

WASHINGTON PARISH RESERVOIR PROJECT

STATUS AND REASONS FOR DELAYS



ADVISORY SERVICES
ISSUED AUGUST 23, 2017

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

August 23, 2017

The Honorable John A. Alario, Jr.,
President of the Senate
The Honorable Taylor F. Barras,
Speaker of the House of Representatives

Dear Senator Alario and Representative Barras:

This report provides the results of our review of the status and reasons for delays on the Washington Parish Reservoir Project. Appendix A contains the Washington Parish Reservoir Commission's responses to this report, and Appendix B contains our scope and methodology. I hope this report will benefit you in your legislative decision-making process.

We would like to express our appreciation to the management and staff of the United States Army Corps of Engineers, Louisiana Department of Transportation and Development, and the Washington Parish Reservoir Commission for their assistance during the preparation of this report.

Respectfully submitted,

A handwritten signature in blue ink that reads "Thomas H. Cole".

Thomas H. Cole, CPA
First Assistant Legislative Auditor

THC/aa

WPRPSTATUS

Louisiana Legislative Auditor

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Washington Parish Reservoir Project Status and Reasons for Delays

August 2017

Audit Control # 70170011

Executive Summary

We reviewed the status and reasons for delays with the Washington Parish Reservoir Project (Project). We conducted this review based on legislative concerns that approximately \$3 million has been committed to the Project since 2002, and construction has not yet begun. In fact, the Project has still not received all necessary permits, nor has it acquired the necessary property rights to move the Project forward.

Purpose of Project

The Project's purpose has continued to change since its inception. According to the first audit report of the Washington Parish Reservoir Commission (Commission) in 2004, the Project was begun to "enhance economic development, offer opportunities for recreational development, and serve the growing demand for water-oriented outdoor recreation." While the purpose has changed over the life of the Project, the most recent addition to the purpose in June 2017 is to "create a safety-net alternative water source for the parish and adjacent regional users of the region's USEPA designated 'sole-source' Southern Hills Regional Aquifer System (SSA) should that aquifer become significantly overused, contaminated, or otherwise significantly impaired by geologic forces or biological agents, or otherwise."

While the Project's purpose has been changed over the years to increasingly focus on water resources, a March 2015 letter from the U.S. Geological Survey (USGS) stated, in part, that "groundwater resources in the Washington Parish, Louisiana, area generally are abundant...in summary, the groundwater resources of Washington Parish currently are sustainable and reliable sources of water."

Role of Agencies Involved

There are five primary agencies involved in the Project. The Commission is responsible for Project administration; the United States Army Corps of Engineers (Corps) is responsible for evaluating the Project and deciding whether to issue a Section 404 Permit (404 Permit) under the Clean Water Act (CWA), as well as promulgating rules under the CWA; the Environmental Protection Agency (EPA) is responsible for promulgating rules under the CWA, may comment on the Corps' permitting process, and may override a 404 Permit issued by the Corps; the Louisiana Department of Environmental Quality (DEQ) is responsible for evaluating the Project and deciding whether to issue a Section 401 Certification (401 Certification) under the CWA;

and the Louisiana Department of Transportation and Development (DOTD) is responsible for reimbursing the Commission for eligible expenses.

Project Funding and Expenditures

Project funding has included total state appropriations of \$3,025,000 since 2002. Approximately \$2.2 million has been spent, with remaining appropriations currently under contract. All monies spent or under contract were for consulting, engineering, auditing, and legal services. No monies have been spent on land acquisition or construction.

Project Status

The Commission needs to obtain a 404 Permit to move forward with the Project. The Commission's initial 404 Permit application with the Corps was filed in 2006, or 11 years ago. The most recent application, filed in 2013, was denied by the Corps. An appeal was granted by the Corps' Mississippi Valley Division Commander in July 2016, allowing the Commission to provide additional information for reconsideration. The Commission has designated a new environmental agent and has been working to clarify for the Corps "the needs for, and purposes of, the project." However, the Corps still has not received from the Commission the requested information regarding the current size and scope of the Project. The Corps has requested an updated, complete permit application, to include changes that have occurred since the original application was submitted, including consideration of the Commission's inability to exercise eminent domain authority in acquiring land necessary for the Project's completion.

Future Hurdles

If the Corps receives the updated permit application and other requested information regarding the scope and size of the Project, the Corps may require an Environmental Assessment or an Environmental Impact Study (EIS), and the permit application may still be denied. If the Corps approves the 404 Permit, the Commission will still need to obtain a 401 Certification from DEQ. In addition, the Commission may not be able to acquire land within the Project's planned "footprint" because several landowners have publicly stated that they will not sell their property. Louisiana Revised Statute (R.S.) 38:3087.197(D) states that the Commission "shall have no authority to expropriate by eminent domain any immovable property" related to the Project.

An even greater hurdle to land acquisition and subsequent construction is the Project's current lack of funding. No additional state Capital Outlay funds have been appropriated since 2007.

Basis for Comparison

To evaluate the reasonableness of the costs and timeframes, we compared the Project to the Bayou DeChene Project (Bayou DeChene) in Caldwell Parish, which is the closest comparable project we could identify. We acknowledge differences between these projects in topography, technical challenges, and Project management. However, Bayou DeChene provides insights about the magnitude of the remaining costs and timeframes relative to the Washington Parish Project.

Starting in 1998, Bayou DeChene's permitting was completed within five years and cost approximately \$6 million. The project will take 15 years from permit approval to expected completion of construction in 2018 with an estimated completion cost of between \$22.3 million and \$24.3 million. Its scope encompasses 1,098 acres and impacts 100 acres of wetlands.

Starting in 2006, the Washington Parish Project's permitting is still in progress with costs of approximately \$3.025 million thus far. Total Project costs were estimated (10 years ago) at between \$27 million and \$29 million, not including any mitigation or land acquisition costs. Its scope encompasses 3,262 acres and impacts more than 1,000 acres of wetlands.

Matter for Legislative Consideration

The legislature may wish to direct the Commission to evaluate the viability of this Project, including ways to obtain enough funding for completion, whether or not to revise the scope and design of the Project, or whether or not it should be continued.

Purpose of Project

Act 71 of 2003 (R.S. 38:3087.191) created the Washington Parish Reservoir District (District) as a “recreation and water conservation and reservoir district.” The original scope of the Project included 3,262 acres, impacting over 1,000 acres of wetlands. The purpose of the Project has changed over the years, as discussed on the following pages.

The first audit report on the Commission in 2004 provided the following: The Commission was created for the purpose of studying the feasibility of developing a reservoir in Washington Parish and to examine and search for potential sites of such a reservoir. The reservoir will enhance the economic development of both the parish and the state. The reservoir will offer opportunities for recreational development and serve the growing demand for water-oriented outdoor recreation. This will attract a greater number of tourists to Washington Parish to enjoy its scenic beauty and recreation potential.

R.S. 38:3087.193 states, in part: The District shall be a political subdivision of the state of Louisiana and shall have for its purpose the development of the wealth and natural resources of the district by the conservation of soil and water for agricultural, recreational, commercial, industrial, and sanitary purposes. The creation and maintenance of reservoirs within the district shall be for such purposes. The District shall also have as one of its purposes economic development for the District.

The original 2008 Environmental Impact Statement notice provided the following: The purpose of the project is to identify a new water supply to address the current and future potable water demands of Washington Parish.

In the July 2013 permit application to the Corps, the stated purpose of the Project was as follows: To develop the full potential of Louisiana’s water related resources by implementing an infrastructure project related to the control, development, conservation and protection of the waters of Washington Parish for the benefit of the parish and the Region. To provide for additional supplies of potable and non-potable water; recharge to underlying aquifers; the provisions of recreational areas and economic development potential; and to provide for the storage of flood waters that can be available for use during droughts. Among the needs that the water from the reservoir is anticipated to meet are the following: domestic and municipal uses, including water sustaining human life and life of domestic animals; agricultural and industrial uses, which means processes designed to convert materials of lower value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric; mining and recovery of minerals; recreation and pleasure; prevention of salt water intrusion; and other beneficial uses. The waters of the reservoir are intended to benefit persons residing or owning property within Washington Parish, and also support irrigation, municipal and industrial uses both within and outside of the District.

In the “Potable Water Reservoir Site Selection Report” submitted to the Corps in October 2014, the Commission amended the statement of purpose and need to read as follows: The intent of the project will be to supply potable water to Washington Parish, and the two adjacent parishes, St. Tammany and Tangipahoa. The project will include all components of the lake

including: reservoir, dams, outlet structure, road and utility relocation, water treatment facilities, and any recreational or support structures supporting the lake.

The Corps' November 2014 Public Notice regarding the Project presented the following purpose: To provide additional supplies of potable and non-potable water; recharge underlying aquifers; provide recreation areas and economic development opportunities; and provide storage of flood waters that can be available for use during droughts.

In a letter to the Corps dated March 31, 2015, the Commission stated: It should be noted that in accordance with the Project Purpose and the Legislation creating the Reservoir Commission, the Primary Purpose of the Project is Water Supply sufficient to meet the existing need for new water sources in the Project Area. The additional purposes (recreation, economic development, etc.) are considered secondary purposes and benefits of the project.

In June 2017, the Commission updated its purpose by adding the following: To create a safety-net alternative water source for the parish and adjacent regional users of the region's USEPA designated "sole-source" Southern Hills Regional Aquifer System (SSA) should that aquifer become significantly overused, contaminated or otherwise significantly impaired by geologic forces or biological agents, or otherwise. SSA's are aquifers that supply at least fifty percent of the drinking water for the service area and that there are no reasonable alternatives. This need effectively calls for the construction of a surface reservoir capable of providing all of the current and future water needs of the parish and adjacent regional users currently served by the Southern Hills Aquifer in the event the aquifer should become contaminated or impaired, such that it cannot be relied upon to provide the water needs of the parish and region.

However, a March 2015 letter from the USGS to the Corps stated, in part, that "groundwater resources in the Washington Parish, Louisiana, area generally are abundant...in summary, the groundwater resources of Washington Parish currently are sustainable and reliable sources of water."

Role of Agencies Involved

- The Commission is charged with overseeing the administrative functions for the District, including contracting for services and providing necessary information for permitting. R.S. 38:3087.197 provides, in part, that the Commission may work with DOTD and other state agencies in the maintenance, improvement, and construction of any works or improvements for the control, retention, diversion, and utilization of water. This includes the construction of any ditch, channel improvement, dike, dam, or levee. The Commission is allowed to employ any such personnel as may be necessary in the operation of the business of the District and to cooperate and contract with persons, firms, associations, partnerships, private corporations, municipalities of this state, or other public corporations, and with any other local, state, or federal agencies for the sale or use of any waters impounded by the District. The Commission can acquire movable property by donation or purchase and is authorized to perform any and all things necessary or incident to the fulfillment of the purposes for which the District is created.

- The Corps is responsible for reviewing and evaluating the Project and deciding whether to issue a 404 Permit under the CWA. The Corps may also promulgate rules under the CWA. The size of the reservoir does not determine the length of time for permitting. Rather, this is determined by the amount of wetlands, cultural resources, natural resources, and property rights that must be obtained. According to the Corps' website, a major aspect of the Regulatory program under Section 404 of the CWA is determining which areas qualify for protection as wetlands. Section 404 requires such approval prior to discharging dredged or fill material into the waters of the United States.
- The EPA is responsible for promulgating rules under the CWA, may comment on the Corps permitting process, and has the authority to override, or veto, a 404 Permit issued by the Corps.
- DEQ, whose authority is delegated from the EPA, reviews water quality and is responsible for evaluating the Project and deciding whether to issue a 401 Certification under the CWA, which is generally completed right before the Corps decides on whether to issue a 404 Permit. The 401 Certification is required for all 404 Permits which involve discharge of fill material into the waters of the United States. The 401 Certification assures that any dredge and fill activity permitted under a 404 Permit will be protective of site-specific water quality standards.
- DOTD has been responsible for managing the funding for the Project and reimbursing the Commission for eligible expenses. R.S. 38:3087.200 provides, in part, that all of the powers and duties relative to construction and letting of contracts for construction required to be advertised by R.S. 38:2211 and 2212 conferred upon the District shall be subject to and exercised under the supervisory control of the DOTD. DOTD shall furnish to the District such engineering services as it shall require and may cooperate with the District in the construction of any work or facility considered by the District and department necessary to fulfill the purposes of the District.

Project Funding and Expenditures

Between 2002 and 2007, the state of Louisiana appropriated \$3,025,000 through Capital Outlay and General Fund direct funding, as follows:

Act 23 of 2002 – Priority 1	\$100,000
Act 24 of 2003 – Priority 2	500,000
General Fund Direct	400,000
Act 25 of 2004 – Priority 1 and 2	100,000
Act 26 of 2005 – Priority 1	125,000
Act 26 of 2005 – Priority 2	475,000
Act 27 of 2006 and Act 28 of 2007	<u>1,325,000</u>
Total Funding	<u>\$3,025,000</u>

During the same period, the Commission paid approximately \$2.2 million to its contractors, as follows:

Administrative Consulting	\$378,000
Engineering/Legal Services	1,787,000
Auditing Services	<u>43,000</u>
Total Expenses	<u>\$2,208,000</u>

The remaining \$817,000 is committed under contract. No monies have been spent on land acquisition or construction.

Projected Costs to Complete the Project

Costs to complete the Project were included in both a 2005 Site Selection Report and in a 2006 Preliminary Engineering Report. According to these reports, total costs ranged from approximately \$27 million to \$29 million. The reports clarified that these estimates only reflected the actual cost of the reservoir construction and did not include any cost associated with wetland, habitat, or cultural resource mitigation; and land acquisition or relocations, as such costs would have to be further studied.

Disbursement Process

The process related to disbursements and the flow of money for work conducted for the Project is as follows:

- In February 2004, the Commission selected Denmon Engineering as its primary project contractor (contractor).
- The contractor hires and pays the subcontractors for work performed.
- The contractor sends bills to the Commission.
- The Commission's treasurer approves invoices and forwards to the DOTD.
- DOTD matches the invoices to the contracts and reviews for legal and contractual compliance.
- DOTD sends payment to the Commission.
- The Commission pays the contractor.

Project Status

Current Status of Project

The Commission needs to obtain a 404 Permit to move forward with the Project. The Corps denied the Commission's application for a 404 Permit in June 2015. However, an appeal was granted in July 2016, and the Corps requested additional information from the Commission. The Commission's attorney has stated that the Corps requested the Commission supplement the pending permit application with updated and/or current statements with respect to the purpose and need of the proposed Project and to designate an environmental consultant. The Corps has clarified that it also needs information from the Commission regarding the current size and scope of the Project.

According to a letter issued by the Corps on July 21, 2017, the most recent supplemental information provided by the Commission was insufficient. The Corps has requested an updated complete permit application, to include changes that have occurred since the original application was submitted, including consideration of the Commission's inability to exercise eminent domain authority in acquiring land necessary for the Project's completion.

Timeline of Significant Events

- **January 2005** – Site selection study completed by Denmon Engineering (Commission's agent), setting forth an estimated cost of approximately \$29 million.
- **March 2005** – Pre-application meeting with the Corps and Denmon Engineering.
- **January 2006** – Pre-application meeting with the Corps, Denmon Engineering, and other agencies.
- **May 2006** – Initial 404 Permit application filed with the Corps.
- **December 2006** – Preliminary engineering report completed with estimated Project costs at \$27 million.
- **June 2007** – Based upon a review of the site selection report, the Corps concluded that the proposed Project had the potential for significant impacts to the human and natural environment and needed an EIS.
- **March 2008** – The Commission began the process for an EIS and a "Notice of Intent to Prepare a Draft EIS for the Potable Water Supply for Washington Parish Reservoir" was published in the Federal Register.
- **May 2008** – DEQ sent a list of concerns to the Corps that needed to be addressed in the EIS to enable DEQ to have information necessary for the 401 Certification.

- **November 2008** – The USGS sent a letter to the Corps stating, “In the Washington Parish, Louisiana area, groundwater resources are plentiful. Aquifers...are readily available throughout the parish. In summary, the aquifers are a sustainable and reliable source of drinking water...certainly meeting present day demand and in all likelihood meeting demand for future generations.”
- **June 2009** – The Commission filed a new 404 Permit application based on modifications to the scope of the Project.
- **July 2009** – The Corps officially terminated the EIS process initiated in March 2008. The Corps also met with Commission contractors to discuss additional information needed concerning wetlands impact.
- **January 2011** – The second 404 Permit application was withdrawn by the Corps based on lack of additional information from the Commission.
- **July 2013** – The Commission applied to the Corps for the third time for a 404 Permit. The Corps sent a letter to Denmon Engineering 20 days later requesting an alternatives analysis and mitigation plan.
- **July 2014** – Commission contractors met with the Corps about proposed mitigation.
- **August 2014** – The Corps contacted various Native American tribes in the area about the proposed 404 Permit.
- **September 2014** – The Corps received the Commission’s preliminary mitigation plan. The Commission requested an issuance of a public notice.
- **October 2014** – Denmon Engineering provided information to the Corps on the alternatives analysis, drawings, and maps, and stated that a Wetland Consultant would provide the proposed mitigation plan.
- **November 2014** – The Corps issued a public notice for the proposed 404 Permit. The public notice also indicated that the Commission had applied to the DEQ for a 401 Water Quality Certification.
- **December 2014** – The Corps notified Denmon Engineering that the Choctaw Nation required a survey of those areas that had not previously been surveyed. The Corps also noted that more cultural information would have to be provided due to the presence of National Register of Historic Places, including a house, cemeteries, and prehistoric sites within the proposed Project’s footprint.
- **January 2015** – A conference call was held between the Corps, EPA Region 6, the USGS, U.S. Fish and Wildlife Service (USFWS), Louisiana Department of Natural Resources (LDNR), Louisiana Department of Wildlife and Fisheries (LDWF), Mississippi Band of Choctaw, Louisiana State Historic Preservation Office (LSHPO), Mississippi DEQ (MDEQ), and the Mississippi Department of Marine Resources to discuss the next stage in the evaluation process and additional comments or concerns.

The Corps subsequently sent an “adverse” letter containing nearly 1,000 comments and petitions to Denmon Engineering for a response within 30 days, along with a list of concerns and issues that needed to be addressed to move forward in the evaluation process.

- **March 2015** – The Corps received an updated USGS letter reiterating information received in the November 2008 letter stating, in part, that “groundwater resources in the Washington Parish, Louisiana, area generally are abundant...in summary, the groundwater resources of Washington Parish currently are sustainable and reliable sources of water.” Also, the Corps and USFWS reiterated the necessity for a strong need and purpose statement and alternatives analysis. The Corps stated that the Commission should consider minimization and expressed concerns with the proposed wetland site.
- **April 2015** – The Commission received notice that its response to the January 2015 adverse letter did not sufficiently address the concerns of the USFWS and the MDEQ. The response also did not satisfy the EPA, and the EPA supported a denial of the 404 Permit.
- **May 2015** – The Corps informed the Commission that all questions from the January 2015 adverse letter needed to be answered, in addition to providing timelines of surveys/additional studies. The Commission responded that it understood what was needed and asked about a timeline. The Corps indicated that it hoped to have a path forward within 60 days. DEQ restated to the Corps its concerns presented in its May 2008 letter.
- **June 2015** – The Corps denied the 404 Permit based on lack of sufficient information from the Commission.
- **August 2015** – The Commission filed an appeal of the 404 Permit denial, which was heard in December 2015.
- **July 6, 2016** – The Commission filed a civil suit against the Corps because of the lack of a decision on the appeal.
- **July 15, 2016** – Administrative Appeal Decision that the appeal had “merit.” The appeal was remanded to the Vicksburg District Engineer for reconsideration of its denial. The Corps continued to seek additional information from the Commission.
- **July 18, 2016** – The Commission withdrew its civil suit against the Corps.
- **August 1, 2016** – Senate Bill No. 373, which amended R.S. 38:3087.197, went into effect. The statute was amended to say that “the board of commissioners shall have no authority to expropriate by eminent domain any immovable property...”
- **August 3, 2016** – The Commission and its attorneys met with the Corps, and the Corps requested an environmental consultant be named. The Corps also requested more information regarding the purpose, need, scope, and size of the Project.

- **June 2017** – The Commission submitted additional information to the Corps. This information focused on amending the purpose and need for the Project and informed the Corps of a newly-appointed environmental consultant; however, the additional information did not include changes to the size and scope of the Project as requested by the Corps.
- **July 21, 2017** – The Corps sent a letter to the newly-designated environmental agent for the Commission requesting that an updated complete permit application be submitted so that the Corps has a sufficiently concrete project to review.

Future Hurdles

If the Corps receives the updated 404 Permit application and other information it has requested from the Commission, the permit evaluation process will begin again, including a determination about whether a new public notice for comment should be made. The Corps may also determine that a “significant impact” to the environment exists and require an EIS, which may cost several hundred thousand dollars and take from 18 to 36 months, before reconsidering whether to issue the permit. The Corps may also determine that an Environmental Assessment should be made, which is smaller in scope than an EIS. After evaluating all information, the Corps may issue a 404 Permit or may deny the Commission’s permit application.

The Commission will also need to obtain a 401 Certification from the DEQ, which is generally completed right before the Corps issues a 404 Permit. If the 401 Certification is denied by the DEQ, the Corps usually denies the 404 Permit.

Even if the Commission obtains a 404 Permit and 401 Certification, land acquisition may not be possible since several homeowners within the Project’s planned “footprint” have publicly stated that they will not sell their property. Furthermore, R.S. 38:3087.197(D) states that the Commission “shall have no authority to expropriate by eminent domain any immovable property” related to the Project. At the June 20, 2017, Commission meeting, there was discussion on the Commission/District’s ability to expropriate land for the Project. One member (of the six present at the meeting) commented that he cannot support spending more money if the acquisition of land is in question. Another member commented that he could only support the Project moving forward if land acquisition is done in compliance with the law that prohibits expropriation.

An even greater hurdle to land acquisition and subsequent construction is the Project’s current lack of funding. No additional state Capital Outlay funds have been appropriated since 2007.

Basis for Comparison

To evaluate the reasonableness of the Project's costs and timeframes, we compared it to the Bayou DeChene Reservoir Project (Bayou DeChene) in Caldwell Parish, which is the most similar reservoir project we could identify. We acknowledge that the topography and technical challenges are different on each reservoir project, and Bayou DeChene was overseen by different management personnel of the Corps. However, Bayou DeChene does provide a reasonably current benchmark with which to gauge the magnitude of the remaining costs and timeframes of the Washington Parish Project.

Bayou DeChene began its permitting process in 1998 with a scope of 1,098 acres and impacting only 100 acres of wetlands. Permitting was completed within five years and will take 15 years from permit approval to expected completion of construction in 2018. Bayou DeChene incurred nearly \$6 million in costs prior to its 404 Permit approval. Total project costs are estimated between \$22.3 million and \$24.3 million.

By comparison, the Washington Parish Reservoir Project began its permitting process in 2006, or 11 years ago, with an original scope of 3,262 acres and impacting more than 1,000 acres of wetlands. This Project has spent/committed approximately \$3.025 million thus far during its permitting process. According to a 2005 Site Selection report and a 2006 Preliminary Engineering report, total Project costs were estimated between \$27 million and \$29 million. These cost estimates are now more than 10 years old and excluded any mitigation or land acquisition costs.

Matter for Legislative Consideration

The legislature may wish to direct the Commission to evaluate the viability of this Project, including ways to obtain enough funding for completion, whether or not to revise the scope and design of the Project, or whether or not it should be continued.

APPENDIX A: MANAGEMENT'S RESPONSES

We requested responses from the United States Army Corps of Engineers (Corps), Louisiana Department of Transportation and Development (DOTD), and the Washington Parish Reservoir Commission (Commission). The Corps and DOTD declined to provide official responses but did, at our request, provide feedback on earlier report drafts. Commission members responded both collectively and individually as follows:

- **Commission Chairman Bill Jenkins** provided three responses to different drafts of our report and asked that all responses be included as “management’s response” (pages A.3-A.12). According to Chairman Jenkins, the most recent response dated August 18, 2017, represents the views of **Chairman Jenkins, Commissioner Beryl Schilling, and Commissioner Bob Bateman**.

Mr. Jenkins also noted in the most recent response, in part, that “it is understood that land needed for the project can still be acquired by the eminent domain authority of the LDOT.”

Additional Comments: The Legislative Auditor’s Office does not believe that DOTD has the authority to exercise eminent domain regarding the acquisition of land for the Washington Parish Reservoir Project. We encourage the Commission to seek an opinion from the state Attorney General regarding this matter.

- **Commissioner John Nichols** responded by email on August 19, 2017, and **Commissioner James Beatty** agreed with Mr. Nichols response, as follows:

Purpose: I agree that a reservoir for lake style fishing and water recreation would be a great addition for Washington Parish. I agree that the project need should be clearly defined with singleness of purpose and be our mandate.

Roles: Something is missing. Who has the role of Oversight and Accountability? Apparently, the State’s Boards and Commissions expects the commissioners to perform that role under “Project Administration”. It is an unrealistic expectation that 11 unpaid commissioners meeting once a quarter for a couple of hours can adequately monitor the activities of an engineering firm, consultants and team of attorneys that have already spent 2.2 million taxpayer dollars. The current WPRC is an excellent board of professionals but most of have full time jobs. I suggest that this is a major contributor to the “reasons for delays” that you are looking for. A third-party project manager or team, answering only to and paid by the commission to provide daily oversight and demand accountability is sorely needed.

Funding: I agree that discussions with our legislative delegation should begin soon for funding the next phase. In view of the shortage of state funds for any purpose, funding should be considered a major hurdle and be taken into consideration in current spending.

Hurdles: I disagree with pressing forward with spending a half million dollars of our remaining capital outlay for an Oak Grove EIS without reasonable assurance that all required property can be purchased. Relying on the legislature to reverse the “no expropriation” amendment is an unacceptable risk of \$500,000 of tax payer dollars. This legislation was passed in response to the will of the people to provide protection from expropriation. Overturning that amendment or circumventing it with DOTD authority cannot be justified and would lead to great loss of the public trust that we have been working so hard to earn.

Bottomline: We are a new commission. We should step back and evaluate our options under the amended law before releasing Denmon to further pursue the EIS. WPRC does have options as pointed out by one of our parish council and members of the public. Now is our last chance to redirect the project before committing most of our remaining funding to the Oak Grove site gamble.

- **Commissioner Jerry Thomas, MD**, responded by email on July 25, 2017, as follows:

I support a reservoir project for Washington Parish. The project should comply with the legislation successfully authored by Senator Mizell and amended by Representative White in 2016.

- **Commissioner Clifton Roberts** responded by handwritten letter, which was emailed to us on July 25, 2017, as follows:

I cannot support the current foot print at this time. The reason for this being, that can't and won't vote for or support any project that would force people off there land. Furthermore, it seems to me that a lot of money have been spent on this project. Since 2005, 2.2 million dollars have been spent on this project and we still don't have E.I.S. permit 404. Where will the funding come from to pay all of the different people working on the project. I think that we the commission need to redefine the purpose of the reservoir. The voice of the people living in or along the original foot print refuse to sale their land. I know of no one who have committed to selling their land. With no one agreeing to sell their land, it is very difficult to move forward with this foot print. I think without enough people willing to sale, maybe an alternative site should be looked at.

- **Commissioner Michael Melancon** responded by email on July 26, 2017, as follows:

I'm a new board member as of this year. I'm still learning about what has happened in the past and what has been done. I am in favor of the Reservoir for Washington Parish and think this will be a great asset to our parish.

MANAGEMENTS SUPPLEMENTAL RESPONSE OF THE WASHINGTON PARISH RESERVOIR COMMISSION TO LOUISIANA STATE AUDITOR

RE: ADVISORY SERVICES' August 2017 DRAFT REPORT on STATUS AND REASONS
FOR DELAYS

August 18, 2017

This supplemental response is provided on behalf of the WPRC to supplement the WPRC's response to the earlier draft report, and to address additional statements and comments contained in the current draft of August 2017.

Purpose of Project – the Report suggests that multiple modifications to the Project Purpose were made by the WPRC over the years which contributed to delays of the project. However, as was illustrated in the WPRC's appeal of the Corp's permit denial, it has been the Corps that has been altering the project purpose in an apparent effort by individuals within the Corps to obstruct the project based upon their personal biases, and not based upon any reasonable or proper analysis by the Corps itself. Obstruction of State infrastructure projects by federal agencies was a prominent and growing problem during the previous federal administration, and was not limited to the Vicksburg office of the Corps. It is believed, however, that under the current administration important state infrastructure projects like the WPRC reservoir project will now receive proper oversight and cooperation from our federal agencies.

The Project Purpose was recently clarified again for the Corps by the WPRC's Supplement to the Permit Application dated June 13, 2017. The supplement makes clear that the original project purpose was amended in 2009 to expand the purpose consistent with the statutory mission of the WPRC. The June 13, 2017 supplement again expanded the existing project purpose based on the findings of the NEED ASSESSMENT REPORT updated in June of 2014. That 107 page report, prepared by Denmon Engineering, supports the need for a reservoir to meet all of the Project Purposes reflected in the June 13, 2017 supplement to the permit application.

The Draft Audit Report makes no mention of the NEED ASSESSMENT REPORT, and appears to accept without question a statement contained in a March 15 letter on U.S. Geological Survey letterhead that groundwater resources in Washington Parish are adequate. However, as was conveyed to the auditor in response to the earlier drafts, the March 2015 letter from an individual at the U.S. Geological Survey which appears to have been cited in the auditor's report to suggest a conclusion that the reservoir is not needed, is not a formal opinion from the U.S. Geological Survey, nor does it address any of the other needs which were evaluated in the NEED ASSESSMENT REPORT. Moreover, the project is intended to benefit a region larger than just Washington Parish.

Project Status: The current draft of the audit report misrepresents the significance of the WPRC's appeal of the Corps' earlier wrongful denial of the permit application and the current posture of the permit process. The Division Commander found that the Corps' earlier denial of the WPRC's permit application was not properly supported by the information in the record – there was no determination that the WPRC had not been allowed to provide additional

information before the permit was denied. Moreover, and as is set out in a letter to the Corps, attached hereto as Exhibit “A,” the Corps’ most recent request for the WPRC to submit a new application is also improper. While it is clear that the intent of the audit report is to assist factions that desire to kill the project, the record suggests that rather than retreating in response to a few vocal detractors, perhaps the Legislature should be concerned that biased forces within the Army Corps of Engineers appear to be actively impeding the will of the Legislature which formed the WPRC for the express purpose of constructing a reservoir in Washington Parish.

Future Hurdles: The report states that “land acquisition may not be possible since several homeowners within the Project’s planned “footprint” have publicly stated that they will not sell their property,” and because 38:3087.197(d) provides that the Commission “shall have no authority to expropriate by eminent domain any immovable property” for the project. First, the “footprint” for the project is not set, and ultimately will be determined as a result of the EIS process. Second, it is understood that land needed for the project can still be acquired by the eminent domain authority of the LDOT, which is ultimately responsible for the project’s completion. Third, and as expressed in the attached letter to the Corps, the Corps’ most recent request for a new application is improper.

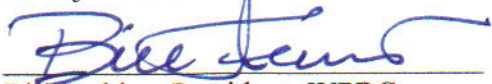
The report’s statements about a *current* lack of funding may be true, but the report contains no discussion of the funding process, or whether any request for funding is pending, or when such a request might be proper. It would be reasonable to anticipate that a request for funding would not be made until the EIS process is complete, and the proposed reservoir is more completely defined. It is also worth noting that the expenses incurred to date on the project include a significant amount of money spent on the earlier EIS study, the results of which have value to the current project. If terminated, the expenditure of those funds would have been wasted.

Basis for Comparison: The report’s comparison of this project to the Bayou DeChene reservoir does not discuss the fact that that project was overseen by a different office of the Corps, and by different Corps personnel. Nor does the comparison address the topography of the project sites, or any technical challenges with respect to construction. Without a more complete analysis, the comparison is of little to no value.

Matter for Legislative Consideration: The report’s suggestion that the legislature may wish to direct the WPRC “to evaluate the viability of the Project, including ways to obtain enough funding for completion, whether or not to revise the scope and design of the Project, or whether or not it should be continued,” is premature. The viability of the project, as well as the scope and design of the project will be the focus of the EIS study, which has not yet been re-started. The WPRC, nor the legislature, can make any reasonable judgments about the project unless and until the EIS is complete.

While the act of the legislature in eliminating the WPRC’s power of eminent domain, suggests that at least some members of the legislature disfavor eminent domain power, the legislature may wish to review the statutory mandate for reservoir commissions and the multiple and ongoing water needs studies which support reservoir construction. The legislature may then wish to consider whether it was reasonable or appropriate to eliminate the WPRC’s eminent domain

authority in the first place, and who or what motivated that action specific to the WPRC, while no objections have been raised with respect to other reservoir commissions.



Bill Jenkins, President, WPRC

DATE: August 18, 2017.

WASHINGTON PARISH RESERVOIR COMMISSION

Post Office Box 668, 526 Georgia Avenue, Bogalusa, La. 70429

Bradley Cryer, CPA
Director of Local Government Services
Louisiana Legislative Auditor
P.O. Box 94397
Baton Rouge, La. 70804-9397

Re: Responses of Washington Parish Reservoir Commission ("WPRC")/Commissioners to Auditor Services' Proposed July 2017 Report on the Washington Parish Reservoir Project.

Dear Mr. Cryer:

On July 18, 2017, Andree Taylor in your offices emailed to me your proposed July 2017 – Washington Parish Reservoir Project – Status and Reasons For Delays report, requesting a formal response from the board, either collectively from the Chairman or individually from each board member by July 26, 2017. Earlier, on July 11, 2017, Mr. Bill Jenkins, the President/Chairman of the WPRC, conveyed his responses and criticisms regarding the prior draft to your office. However, it does not appear that any of those responses or criticisms have been addressed or noted in the most recent draft of July 18. Particularly, it is noted that in the current draft Appendix A: MANAGEMENT'S RESPONSE is blank. While it was Mr. Jenkins' understanding that his responses and criticisms of the earlier draft would be reflected in Management Response section, the current draft reflects no such information. If you require an official response from the WPRC in order to include such in your report, that fact was not conveyed to Mr. Jenkins, and at this late date, it will not be possible to convene the WPRC for such purposes. Accordingly, it is requested that you immediately advise Mr. Jenkins if an official WPRC response is required for any such information to be reflected in the MANAGEMENT'S RESPONSE section, and if so, that you also extend the response time until August 26, 2017, to permit the WPRC a reasonable to respond appropriately.

Whether or not an extension is granted, this letter is submitted as the joint and/or individual responses to the proposed report by the members of the WPRC whose signatures appear below. Attached to and incorporated into this letter is a copy of Mr. Jenkin's July 11, 2017 response memo to the earlier draft, as well as a copy of the WPRC's most recent supplement to the permit application filed with the Army Corps of Engineers. The undersigned request that this response letter be attached to, and incorporated into, the final report even if the deadline for a formal response is extended, and a formal response is subsequently provided.

In addition to the comments reflected in Mr. Jenkins' response memo of July 11, 2017, the undersigned also request that the final audit report reflect that the WPRC was not provided with any prior notice or any timely opportunity to respond to or oppose the most recent legislative hearings or actions which resulted in the eminent domain authority of the WPRC being taken away.

Sincerely,

Bill Sepp

Date: 07/24/2017

Bob DePina

Date: 07/24/2017

Beryl Schullin

Date: 07/25/2017

James F. Batty

Date: 7/25/17

Date: _____

Date: _____

Date: _____

Date: _____

Cc: The Honorable John A. Alario, Jr., President of the Senate
The Honorable Taylor F. Barras, Speaker of the House of Representatives

MANAGEMENTS RESPONSE

RESPONSE OF THE WASHINGTON PARISH RESERVOIR COMMISSION TO LOUISIANA STATE AUDITOR

RE: ADVISORY SERVICES' JULY 2017 REPORT on STATUS AND REASONS FOR DELAYS

July 11, 2017

The WPRC responds to the matters presented in the Executive Summary (pp. 1-3) of the Report as follows:

Purpose of Project – the Report suggests that multiple modifications to the Project Purpose were made by the WPRC over the years which contributed to delays of the project. However, as was illustrated in the WPRC's appeal of the Corps' permit denial, it has been the Corps of Engineers that has been altering the project purpose in an apparent effort by individuals within the Corps to obstruct the project based upon their personal biases, and not based upon any reasonable or proper analysis by the Corps itself. Obstruction of State infrastructure projects by federal agencies was a prominent and growing problem during the previous federal administration, and was not limited to the Vicksburg office of the Corps. It is believed, however, that under the current administration important state infrastructure projects like the WPRC reservoir project will now receive proper oversight and cooperation from our federal agencies. The Project Purpose was recently clarified again for the Corps by the WPRC's Supplement to the Permit Application dated June 13, 2017, a copy of which is attached hereto. The supplement makes clear that the original project purpose was amended in 2009 to expand the purpose consistent with the statutory mission of the WPRC. The June 13, 2017 supplement again expanded the existing project purpose based on the findings of the NEED ASSESSMENT REPORT updated in June of 2014. That 107 page report, prepared by Denmon Engineering, supports the need for a reservoir to meet all of the Project Purposes reflected in the June 13, 2017 supplement to the permit.

The March 2015 letter from an individual at the U.S. Geological Survey which appears to have been cited in the auditor's report to suggest a conclusion that the reservoir is not needed, is not a formal opinion from the U.S. Geological Survey, and does not address any of the other needs which were evaluated by the NEED ASSESSMENT. Moreover, the project is intended to benefit a region larger than just Washington Parish. Further, that same letter was similarly used by the Corps to justify the Corps' wrongful denial of the WPRC's permit. The appeal filed by the WPRC illustrates the multiple ways in which individuals within the Corps acted wrongfully in an obvious effort to obstruct the project. The WPRC successfully appealed the Corps' wrongful denial of the permit.

Project Status: The report suggests that current and ongoing discussions with the Corps as to whether an EIS will be required could "possibly [result] in additional delays of 18 to 36 months." This statement is incorrect and misleading. The Corps has represented that it would respond within approximately 30 days of WPRC's supplementation of the permit with regard to moving forward with an EIS. While the EIS process, which is partially complete (much work was completed on a prior EIS sanctioned by the Corps on this same project), could take 18 to 36 months to complete, that would not be a period of "delay" but rather positive, necessary work on the project.

Future Hurdles: The report states that "land acquisition may not be possible since several homeowners within the Project's planned "footprint" have publicly stated that they will not sell their property," and because 38:3087.197(d) provides that the Commission "shall have no authority to expropriate by eminent domain any immovable property" for the project. First, the "footprint" for the project is not set, and ultimately will be determined as a result of the EIS process. Second, it is

understood that land needed for the project can still be acquired by the eminent domain authority of the LDOT, which is ultimately responsible for the project's completion.

The report's statements about a **current** lack of funding may be true, but the report contains no discussion of the funding process, or whether any request for funding is pending, or when such a request might be proper. It would be reasonable to anticipate that a request for funding would not be made until the EIS process is complete, and the proposed reservoir is more completely defined. It is also worth noting that the expenses incurred to date on the project include a significant amount of money spent on the earlier EIS study, the results of which have value to the current project. If terminated, the expenditure of those funds would have been wasted.

Basis for Comparison: The report's comparison of this project to the Bayou DeChene reservoir does not discuss the fact that that project was overseen by a different office of the Corps, and by different Corps personnel. Nor does the comparison address the topography of the project sites, or any technical challenges with respect to construction. Without a more complete analysis, the comparison is of little to no value.

Matter for Legislative Consideration:

The report's suggestion that the legislature may wish to direct the WPRC "to evaluate the viability of the Project, including ways to obtain enough funding for completion, whether or not to revise the scope and design of the Project, or whether or not it should be continued," is premature. The viability of the project, as well as the scope and design of the project will be the focus of the EIS study, which has not yet been re-started. The WPRC, nor the legislature, can make any reasonable judgments about the project unless and until the EIS is complete.

While the act of the legislature in eliminating the WPRC's power of eminent domain, suggests that at least some members of the legislature disfavor eminent domain power, the legislature may wish to review the statutory mandate for reservoir commissions and the multiple and ongoing water needs studies which support reservoir construction. The legislature may then wish to consider whether it was reasonable or appropriate to eliminate the WPRC's eminent domain authority in the first place, and who or what motivated that action specific to the WPRC, while no objections have been raised with respect to other reservoir commissions.

Bill Jenkins, President, WPRC _____

DATE

Supplement to Permit Application

Washington Parish Reservoir, MVK 2012-1240

Date Submitted: June 13, 2017

Submitted by: Headwaters, Inc.



Mike Goff, Principal

The following items in the subject pending permit application are amended to state as follows:

6. Applicant's Address: Washington Parish Reservoir Commission
Office of the Washington Economic Development Foundation
Post Office Box 668
526 Georgia Avenue
Bogalusa, Louisiana 70429

7. Applicant's Phone Numbers with Area Code: (985) 735-7565

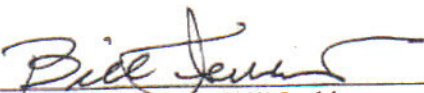
8. Authorized Agent's Name & Title: Mike Goff, Headwaters, Inc.

9. Agent's Address: Headwaters, Inc.
Post Office Box 2836
307 Highland Park Cove
Ridgeland, Mississippi 39157 -39158

10. Agent's Phone Numbers with Area Code: (601) 634-0097

11. Statement of Authorization:

I hereby authorize Headwaters, Inc., including one of its principals, Mike Goff, to act on my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.



Applicant's Signature/Bill Jenkins
Chairman, WPRC

06/12/2017
Date

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

To construct an impoundment reservoir in Washington Parish to serve the project purposes and needs as stated in the pending application (which re-stated the PROJECT PURPOSE dated 6/15/2009), and as supplemented and amended herein.

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

The PROJECT PURPOSE as stated in the pending application (re-stating the PROJECT PURPOSE dated 6/15/2009) is hereby amended as follows:

The purpose of the proposed project is for the applicant to fulfill its statutory mission to develop the full potential of Louisiana's water related resources by implementing an infrastructure project related to the control, development, conservation and protection of the waters of Washington Parish for the benefit of the Parish and the Region. Numerous studies indicate a need for additional reservoir development in Louisiana, and Washington Parish, to supply critical needs. These needs include: the provision of additional supplies of potable and non-potable water, recharge to underlying aquifers, the provision of recreational areas and economic development potential, and to provide for the storage of flood waters that can be available for use during droughts.

To meet these needs, the applicant, a political subdivision and state agency (a subdivision of the Public Works and Water Resources Division of the Louisiana Department of Transportation and Development) and an established recreation and water conservation and reservoir district, proposes the construction of a reservoir, located within Washington parish. Among the needs that the water from the reservoir is anticipated to meet are the following: domestic and municipal uses, including water for sustaining human life and the life of domestic animals; agricultural and industrial uses, including the development of power by means other than by hydroelectric; mining and recovery of minerals; recreation and pleasure; prevention of salt water intrusion; and other beneficial uses.

The waters of the reservoir are intended to benefit persons residing or owning property within Washington Parish, and also to support irrigation, municipal and industrial uses both within and outside of the District.

The PROJECT PURPOSE as re-stated and amended above, is hereby further amended consistent with the NEED ASSESSMENT updated in June of 2014, to add as an additional purpose:

To create a safety-net alternative water source for the parish and adjacent regional users of the region's USEPA designated "sole-source" Southern Hills Regional Aquifer System ("SSA") should that aquifer become significantly overused, contaminated or otherwise significantly impaired by geologic forces or biological agents, or otherwise. SSA's are aquifers that supply at least fifty percent of the drinking water for the service area (which here includes Baton Rouge) and that there are no reasonable alternatives. This need effectively calls for the

construction of a surface reservoir capable of providing all of the current and future water needs of the parish and adjacent regional users currently served by the Southern Hills Aquifer in the event the aquifer should become contaminated or impaired such that it cannot be relied upon to provide the water needs of the parish and region.

20. REASON(S) FOR DISCHARGE:

Construction of an impoundment dam.

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.

	<u>06/12/2017</u>		<u>06/13/2017</u>
SIGNATURE OF APPLICANT	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 U.S.C. 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, factitious [sic], 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: SCOPE AND METHODOLOGY

We produced this report under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. This report covers the time period of July 1, 2002, through July 31, 2017. The report's objective was to review the status and reasons for delays with the Washington Parish Reservoir Project (Project).

The scope of our work was significantly less than an audit performed under *Government Auditing Standards*. We believe the evidence obtained provides a reasonable basis for our recommendation. To answer our objective, we performed the following steps:

- Conducted interviews with the Washington Parish Reservoir Commission, the Corps, DOTD, DEQ, and Commission attorneys and Project engineers.
- Researched and reviewed information relevant to the Project, including, but not limited to, maps and footprints of the Project, site selection reports, engineering reports, legal documents, and federal/state law.
- Obtained and analyzed budgets, expenditures, contract information, and permit applications from the Corps and DOTD.