mitigation Bank for the additional impacts from the current ROW changes.

We appreciate the opportunity to provide information regarding this Project on behalf of El Dorado Water Utilities. If you or your staff have any questions regarding this matter, please contact me, Greg Phillips or Brad Phillips.

Sincerely,



Chuck Campbell, P.E., REM
Principal/Senior Engineer

Cc: Mike Miller-USACE

Summary of main changes to the Ouachita Pipeline Route (the revised route)

Change	Positive Effect	Negative Effect
1 - Shift of pipeline segment North away from Hwy 63 corridor.	Avoidance of wetlands 21, 22, 23, 24	Crossing of new wetlands W6, W7, W8, S9, W10, W11
2 - Moved line around wetland 32	Avoided impact to wetland 32.	none
3 - Pipeline shift to avoid cultural resources near wetlands 34, 35, 36	Avoided cultural resources and crossing of wetland 35	Increased impact length in wetland 34 and 36
4 - Shifted route in area that crosses wetland 9 to the east.	Avoided wetland W5	Increased impact length in wetland 9
5 - Shifted a large section of the feeder line to GLCC in order to avoid interference with existing underground brine lines	none	Increased impact to wetlands 13, 14, 15, 16
6 - Shifted a section of the feeder line to Lion Oil to the south so it could run in an existing cleared right-of-way.	Reduced linear distance of impact to wetland 12.	none
7 - Shifted the west terminus of the feeder line to EDCC to the north so that an existing right-of-way could be entered in less linear distance.	Reduced linear distance of impacts to wetland 1.	none
8 - Several other slight shifts in the pipeline position were made, some decreased linear impacts others increased linear impacts	Shifts that reflect decreases in impact are generally due to the new route being in already cleared land.	Shifts that increase impacts are generally due to them now being in areas that require mechanized land clearing.

**Jurisdictional Determination and Additional Permitting
Information for the Revised Route to the Ouachita Pipeline**

Addendum to USACE Project No. 2009-1236

Prepared for:

**El Dorado Water Utilities
500 North Washington
El Dorado, AR 71730**

Prepared by:

**GBM^c & Associates
219 Brown Lane
Bryant, AR 72022**

May 21, 2012

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APPENDICES

- Appendix A – Tables
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1.0 INTRODUCTION

On July 30, 2010 the USACE Vicksburg District Office authorized the construction of the El Dorado Water Utilities Pipeline Project in El Dorado (Union County), Arkansas under NWP 12 and 7. During the final topographic and cultural resources surveys, the joint pipeline group determined that changes in the route would be necessary to accommodate a historical site, surface obstructions, and previously unidentified underground features. The new route was finalized on or about April 27, 2012. There was a new section of the new route (hence forth referred to as the revised route) that intersected wetlands and/or channels that had either not previously been delineated, or had not been delineated in the area near the intersection with the revised pipeline right-of-way (ROW). In addition, there were several locations the revised route transected a wetland that had already been delineated and permitted, but the route shifted enough that the linear distance of the wetland crossing needed to be revised.

This letter report provides the necessary delineations of Waters of the United States (WOUS) and additional information that should allow the USACE to re-issue a permit authorization covering the revised route. This letter report serves as an addendum to the permit application that was submitted in June 2010 and resulted in the permit authorization from the USACE of July 30, 2010 (USACE Tracking No. 2009-1236).

2.0 PROJECT OVERVIEW

The El Dorado Water Utilities Pipeline Project (the Project) consists of the construction of an underground force main pipeline and collection lines from the El Dorado Water Utilities' North and South Wastewater Treatment facilities, plus three industries (Lion Oil Company, Great Lakes Chemical Corporation, El Dorado Chemical Company) to convey up to 20 million gallons per day of treated effluent to a multi-port subsurface diffuser installed in the Ouachita River below the H. K. Thatcher Lock and Dam.

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The multi-port diffuser outfall structure will be constructed of fusion welded HDPE tapering from 36-inches to 8-inches in diameter and will extend approximately 80 feet from the top of bank into the Ouachita River. The diffuser will be embedded approximately 4 feet below the floor of the river and will be protected from scour by the placement of 18-inch stone around the diffuser. Ten HDPE risers with 6-inch diameter discharge nozzles will extend two feet above the floor of the river. The area excavated for the placement of the diffuser and embedment will be restored to pre-existing contours; no dredge or permanent fill will occur in the Ouachita River. A warning sign will be installed at the river's edge noting the presence of the underwater structure.

The Project route follows existing rights-of-way where possible to minimize the impact of construction. The pipeline will have a 30' permanent easement for the entire length that will be cleared as necessary and maintained. An additional 20' temporary construction easement has been acquired to facilitate equipment/material access during installation of the pipeline. Upon completion of construction, all areas impacted by the operations will be revegetated and restored in accordance with the requirements of the Arkansas Department of Environmental Quality permit for construction activities. For USACE permitting purposes, a 50' wide impact was conservatively assumed even though the temporary easement areas will not be maintained and will eventually revert to their preconstruction habitat.

The construction activities authorized by Permit MVK-2009-1236 and proposed by this submittal result in no permanent loss of wetlands. However, the clearing and establishment of a permanent 30' ROW will result in the conversion of forested wetlands to emergent vegetation or scrub/shrub wetlands for which compensatory mitigation is necessary. MVK-2009-1236 authorized the conversion of 16.6 acres of wetlands (14,479 linear feet, 50' wide corridor) for installation of the Ouachita Pipeline. Compensatory mitigation was provided for the Project in the form of 163 credits acquired from the Lower Cutoff Creek Mitigation Bank to offset the conversion of the 16.6 wetland acres from forested to emergent vegetation (PFO to PSS). However, the pipeline ROW described in the submittals for MVK-2009-1236 (June 2010) has been adjusted as indicated in Section 1.0 and will now result in impacts (but no permanent loss) to a total of 23.65 acres of wetlands, or an increase of 7.05 acres. El Dorado Water Utilities has entered an agreement to purchase 78 additional credits from the Lower Cutoff Creek Mitigation Bank for the additional impacts from the current ROW changes.

3.0 SUMMARY OF ROUTE CHANGES

Figure 1 provides an overlay of the original route that was permitted and the revised route (both with 50' wide ROW). The majority of the route revisions occurred due to minor obstacles that needed to be avoided (homes, historic sites, open water bodies, etc.). These revisions generally resulted in only minor shifts in the position of the pipeline. However, there were seven sections of line (Figure 1) where significant shifts occurred. The first section where a significant shift occurred was along the Northwest trunk line from El Dorado Chemical Company. The revision to the route in

this area (Wetland 1) was made to reach an existing cleared ROW in less linear distance, minimizing the amount of wetland that would need to be cleared. The second revised section was along the trunk line from Lion Oil. This revision was necessary to avoid a solid waste management unit (SWMU) on Lion Oil property. The adjustment in the pipeline route that was designed to avoid the SWMU added additional linear distance to the pipeline in Wetland 12 but allowed the revised route to enter an existing cleared ROW and minimize (actually decrease) the linear feet of new wetland that will need to be cleared. The third section was along the trunk line for Great Lakes Chemical Corporation and was determined to be necessary due to crowding of pipelines in the original route ROW. The revised route shifts a portion the pipeline south off the existing cleared ROW into a wooded portion of wetlands that will require additional land clearing of wetland to accommodate more new ROWs. This area of the revised route has a significant change in wetland impacts. The fourth section is along the pipeline in the center of the route that had originally been proposed to parallel a portion of the Highway 63 corridor. However, due to highway easement issues the pipeline route was shifted to the north approximately 1.5 miles. The shift in the pipeline position removed the crossing of four wetland areas (Wetlands 21, 22, 23 and 24), but added the crossing of several streams and wetland areas (W6-W11) that required additional delineation. Delineation of these areas is discussed later in this report. The fifth section of line was in the eastern portion of the line at Wetland 32. This wetland is now being avoided entirely. The sixth section where the pipeline route was revised significantly is near the pipeline confluence with the Ouachita River, in Wetlands 34, 35 and 36. The pipeline was revised in this area to avoid and preserve an identified historic site. The seventh and final section is along the southern trunk line north of Hwy 82 and east of Hwy 167. An adjustment was made to the route in this area to avoid some industrial and private property. This route adjustment was completed in a manner that allowed less wetland to be impacted by avoiding Wetland W5 entirely. In addition, the pipeline crossing at Wetlands 8 and 9 was originally determined to not require clearing. This no longer appears to be the case, so these areas are now included as impacted Wetlands requiring mitigation.



Figure 1. Revised (current) pipeline route and associated Watersheds of the U.S., overlaid on old (permitted) pipeline route.

May 21, 2012

4.0 PREVIOUSLY IDENTIFIED/DELINEATED WETLANDS ON REVISED ROUTE

The majority of the revised pipeline route runs through upland areas or is represented by only minor position shifts where it encounters WOUS. Where the pipeline revised route runs through previously delineated wetlands, in areas where the pipeline position has shifted only minimally, new desktop measurements have been made to revise the linear distance the pipeline transects a wetland area. The new linear distances are based on hydric soil boundaries and topography, consistent with the method used in the initial permit application. Where the pipeline revised route passes through new wetland areas (not previously delineated), these areas were delineated in the field and are described later in this report.

An update of the linear distance each wetland is transected and the total impact to WOUS for each affected wetland are provided in Table 1. Updates in linear distances have been made to many of the existing (already permitted) wetland areas. A total of 6 new wetland areas (W6-W11) are now crossed by the pipeline, and were delineated and added to Table 1. Seven wetland areas (21-24, 32, 35 and W5) were eliminated from Table 1, as they were no longer crossed by the revised route. Linear distances provided in Table 1 reflect the distances where permanent impact will occur, i.e. areas that will require mechanized land clearing of the ROW in each wetland. The pipeline route will require a 30' permanent cleared ROW, and 20' of temporary (for construction) ROW. To be conservative the entire 50' ROW was assumed to be cleared permanently (10+ years) in most areas. To see total distance of wetland crossed, including temporary impacts and permanent impacts from land clearing, refer to the tables provided in Appendix A.

The current permit authorization and associated mitigation covers permanent impacts (land clearing) to wetlands totaling 163 credits. The revised route requires mitigation credits totaling approximately 241 credits, a net increase of 78 mitigation credits, all due to mechanized land clearing in wetlands. Figure 1 and the figures included in Appendix B display the entire revised route as compared to the previous route that was initially permitted.

Table 1. Summary of wetlands impacted by the revised pipeline route.

ID	Soil Type	Original Impacted (Cleared) Length (ft)	Revised Impacted Length (ft)	Net Length Change (ft)	ROW Width Cleared (ft)	Acres Impacted (50' ROW)	long	lat	Wetland Type
1	OfA	677.0	492.4	-184.6	50.0	0.57	92° 40.895' W 33° 15.370' N	PSS1	
2	GyA	0.0	0.0	0.0	50.0	0.00	92° 40.866' W 33° 15.339' N	PSS1	
3	GyA	354.0	213.5	-140.5	50.0	0.25	92° 40.602' W 33° 15.086' N	PSS1	
4	GyA	267.0	0.0	-267.0	50.0	0.00	92° 39.867' W 33° 15.076' N	PSS1	
5	BbA	1134.6	701.1	-433.5	50.0	0.80	92° 38.499' W 33° 14.905' N	PSS1	
6	BbA	407.8	435.3	27.5	50.0	0.50	92° 38.088' W 33° 14.659' N	PFO1	
7	OfA	0.0	481.9	481.9	50.0	0.55	92° 37.140' W 33° 14.053' N	PSS1	
8	GyA	0.0	369.2	369.2	50.0	0.42	92° 37.098' W 33° 12.243' N	PFO1	
9	GyA	0.0	700.0	700.0	50.0	0.80	92° 37.513' W 33° 12.079' N	PFO4	
10	BbA	0.0	0.0	0.0	50.0	0.00	92° 38.928' W 33° 11.455' N	PFO1	
11	BbA	0.0	0.0	0.0	50.0	0.00	92° 39.405' W 33° 11.293' N	PFO1	
12	OfA	870.0	305.2	-564.8	50.0	0.35	92° 40.336' W 33° 11.584' N	PSS1	
13	GyA	0.0	238.0	238.0	50.0	0.27	92° 41.499' W 33° 11.232' N	PSS1	
14	GyA	0.0	1700.4	1700.4	50.0	1.95	92° 40.948' W 33° 11.199' N	PFO4	
15	OfA	0.0	915.1	915.1	25.0	0.53	92° 40.773' W 33° 11.178' N	PFO4	
16a	OfA	0.0	479.0	479.0	25.0	0.27	92° 40.487' W 33° 11.166' N	PFO1	

ID	Soil Type	Original Impacted (Cleared) Length (ft)	Revised Impacted Length (ft)	Net Length Change (ft)	ROW Width Cleared (ft)	Acres Impacted (50' ROW)	long	lat	Wetland Type
16b	OfA	600.0	1117.0	517.0	50.0	1.28	92° 40.162' W	33° 11.105' N	PFO1
17	GyA	358.4	461.3	102.9	50.0	0.53	92° 39.856' W	33° 10.702' N	PFO4
18	OfA	212.5	613.4	400.9	50.0	0.70	92° 39.933' W	33° 10.888' N	PFO4
19	GyA	490.4	283.6	-206.8	50.0	0.33	92° 39.961' W	33° 10.965' N	PFO4
20	OfA	729.1	542.0	-187.1	50.0	0.62	92° 39.960' W	33° 11.086' N	PFO4
21	BbA	0.0	0.0	0.0	50.0	0.00	92° 34.897' W	33° 13.309' N	PSS1
22	BbA	411.5	0.0	-411.5	50.0	0.00	92° 34.679' W	33° 13.399' N	PSS1
23	GyA	326.0	0.0	-326.0	50.0	0.00	92° 34.160' W	33° 13.556' N	PSS1
24	BbA	0.0	0.0	0.0	50.0	0.00	92° 33.774' W	33° 13.798' N	PSS1
25	BbA	270.8	339.6	68.8	50.0	0.39	92° 33.061' W	33° 14.320' N	PFO4
26	BbA	278.8	274.8	-4.0	50.0	0.32	92° 32.816' W	33° 14.499' N	PFO4
27	OfA	131.4	164.7	33.3	50.0	0.19	92° 32.636' W	33° 14.630' N	PFO4
28	OfA	454.7	238.5	-216.2	50.0	0.27	92° 31.876' W	33° 15.151' N	PFO1
29	BbA	762.7	693.1	-69.6	50.0	0.80	92° 30.666' W	33° 15.911' N	PFO4
30	BbA	466.8	458.4	-8.4	50.0	0.53	92° 30.280' W	33° 16.154' N	PFO1
31	BbA	105.6	97.7	-7.9	50.0	0.11	92° 30.064' W	33° 16.289' N	PFO1
32	GyA	161.8	0.0	-161.8	50.0	0.00	92° 29.691' W	33° 16.523' N	PFO4

ID	Soil Type	Original Impacted (Cleared) Length (ft)	Revised Impacted Length (ft)	Net Length Change (ft)	ROW Width Cleared (ft)	Acres Impacted (50' ROW)	long	lat	Wetland Type
33	GyA	93.3	93.3	0.0	50.0	0.11	92° 29.218' W	33° 16.821' N	PFO4
34	GyA	908.6	1565.4	656.8	50.0	1.80	92° 28.968' W	33° 16.977' N	PFO4
35	GyA	0.0	0.0	0.0	50.0	0.00	92° 28.661' W	33° 17.170' N	PSS1
36	GyA	1517.1	1957.1	440.0	50.0	2.25	92° 28.383' W	33° 17.344' N	PFO1
37	UnA	1290.2	1388.9	98.7	50.0	1.59	92° 28.197' W	33° 17.488' N	PFO1
W1	Bibb	410.0	387.0	-23.0	50.0	0.44	92.65247	33.17870	PSS1
W2	Bibb	--	--	0.0	--	0.23	92.64880	33.17850	PSS1
W3	WarS	--	--	0.0	--	0.76	92.63284	33.17832	PFO1
W4	Amy	--	--	0.0	--	0.00	92.62401	33.18742	PFO1
W5	GyA	200.0	0.0	-200.0	50.0	0.00	92.62618	33.19600	PFO1
W6	OfA	0.0	559.4	559.4	50.0	0.64	92.61235	33.23525	PSS1
W7	BbA	0.0	168.7	168.7	50.0	0.19	92.59285	33.23519	PFO1
W8	BbA	0.0	50.0	50.0	50.0	0.06	92.58629	33.23524	PFO1
W9	GyA	0.0	441.8	441.8	50.0	0.51	92.58353	33.23514	PFO1
W10	BbA	0.0	521.7	521.7	50.0	0.60	92.57634	33.23494	PFO1
W11	BbA	0.0	993.2	993.2	50.0	1.14	92.56535	33.23715	PFO1
Totals:		13890	20442	6551		23.65			

5.0 IDENTIFICATION/DELINEATION OF NEW AREAS ALONG REVISED ROUTE

GBM^c & Associates conducted a jurisdictional determination (JD) for the revised route with the purpose of determining and delineating any jurisdictional WOUS. The revised route was assessed from the desktop using prior wetland delineations completed for the permitted pipeline route, aerial photographs, topographic maps, and soil survey maps of the area. Desktop evaluation was used to determine new areas along the revised route potentially containing WOUS. The desktop analysis allowed field investigation to be focused in those areas most likely to contain streams and wetlands that had not previously been assessed. Areas along the revised route where streams and wetlands had previously been identified/delineated were not assessed further in the field during this effort.

The field assessment portion of the review was completed on December 12-13, 2011. In the week prior to the field assessment rainfall in excess of three inches was received in the El Dorado area. The entire revised route, in the areas where new stream or wetlands potentially existed was assessed during the field visit. Field effort was focused in areas that displayed hydrophytic vegetation, hydric soil indicators, and areas displaying the most potential for jurisdictional waters during the desktop evaluation. Assessment points included streams and areas displaying wetland characteristics.

Wetland hydrology indicators were observed, primarily in the flood plain of streams along the revised route. The assessment was not conducted during the growing season as determined by methods suggested in the Atlantic and Gulf Coastal Plain Regional Supplement to the USACE 1987 Corps of Engineers Wetland Delineation Manual. Field indicators of biological activity as suggested in the Regional Supplement (emergence of herbaceous plants, appearance of new growth from vegetative crowns, coleoptile/cotyledon emergences from seed, bud burst on woody plants, emergence or elongation of leaves on woody plants, or emergence or opening of flowers) were not observed during the site visit. However, enough vegetative material was still remaining to allow most of the dominant vegetation to be identified. Best practical judgment was utilized when assessing wetland hydrology indicators for making a determination of the presence or absence of a wetland.

The pipeline will require a 50' wide ROW. The revised route follows existing pipeline ROW where possible or goes through open fields, minimizing the need for mechanized land clearing of new areas. The revised route has two primary sections that encounter new wetland areas and stream crossings. The longest revised section replaces a stretch of pipeline that was permitted to parallel the Hwy 63 corridor. The revised location of this section now runs west to east approximately 1.5 miles north of Hwy 63 (Section 4 in Figure 1). The second primary section of the revised route occurs in the south west portion of the pipeline, along the trunk line to Great Lakes Chemical Corporation (Section 3 in Figure 1).

The revised route crosses five streams (S1-S5) and six wetlands (Wetland W6-W11). Terrain along the majority of the route is gently rolling hills with some flat areas near wetlands. Dominant adjacent land use along the route includes forested, residential, and commercial/industrial areas. Detailed discussion of each of these water bodies, as well as their jurisdictional status, is contained in the report sections that follow.

5.1 Streams

A total of 5 streams were encountered along the alternate route. Each of these streams was characterized to aid in the determination of their jurisdictional status. Ordinary high water widths and depths (OHWW and OHWD, respectively), latitude/longitude coordinates, and stream type for each of the streams are tabularized in Table 2. Locations of each of the stream crossings are displayed in the figures located in Appendix B, field forms and photos are located in Appendix C. Streams were labeled as S1-S5.

Table 2. Summary of stream measurements for the Ouachita Pipeline revised route.

Station	Stream Name	OHWW (ft)	OHWD (ft)	Latitude	Longitude	Stream Type
S1	Unnamed Trib to Flat Creek	4.0	0.5	33.23525	92.61235	Ephemeral
S2	Unnamed Trib to Salt Creek	15.0	3.0	33.23519	92.59285	Intermittent
S3	Unnamed Trib to Salt Creek	7.0	1.3	33.23514	92.58353	Intermittent
S4	Unnamed Trib to Salt Creek	8.0	2.3	33.23494	92.57634	Perennial
S5	Unnamed Trib to Salt Creek	4.0	0.3	33.23715	92.56535	Ephemeral

Table 2 identifies each stream as perennial, intermittent, or ephemeral. Perennial and intermittent streams are generally considered relatively permanent waters (RPWs) and are by definition jurisdictional. Ephemeral streams are only jurisdictional if a "significant nexus" to WOUS exists.

Tributaries S2, S3 and S4 are considered perennial or intermittent streams and are all likely considered RPWs. RPWs contain flow year round or have continuous flow at least seasonally and are considered jurisdictional WOUS. These streams are typical meandering low gradient gulf coastal streams with good floodplain connection and sandy or silt/clay bottom substrates.

Tributaries S1 and S5 are ephemeral first order streams that should be considered non-RPWs. Non-RPWs are considered jurisdictional WOUS, if they contain a "significant nexus" to a WOUS. S1 and S5 have very small channel size and appear to carry very low flow volumes, and therefore, may not be considered to have a "significant nexus". S5 is the least developed of the two ephemeral streams and is only a swale at the location the pipeline ROW will cross. However, each of the five streams is located in wetlands so any impacts associated with the stream crossing are captured in the wetland impact acreage provided in Table 1.

5.2 Wetlands

Wetland determination was based on the three diagnostic characteristics (wetland hydrology, hydrophytic vegetation, and hydric soils) outlined in the United States Army Corps of Engineers (USACE) Wetlands Delineation Manual (1987 Corps Manual) and the Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic And Gulf Coastal Plain Region. For an area to be considered a wetland it is required, under most circumstances, to meet each of the three diagnostic criteria.

A total of seven areas were identified as having the potential to be considered wetlands based on aerial photographs, topographic maps, soil survey maps, and initial field observations. Routine wetland determinations were performed in each of these areas to determine the presence or lack of wetland characteristics. Wetlands were determined to exist at six (Wetlands W6-W11) of the seven identified areas. Boundaries for each wetland were found to follow the boundary of the hydric soils mapping unit which were noted in the field by changes in topography such that hydrology indicators were eliminated. Wetland numbering (identification) provided in this report follows that of the original permit application, picking up the numbering where the original route left off (i.e. the last report ended at W5 so this report picks up at W6.) Summary discussion of the routine determinations and delineations for each of the wetland areas follows. Figures located in Appendix B show general locations and delineations of each of the wetlands. Routine determination field forms and photographs are included as Appendix C.

5.2.1 Wetland 6 (W6)

W6 is a palustrine scrub shrub wetland in a depressional area fed hydrologically by tributary S1 and direct rainfall. The area appears to have been disturbed at some point in the past, likely by oil exploration, and is somewhat devoid of vegetation except in the wettest areas (see photos in Appendix C). The pipeline ROW cuts through the north side of the barren area and intersects the wetland. W6 was characterized at three locations (points H,I,J) along the pipeline ROW. Each of the points shared similar sandy soils that demonstrated redoximorphic characteristics. The mapped soil unit is Oil Wasteland-Fluvaquents (OfA) which is on the national hydric soils list. The depressional area along the pipeline ROW displayed several features indicating that it is flooded frequently including drift lines/deposits, drainage pathways and geomorphic position. Dominant vegetation included loblolly pines, wax myrtle and American holly. Several other herbaceous species occurred in the wetter areas (particularly at Point J) and included broom sedge and dog fennel. A small rise near the western boundary of the wetland does not exhibit hydrology indicators and the linear distance (120 ft.) the pipeline follows the rise will be subtracted from the total wetland length.

5.2.2 Wetland 7 (W7)

W7 is a palustrine forested wetland in the floodplain of tributary S2. Though there are sufficient trees in this wetland to characterize it as "forested" some areas of the wetland are dominated by mostly emergent species. W7 was characterized at location E along the pipeline ROW. Much of the area was either inundated or saturated to the surface. Soils were silt loam or loamy sand and displayed a depleted matrix. The mapped soil unit is Bibb (BbA) which is on the national hydric soils list. Dominant vegetation included sweetgum trees, blackgum and wax myrtle. W7 is represented as a fairly good quality wetland and should be directionally drilled during pipeline construction to protect wetland integrity.

5.2.3 Wetland 8 (W8)

W8 occurs in a drainage swale and is classified as a palustrine forested wetland. Point D was used to characterize this site. Soils were saturated to the surface and displayed a high water table and obvious drainage patterns. Soils were characterized as silt loam with a depleted matrix. Point D is in the Darden (DdC) soil complex but the soil characteristics observed in the field are more similar to the Bibb soil complex which is immediately down gradient of the point. Dominant vegetation near the point includes blackgum trees, sweetgum and American holly.

5.2.4 Wetland 9 (W9)

W9 is a palustrine forested wetland in the floodplain of tributary S3. Indicators of wetland hydrology at this site (Point C) included saturation in upper 6 inches, drift deposits up to a foot above the ground surface and water marks on trees. W9 is in the Bibb soil complex and was field characterized as being a silt loam soil with a depleted matrix. Dominant vegetation included blackgum trees, loblolly pine and American holly.

5.2.5 Wetland 10 (W10)

W10 is a palustrine forested wetland in the floodplain of tributary S4. Much of the area was inundated or saturated to the surface. Inundated areas were mostly dominated by emergent herbaceous species represented mostly by cattail. Other dominant vegetation included sweetgum trees, water oak and wax myrtle. Soils were characterized at Point B and were sandy loam and loamy sand displaying a depleted matrix. Soils in the wetland area were mapped as Guyton (GyA) soil complex, which is on the national hydric soils list. W10 is represented as a fairly good quality wetland and should be directionally drilled during pipeline construction to protect wetland integrity.

5.2.6 Wetland 11 (W11)

W11 was characterized at Point F and was determined to be a palustrine forested wetland. The center of the wetland was in a drainage swale that transected the pipeline ROW and forms tributary S5. Hydrology indicators included inundation (in the swale's center) water marks and water stained leaves. Silt loam soils dominated with a depleted matrix. Point F falls in an area mapped as Oil Wasteland-Fluvaquents, but the pipeline ROW also crosses an area mapped as Bibb soils (both hydric) in proximity to Point F. The area characterized was dominated by black willow trees, buttonbush and sweetgum.

6.0 SUMMARY

The revised pipeline route was assessed in order to characterize/delineate jurisdictional WOUS (streams & wetlands). Delineated wetlands and stream locations are displayed in figures included in Appendix B. The figures in Appendix B include a series of aerial images displaying the overall revised pipeline route, stream locations and each individual wetland area (including new areas W6-W11 and their associated assessment points).

A portion of the revised route is located in pre-existing and maintained ROWs, roadways, emergent wetlands, or open water habitats and will require minimal land clearing for construction activities associated with the pipeline installation. All disturbed areas will be returned to pre-existing conditions at project completion, and no mechanized land clearing is necessary within these areas thus no mitigation will be required in those areas.

Construction of the pipeline will not result in any permanent change in topography to waters of the U.S. All trenches will be backfilled according to conditions promulgated in USACE Nationwide Permit No. 12 to meet pre-existing conditions or directional boring will be utilized so no surface disturbance will occur. Intentions are to directional bore new Wetlands W7 and W10. However, some level of mechanized land clearing will be required in each wetland, and compensatory mitigation will likely be required to offset impacts due to mechanized land clearing. Where mechanized land clearing is necessary to establish a ROW for maintenance access, mitigation will be required to off-set the impacts resulting from conversion of forested wetland to emergent wetland. No permanent loss of wetlands will occur in any area of this project. Approximately 78 additional mitigation credits will be purchased from the Lower Cut-off Creek Mitigation Bank (or appropriate alternative) in order to off-set impacts to wetlands along the pipeline ROW associated with mechanized land clearing in wetlands along the revised pipeline route.



DEPARTMENT OF THE ARMY

VICKSBURG DISTRICT, CORPS OF ENGINEERS

4155 CLAY STREET

VICKSBURG, MISSISSIPPI 39183-3435

REPLY TO
ATTENTION OF:

July 30, 2010

DL
LOFTON
CEMVK-OD-FP
9/30/10

Operations Division

SUBJECT: Permit Requirements for the Construction of the El Dorado Water Utilities Pipeline Project, Located in Union County, Arkansas

Mr. Larry Washington
El Dorado Water Utility
500 North Washington Street
El Dorado, Arkansas 71730

Dear Mr. Washington:

Based upon the information furnished on June 15, 2010, (enclosure 1), it appears that Department of the Army permit requirements for the proposed wastewater pipeline will be authorized by Nationwide Permit No. 12, and the proposed outfall structure will be authorized by Nationwide Permit No. 7, as specified in the March 12, 2007, Federal Register, Issuance of Nationwide Permits; Notice (72 FR 11092-11198), provided the activities comply with the Nationwide Permits Special Conditions (enclosure 2), the Nationwide Permit General Conditions (enclosure 3), and the Regional Conditions (enclosure 4). It is your responsibility to read and become familiar with the enclosed conditions in order for you to ensure that the activities authorized herein comply with the Nationwide Permits.

This authorization is contingent upon the successful completion of the mitigation as described in your mitigation plan (enclosure 5). Please provide proof of mitigation to this office prior to the initiation any construction on this project.

This verification is valid until the NWP is modified, reissued, or revoked. All of the existing NWPs are scheduled to be modified, reissued, or revoked prior to March 18, 2012. It is incumbent upon you to remain informed of changes to the NWPs. We will issue a public notice when the NWPs are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant Nationwide Permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this Nationwide Permit.

Upon completion of the activities authorized by these Nationwide Permits, please fill out the enclosed certification of compliance (enclosure 6) and return it to our office.

NW-7 # NW-12 7-30-10

-2-

This verification of Department of the Army regulatory requirements does not convey any property rights, either in real estate or material or any exclusive privileges, and does not authorize any injury to property or invasion of rights or local laws or regulations, or obviate the requirement to obtain State or local assent required by law for the activity discussed herein.

This authorization was based upon a preliminary determination that there may be jurisdictional areas on the property subject to regulation pursuant to Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act. An appeals form has been enclosed for your review (enclosure 7).

The Vicksburg District Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete the Customer Service Survey found on our web site at <http://per2.nwp.usace.army.mil/survey.html>. If it is more convenient for you, please complete and return the enclosed postage-paid post card (enclosure 8).

Thank you for advising us of your plans. If you change your plans for the proposed work, or if the proposed work does not comply with the conditions of these Nationwide Permits, please contact Mr. Mike Miller, telephone (601) 631-5499, fax (601) 631-5459, or e-mail address: regulatory@usace.army.mil. In any future correspondence concerning this project, please refer to identification no. MVK-2009-1236.

I am forwarding a copy of this letter to Mr. Greg Phillips, Senior Scientist, GBMC and Associates, 219 Brown Lane, Bryant, Arkansas 72022; and Ms. Loretta Reiber, Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.

Sincerely,

David Lofton
Chief, Permit Section
Regulatory Branch

Enclosures

CF:
CEMVK-OD-MP

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

District Office	Vicksburg District	File/ORM #	MVK-2009-1236	PJD Date:	Jul 30, 2010
State	AR	City/County	Union	Name/ Address of Person Requesting PJD	Mr. Larry Washington El Dorado Water Utility 500 North Washington Street El Dorado, Arkansas 71730
Nearest Waterbody:	Ouachita River			Location: TRS, Lat/Long or UTM:	33.29122 -92.46931
Identify (Estimate) Amount of Waters in the Review Area:	Name of Any Water Bodies on the Site Identified as		Tidal: _____		
Non-Wetland Waters:	Stream Flow:	Section 10 Waters:	Non-Tidal: Ouachita River		
_____ linear ft _____ width _____ acres _____	_____ N/A				
Wetlands: _____ acre(s)	Cowardin Class:	Palustrine, forested			
		<input checked="" type="checkbox"/> Office (Desk) Determination		<input type="checkbox"/> Field Determination: _____ Date of Field Trip: _____	

SUPPORTING DATA: Data reviewed for preliminary JD (check all that apply - checked items should be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: _____
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps _____
- Corps navigable waters' study: _____
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite quad name: AR-HARRELL BRAKE
- USDA Natural Resources Conservation Service Soil Survey. Citation: _____
- National wetlands inventory map(s). Cite name: _____
- State/Local wetland inventory map(s): _____
- FEMA/FIRM maps: _____
- 100-year Floodplain Elevation is: _____
- Photographs: Aerial (Name & Date): http://mapper.acme.com
- Other (Name & Date): _____
- Previous determination(s). File no. and date of response letter: _____
- Other information (please specify): _____

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

 <p>7-30-10 Signature and Date of Regulatory Project Manager (REQUIRED)</p>	<p>Signature and Date of Person Requesting Preliminary JD (REQUIRED, unless obtaining the signature is impracticable)</p>
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EXPLANATION OF PRELIMINARY AND APPROVED JURISDICTIONAL DETERMINATIONS:

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "preconstruction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

DECLARATION OF KENT STEGALL

1. My name is Kent Stegall. I am more than eighteen years old and am competent to make this declaration. This declaration is based on my personal knowledge.
2. I am currently the President of Save the Ouachita, Inc. I have been a member since 1999, and President since approximately 2005.
3. I am familiar with Save the Ouachita's policies, structure, and practices.
4. Save the Ouachita, Inc. is an Arkansas registered Non-Profit Corporation. It was established on March 31, 1999.
5. Save the Ouachita, Inc. is a local organization of sportsmen and women whose purpose is to protect and restore the Ouachita River, its watershed, and the surrounding wetlands for existing and future generations.
6. Save the Ouachita, Inc.'s members include residents of Union County, Arkansas and people who live, work, or recreate on and near the Ouachita River and its watershed.
7. The ecological, biological, aesthetic, and other interests that Save the Ouachita, Inc. seeks to protect with litigation against the U.S. Army Corps of Engineers are directly related to Save the Ouachita Inc.'s purpose of protecting and restoring the Ouachita River, its watershed, and the surrounding wetlands.
8. On behalf of its members, Save the Ouachita is concerned about a proposed pipeline known as the El Dorado Pipeline Project, and its impacts on the Ouachita River, watershed, and surrounding wetlands. My understanding is that the purpose of the proposed pipeline is to connect three industries and the City of El Dorado through a pipeline to transport wastewater to the Ouachita River.

9. Save the Ouachita, Inc. participates regularly in the public decision-making process for permits affecting the Ouachita River and its watershed. I understand that for individual “dredge and fill” permits under the Clean Water Act, the Corps’ provides public notice and publicly sets a deadline by which organizations and individuals may participate in the administrative permitting process by submitting comments to the Corps.

10. I did not receive or become aware of any public notice of, or opportunity to comment on, the Corps’ decision to allow dredging and filling of wetlands in connection with construction of the proposed pipeline. My understanding is that the reason for this lack of public notice and opportunity to comment is that the Corps authorized dredging and filling of wetlands for the proposed pipeline under a national permit, rather than an individual permit.

11. If there were public notice and an opportunity to comment on the proposed pipeline, I would have filed comments on behalf of myself and on behalf of Save the Ouachita, Inc. and its members.

12. If there was a detailed governmental evaluation of the proposed pipeline’s environmental impacts, I would review that information to improve my understanding of the project and to participate more effectively in the decision-making process. I understand that such evaluations are often available as Environmental Impact Statements or Environmental Assessments under the National Environmental Policy Act.

13. I am also a founding member of the Ouachita Riverkeeper, Inc., and have been active in the organization since its inception in 2006.

14. I own and live on the property located at 2180 Crain City Road, El Dorado, Arkansas 71730, in Union County. I have lived at this address for approximately one year. I also own

property along the Ouachita River at 964 Pigeon Hill Landing Road, El Dorado, Arkansas 71730, Union County. I have lived in Union County all my life.

15. I have reviewed El Dorado Water Utility's permit application to the U.S. Army Corps of Engineers and the associated documents. I have developed a general understanding of the proposed pipeline's siting.

16. Based on this review, I understand that my property is less than a mile and a half from wetlands on the proposed pipeline route that dredging and filling will disturb.

17. For recreation, I regularly visit these and other wetland areas through which the proposed pipeline will cross. I sightsee and fish in these areas year round. I also hunt in these areas during Archery, Muzzle Load, and Modern Gun seasons.

18. I have participated in these activities throughout my life, and intend to continue doing so.

19. Part of my enjoyment hunting and fishing in these areas, comes from tracking the patterns of natural animal activity. I am concerned that construction and operation of the proposed pipeline will disrupt the presence of game in the area and disturb my enjoyment of participating in this recreation.

20. I am concerned that spills and leaks from the proposed pipeline will disturb my enjoyment of fishing and hunting in the impacted areas. My understanding is that there is a risk of spills and leaks from any wastewater pipeline, and that such spills and leaks are often difficult to detect. I worry that any fish or game I might catch may be contaminated. I also worry that the habitat supporting the fish and game will be destroyed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 5, 2012.


Kent Stegall

DECLARATION OF RALPH SHANE CALAWAY

1. My name is Ralph Shane Calaway. I am more than eighteen years old and am competent to make this declaration. This declaration is based on my personal knowledge.

2. I own and live at the property located at 2348 South Jackson Road, El Dorado, Arkansas 71730, in Union County. I have lived at this property for more than forty-five years. My family has lived on this property since 1923.

3. I am currently a member of Save the Ouachita, Inc., and have been for more than one year.

4. I am concerned about a proposed pipeline known as the El Dorado Pipeline Project, and its impacts on the Ouachita River, watershed, and surrounding wetlands. My understanding is that the purpose of the proposed pipeline is to connect three industries and the City of El Dorado through a pipeline to transport wastewater to the Ouachita River.

5. I have reviewed El Dorado Water Utility's permit application to the U.S. Army Corps of Engineers and the associated documents. I have developed a general understanding of the proposed pipeline's siting.

6. I understand that the proposed pipeline will pass within one hundred feet of my property.

7. I am concerned that the proposed pipeline will cause damage, such as leaks, in and around my property. I know it can be difficult to determine when and if an underground pipe is leaking. Chemical leaks have occurred from another nearby underground pipeline. One such leak killed a stand of trees near my property. I am worried that similar leaks will occur and take many months to repair if discovered.

8. I enjoy keeping and caring for a dog, a pony, and a few horses within close proximity to the proposed pipeline. I also enjoy spending time on my property maintaining equipment and landscaping. I am concerned that leaks from the pipeline will harm my animals, contaminate my property, and make it unfit to live or work on. This will cause me emotional, financial, and physical harm. Contemplation of contamination has already caused me significant anxiety. I am worried that the proposed pipeline will harm my property, disrupt its use, and threaten my safety and ability to care for my family.

9. I am also concerned by the proposed pipeline's impact on surrounding wetland areas. I often spend time walking and sightseeing on and near the proposed pipeline route as well as near the Ouachita River. I hunt, hike, and fish in the wetland areas on and near the proposed pipeline route, and have done so since I was a boy. The potential for ground contamination and clear-cutting on the right of way will impair the habitat of the game I seek. I intend to continue these activities, and am concerned that the proposed pipeline will disturb my enjoyment of the area's beauty, wildlife, and wetland ecosystem.

10. I am also harmed by the lack of public notice on the proposed pipeline project, and the lack of an opportunity to participate in the decision-making process. I received a letter notifying me of a potential survey on my property. I objected to the surveyors work on my property by letter dated March 18, 2010. My concerns were ignored.

11. I have made written and verbal efforts to communicate with the proposed pipeline's proponents without response or avail. I have wanted to participate in, and influence, the decisions allowing this project, but have been shut out of the process by the Corps' decision to permit the pipeline without public participation. The inability to communicate effectively with any person responsible for implementing the proposed pipeline has been distressing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 29, 2012.


Ralph Shane Calaway

DECLARATION OF CHERYL SLAVANT

1. My name is Cheryl Slavant. I am more than eighteen years old, and I am competent to make this declaration. This declaration is based on my personal knowledge.
2. I am currently the designated Ouachita Riverkeeper. As such, I have been the director of Ouachita Riverkeeper, Inc. for more than four years, and am familiar with the organization's policies, structure, and practices.
3. Ouachita Riverkeeper, Inc. is a non-profit 501(c)(3) tax-exempt entity organized under Louisiana law. It was established in December of 2006.
4. The Ouachita Riverkeeper is a position designated by the Waterkeeper Alliance, a grassroots advocacy organization of more than 200 watershed protection programs all over the world. Each Waterkeeper Alliance organization has one member designated as the "Riverkeeper" for the water body the organization seeks to protect. I refer to myself as the Ouachita Riverkeeper because the Waterkeeper Alliance appointed me as the "Riverkeeper" of the Ouachita River.
5. Ouachita Riverkeeper, Inc.'s purpose is to protect and restore the Ouachita River, its watershed, and the surrounding wetlands along its entire length through Arkansas and into Louisiana for existing and future generations.
6. Ouachita Riverkeeper, Inc.'s membership includes residents of El Dorado, Arkansas and other parts of Arkansas and Louisiana, including people who live, work, and recreate on and near the Ouachita River and its watershed.
7. The ecological, biological, aesthetic, and other interests that Ouachita Riverkeeper

Inc. seeks to protect with litigation against the U.S. Army Corps of Engineers are directly related to Ouachita Riverkeeper, Inc.'s purpose of protecting and restoring the Ouachita River, its watershed, and the surrounding wetlands.

8. On behalf of its members, Ouachita Riverkeeper, Inc. is concerned about a proposed pipeline known as the El Dorado Pipeline Project and its impacts on the Ouachita River. My understanding is that the purpose of the proposed pipeline is to connect three industries and the City of El Dorado through a pipeline to transport wastewater to the Ouachita River.

9. Ouachita Riverkeeper, Inc. participates regularly in the public decision-making process for permits affecting the Ouachita River and its watershed. Since the Ouachita Riverkeeper learned of the proposed pipeline project, it has tried to participate in the public discussion. These efforts have included attending El Dorado city meetings.

10. I understand that for individual "dredge and fill" permits under the Clean Water Act, the Corps generally provides public notice and publicly sets a deadline by which organizations and individuals may participate in the administrative permitting process by submitting comments to the Corps.

11. I did not receive or become aware of any public notice of, or opportunity to comment on, the Corps' decision to allow dredging and filling of wetlands in connection with construction of the proposed pipeline. My understanding is that the reason for this lack of public notice and opportunity to comment is that the Corps authorized dredging and filling of wetlands for the proposed pipeline under a national permit, rather than an individual permit.

12. If there had been public notice and an opportunity to comment on the proposed pipeline, I would have filed comments on behalf of myself and on behalf of the Ouachita Riverkeeper, Inc. and its members.

13. If there were a detailed governmental evaluation of the proposed pipeline's environmental impacts, I would review that information to improve my understanding of the project and to participate more effectively in the decision-making process on behalf of myself and the Ouachita Riverkeeper, Inc. and its members. I understand that such evaluations are often available as Environmental Impact Statements or Environmental Assessments under the National Environmental Policy Act.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 20, 2012.


Cheryl Slavant

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

OUACHITA RIVERKEEPER, INC., <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	Civil Action No. 12-cv-803 (CKK)
)	
v.)	
)	
LIEUTENANT GENERAL THOMAS P.)	
BOSTICK, Commanding General and Chief)	
of Engineers, U.S. Army Corps of)	
Engineers, et al.,)	
)	
<i>Defendants.</i>)	

ORDER

Upon consideration of Plaintiffs’ Motion for Partial Summary Judgment, it is hereby ordered that the motion is GRANTED. This Court finds that the Defendants’ authorization of the El Dorado Water Utilities Pipeline Project violated the Administrative Procedure Act and that Plaintiffs have standing to prosecute this suit. Defendants’ decision authorizing the El Dorado Water Utilities Pipeline Project under nationwide permits Nos. 7 and 12 is VACATED, and the Defendant-Intervenors are ENJOINED from constructing the El Dorado Water Utilities Pipeline Project under the authority of nationwide permits Nos. 7 and 12.

Executed this ___ day of _____, 2012.

HON. COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT JUDGE