

**UNITED STATES DISTRICT COURT**  
**MIDDLE DISTRICT OF LOUISIANA**

GARRY LEWIS,	:	
BRENDA GAYLE LEWIS,	:	
G. LEWIS LOUISIANA, LLC,	:	
ROBERT BEARD,	:	
CAROLYN MILTON, and	:	
TOWN OF LIVINGSTON, LA,	:	CIVIL NO.
<i>Plaintiffs,</i>	:	
	:	
versus	:	
	:	
UNITED STATES OF AMERICA,	:	
THE UNITED STATES ARMY	:	
CORPS OF ENGINEERS,	:	
COLONEL MICHAEL CLANCY,	:	
and THE UNITED STATES	:	
ENVIRONMENTAL PROTECTION	:	
AGENCY,	:	
<i>Defendants,</i>	:	

**COMPLAINT**

1.

Plaintiffs, Garry Lewis and Brenda “Gayle” Lewis, individually and Plaintiff G. Lewis Louisiana LLC, managed by Garry Lewis (Lewis) own certain real property at Satsuma, in Livingston Parish, Louisiana, and are damaged by Defendants’ conduct including 19 acres of property known as “Milton Lane,” the main subject of this lawsuit. The U.S. Army Corps of Engineers (“Corps”) has declared regulatory jurisdiction over some of these lands under the Clean Water Act (“CWA”), and is obstructing needed connection to municipal water supplies. Plaintiffs, Robert Beard and Carolyn Milton are residents at Satsuma and are damaged by Defendants’ conduct. The Town of Livingston, Louisiana, is an incorporated entity lying within the Parish of Livingston, State of Louisiana, serving Satsuma and all are harmed by Defendants’ conduct.

2.

The Corps regulates Plaintiffs' freedom to use and enjoy said lands, such as restricting water supply utilities, normal timber harvesting, and development for needs of people of Livingston Parish. This regulation also provides regulated persons administrative appeal rights on certain Corps' actions, but the federal regulatory agencies involved have obstructed Plaintiffs' appeal rights while for three years holding Plaintiffs in perpetual limbo without potable water and without use of land. The Corps' actions are arbitrary and capricious and deprive Plaintiffs of the due process of law.

3.

Plaintiffs request this Court's (1) determination of Federal jurisdiction in accordance with the CWA to determine if any wetlands are "adjacent" to regulated Federal waters. Further, Plaintiffs request (2) a staying of further action by Defendants. Finally, Plaintiffs request (3) injunctive relief from Defendants' cease and desist orders (and notice of violations) such that connections to municipal safe drinking water may be made, along 19 acres of Milton Lane, to limit private harm, pending outcome of litigation, and allow Plaintiffs to exercise silviculture use of the adjacent pine plantation.

#### **JURISDICTION AND VENUE**

4.

This Court has jurisdiction over this action under the Administrative Procedure Act, 5 U.S.C. §§703, 704 and 706, the Clean Water Act, 33 U.S.C. § 1344, the Fifth Amendment of the United States Constitution, Federal question jurisdiction under 28 U.S.C. § 1331. The Administrative Procedure Act has waived sovereign immunity for the counts herein.

5.

This Court is the proper venue because the United States is regulating certain of Plaintiffs' Satsuma area lands in Livingston Parish, Louisiana, under 28 U.S.C. § 1391(b)(2) and (e), which lands are within the Middle District of Louisiana.

6.

This Court has authority to grant any applicable form of relief, including declaratory and injunctive relief under 28 U.S.C. § 2201, *et seq.*, and/or 5 U.S.C. § 703.

## **PARTIES**

7.

Plaintiffs Garry L. Lewis and Brenda Gayle Lewis are persons of the full age of majority, are residents of an unincorporated area in Livingston Parish Louisiana within the Middle District of Louisiana, known as Satsuma, and are property owners of certain lands allegedly regulated by the Corps, which are located in Livingston Parish, Louisiana, within the Middle District of Louisiana. Garry Lewis' vocation experience is agriculture/silviculture, veteran of U.S. Navy, attorney, and then builder. Gayle is a housewife. Plaintiff G. Lewis Louisiana, LLC is a limited liability company organized under the laws of the State of Louisiana, managed by Garry and Gayle Lewis. (Collectively referred to as "Lewis"). Plaintiffs Robert Beard and Carolyn Milton are residents of this same unincorporated area in Livingston Parish Louisiana, within the Middle District of Louisiana, known as Satsuma and are harmed by Defendants' conduct. Robert Beard is a laborer and a U.S. Army veteran. Carolyn Milton is a grocery store employee. The Town of Livingston, Louisiana, is an incorporated entity lying within the Parish of Livingston, State of Louisiana, serving Satsuma with utilities and is damaged by Defendants' conduct (Collectively

“Plaintiffs”). The adverse effects of the Corps’ regulation exist here and harm the Plaintiffs. Plaintiffs dispute the regulations of the subject lands and are directly damaged thereby.

8.

Defendants are the United States, acting through the U.S. Army Corps of Engineers, in the New Orleans District in Louisiana, which is commanded by Colonel Michael Clancy, and the U.S. Environmental Protection Agency (“EPA”). The United States has charged these agencies with authority, *inter alia*, to regulate wetlands, issue permits, issue cease and desist orders and notices of violations, issue jurisdictional determinations, and hear administrative appeals regarding wetlands. Defendants “generally” claim to have Federal jurisdiction, essentially, over all lands in Louisiana, which includes Plaintiffs’ lands. *See Exhibit 1.* Defendants, per Exhibit 1, claim “no one in this area has challenged a significant nexus determination in court” (i.e., Federal jurisdiction). Federal Jurisdiction of wetlands, to be appealable, requires that Defendants support same by data establishing wetlands adjacency to Federal waters. This is called Defendants’ approved jurisdictional determination.

9.

Adjacency of wetlands has been interpreted as a “significant nexus” and/or “relatively permanent surface connection” between any wetlands and “traditionally navigable waters.” The closest traditionally navigable waters to the subject property are Colyell Bay, located ten (10) miles away. Plaintiffs allege that Defendants have exceeded statutory and constitutional jurisdiction to regulate private land, including 19 acres of private property called Milton Lane in Livingston Parish. Defendants have acted aggressively to prevent Plaintiffs’ ability to judicially challenge that jurisdictional determination, by unlawfully delaying it and then calling it preliminary. Further,

Defendants have harmed Plaintiffs by preventing connection to municipal potable waterlines with cease and desist orders<sup>1</sup>.

## STANDING

10.

Plaintiffs have standing in this complaint, which alleges (1) that Defendants unlawfully stopped a 404 permit to use Plaintiffs' private land, (2) that Defendants unlawfully delayed, and then unlawfully refused to issue an approved jurisdictional determination and (3) that Defendants thereby intentionally and unlawfully obstructed Plaintiffs' right to judicially appeal their actions and inactions. Plaintiff, Town of Livingston, was the Louisiana municipality seeking to provide safe drinking public water supply. Plaintiffs, Robert Beard and Carolyn Milton, are in the class of citizens seeking to use and connect to the public water supply. Plaintiff, Lewis, is the private land owner of the road and right of way along which the water supply was intended to traverse. Defendants' actions damaged each Plaintiff. Plaintiffs request this Court to retain oversight until all issues are resolved, to submit all issues of fact to a jury, and reserve all issues of law and regulation to the Court.

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<sup>1</sup> See also Exhibit 5; "Having asked for the appealable jurisdictional determination in 2014, Plaintiffs have continued to beg for it for 3 years". See letter of September 7 2016, asking: Dear Mr. Heffner, I am requesting an approved jurisdictional determination for the purposes of appeal. Further, asking again on December 17, 2016: Dear Colonel Clancy and Mr. Martin Mayer, By the letter below, I asked September 7 for an approved jurisdictional determination on the 19 acre Milton Lane Utility JD to be able to appeal it, first administratively and then judicially. Prompt action here—so I can appeal—is one avenue of relief for residents affected by contaminated drinking water. Mr. Mayer assured numerous elected officials and neighbors the additional time needed to obtain the nexus for an approved jurisdictional determination is only 2 weeks. If my September 7 request was overlooked, I respectfully ask that my request for the approved JD be put back in line for consideration. Mr. Mayer's response on December 19, 2016 indicated: Good afternoon Mr. Lewis, Approved jurisdictional determinations (AJDs) generally require more time than preliminary jurisdictional determinations (PJDs) due to increased information requirements to document and support the jurisdictional determination. Aside from background research, we did receive additional information from your agent for our consideration. Feel free to contact me with any further questions. (Much futile correspondence has occurred since then, including congressional inquiries as well.)

## SUMMARY OF FACTS

11.

Defendants were asked to identify “wetlands” and determine if they were regulated under Federal jurisdiction. Defendants then prohibited/restricted use of large areas of Plaintiffs’ land, without a jurisdictional determination, and effectively prohibited an appeal of Defendants’ actions/inaction. One restricted use was for the requested installation of waterlines to serve Plaintiffs with municipal clean/safe drinking water.

12.

Plaintiffs’ representative filed a request for an approved jurisdictional determination on 19 acres at Milton Lane on November 4, 2014 and was entitled to a Defendants’ response within 60 days by regulation and directive. Published Regulatory Guidance Letters (‘RGL 07-01), 5 June 2007 and (‘RGL 08-02), 26 June 2008 during most of the jurisdictional determination process here, was to process a jurisdictional determination “promptly” but within a “sixty-day goal” of receipt. Later, the policy (‘RGL 16-01) in late 2016 was changed to agency “reasonable priorities.”

13.

Plaintiffs met with multiple top level representatives of Defendants on October 5, 2015 who agreed to give Plaintiffs’ request “top priority.” Defendants’ representatives acknowledged that the need was critical to connect to a safe municipal water system of the Town of Livingston along Milton Lane. Subsequently however, Defendants stopped it, claiming it was “not” needed.

14.

On October 26, 2015, Defendants agreed to, and did, accept an application for a 404 permit without Defendants’ approved jurisdictional determination to save Plaintiffs time, and here Defendants specifically acknowledged the public water need was urgent.

15.

On November 6, 2015, Corps Defendants wrote the EPA stating that Plaintiffs' water was not needed and requested the return of a supporting letter intended to stop Plaintiffs' 404 Permit request. The EPA returned to Defendants the concurring letter, dated November 25, 2015. *See Exhibit 10.*

16.

On February 4, 2016, Defendants issued to Plaintiff a formal cease and desist order stopping the permit process for water, writing that this action was "facilitated by" (its) letter returned by the EPA.

17.

On September 7, 2016, Plaintiffs reiterated the request for the approved jurisdictional determination to enable administrative and eventual judicial review on the 19 acres. Defendants refused and continued to delay. Said delay is now exceeding 3 years.

18.

This suit seeks review and final action by the Court. Any remand to Defendants would result in futile additional delays and continuing damages thus should be equitably and lawfully estopped. The equitable principal of "action delayed is action denied," is codified under 5 U.S.C. § 706.

19.

Timber land (silviculture use) is exempted from Defendants' regulatory process under the CWA and Defendants may not prohibit its use, and may not take that exemption, 33 U.S.C. § 1344(f), 40 C.F.R. § 232.2, and 33 C.F.R. § 323.4, without a hearing and compensation. Defendants unlawfully deprived Plaintiffs of all land use without a hearing, "facilitated by" (its)

letter returned by the EPA. *See Exhibit 10.* Defendants used their unlawful action here to cloud their purpose for three years, stopping the attempt to obtain clean drinking water.

20.

A more detailed recitation of facts follows.

## FACTS

21.

Plaintiffs first requested an approved jurisdictional determination on November 4, 2014. *See Exhibit 2.* After delaying a year, in late October 2015, Defendants coerced Plaintiffs to accept a non-appealable preliminary jurisdictional determination. *See Exhibit 3.* After promising to end delays and accelerate a permit process, Defendants then capriciously acted to stop Plaintiffs' wetland permit efforts. *See Exhibit 4.* Plaintiffs, each of them, sought to connect residents to safe public drinking water supplies of Plaintiff, Town of Livingston. Defendants negligently/wrongfully acted in refusing to provide an appealable opinion of Federal jurisdiction, as requested again on September 7, 2016. *See Exhibit 5.* Under law, including 5 U.S.C. § 706(1), this delay is agency unlawful action or action unreasonably delayed and such delay has damaged Plaintiffs.

22.

Plaintiffs seek the Court's finding of no Federal regulatory jurisdiction, a stay of further independent action by Defendants, and injunctive relief. Other damages for delay have directly resulted, and further damage actions are reserved.

23.

The regulations under the CWA do not empower the EPA to take/remove a private owner's right to grow timber (silviculture) on private wetlands, without an evidentiary hearing, which must establish that the private owner failed to follow "Best Management Practices." 33 U.S.C. § 1344(f); 33 C.F.R. § 323.4; 40 CFR § 232.3. See *Sackett* case, *infra*. No such hearing has ever occurred. Corps Defendants simply took Plaintiffs' silviculture exemption based on *ex parte*, inter-agency communications and a letter from EPA, which is an administrative order in design and is embedded in the Corps' cease and desist and notice of violation. This taking used the same EPA letter as Defendants used to stop Plaintiffs' permit process. *See* permit excerpt, Exhibit 6. These agency enforcement actions are final under the Administrative Procedural Act, as they determine Plaintiffs' rights to use their property, expose Plaintiff Lewis to enforcement, and are the culmination of agency action at this time on the silviculture exemption and on regulatory jurisdiction on the property in question.

24.

Plaintiffs had filed the application for the water (connection), "404" permit, with Defendants on October 29, 2015, resulting from a special meeting with Defendants' top officials and commander, occurring October 5, 2015. Regarding the delay, since November 4, 2014, Defendants agreed and promised top priority, which was witnessed by several elected officials in attendance. *See* Exhibit 7. However, Defendants then inconsistently sought to obstruct the request (*See* Exhibit 8), and continued this opposition in a memo to the EPA, dated November 6, 2015. *See* Exhibit 9. This Defendants' memo, inconsistent with the promises, summary of testimony, assurances, and evidence of October 5, 2015, indicated to the EPA that the community did not need the water. The EPA's responding letter dated November 25, 2015 (Exhibit 10), materially

mirrored Defendants' own solicitation. The EPA's letter read: "after reviewing the additional information provided to us, we are in agreement with your assessment." Defendants, using its EPA letter, then acted to stop the water permit, take the silviculture exemption, refused a hearing thereon, and refused to provide Plaintiffs the "additional information" referenced in the EPA letter. Defendants then denied Freedom of Information Act (FOIA) requests for the "additional information."

25.

Defendants' actions on the following related requests reflect a consistent effort to prevent judicial appeal of its asserted Federal jurisdiction in Louisiana. For (1) subject MVN-2015-00041, Defendants deprived an appeal by refusing to issue an appealable jurisdictional determination. For (2) MVN-2015-01591, Defendants minimized an administrative directive to cure its defective jurisdictional determination. For (3) MVN-2015-00321-SQ, Defendants deprived an appeal of a jurisdictional determination unless Plaintiff conceded rights, including due process rights.

26.

Defendants failed to provide an approved jurisdictional determination on the 19 acres (Exhibit 2 request) and by delays, followed by a promise to accelerate its action, coerced Plaintiff to accept an incorrect "preliminary" jurisdictional determination and delineation wrongly describing dry road ditches as waters of the United States and occasional erosion rivulets along it as wetlands. *See Exhibit 3.* Plaintiff justifiably relied on the agency misrepresentation, filed his permit application, supplemented it when asked, and was harmed. *See Exhibit 4.* Plaintiff reiterated, his request and Defendants refused it (to date) Exhibit 5, thereby depriving Plaintiff the right of appeal of either the unlawful delineation, or of the unlawful usurpation of U.S. Federal jurisdiction. Plaintiff has justifiably relied on all statutes, regulations, and promises of Defendants,

including that of “top priority” for a critical need. Plaintiff was unable to appeal administratively. The local water is contaminated, undrinkable, and caused physical and property injury to Plaintiffs. *See Exhibit 11, Affidavit and report.*

27.

Plaintiff Lewis owns, *inter alia*, a gravel roadway, several decades old used by various parties as a timber delivery roadway and mutual access, known as Milton Lane, comprising approximately 19 acres of land located in Section 4, Township 7 South, Range 4 East, Livingston Parish. Adjacent, and parallel thereto, is Spring Ranch Road, which is the site of Plaintiff Robert Beard and Carolyn Milton’s home and contaminated well water. Milton Road, encumbered by access servitudes together with the short section of connecting road between the two, is the focus of this complaint, which totals 19 acres of private land and roadway.

28.

Plaintiff, Town of Livingston, was given a plot of land along the roadways and mutual servitudes to use for the placement of utilities, including public water lines approximately 1000 feet distance, in order to provide public water to Plaintiffs and for a future water tower.

29.

Plaintiff Lewis retained a wetlands consultant to seek a Corps decision in what is called a jurisdictional determination over the Property, usually valid for a period of five years. This jurisdictional determination was requested of the Corps here on November 4, 2014. *See Exhibit 2.*

30.

Due to Defendants’ lack of action, Plaintiffs began to write complaint letters in March, 2015 and eventually met with the New Orleans District Commander (then Colonel Richard Hansen) and his staff on October 5, 2015. In that meeting, the District Commander reviewed the

delays, the need for water, and photos and videos of the well water contamination. The District Commander orally instructed his staff to proceed with the jurisdictional determination for this Property as “top priority.” *See Exhibit 7, Partial transcript of meeting.*

31.

Defendants’ own guidance, in effect at the time this request was submitted, anticipated a total time period from request to completion of wetlands identification and approved jurisdictional determination in 60 days, as explained herein. Accordingly, under 33 U.S.C. § 1344 and its guidance, the Defendants’ decision should have been due on January 2, 2015.

32.

Corps regulations, located at 33 C.F.R. § 331, allows an individual to administratively appeal an *approved* jurisdictional determination, but as Defendants explained in Exhibit 3, not an appeal of a *preliminary* opinion of jurisdiction.

33.

After promising “top priority” and an accelerated permit process through the acceptance of a non-appealable “preliminary jurisdictional determination,” Defendants acted, using letter Exhibit 10, to stop the permit process with a cease and desist order. It is capricious that this cease and desist order can be issued without the same level of “approved jurisdictional determination” as required to assert U.S. jurisdiction over wetlands. This jurisdictional determination request on 19 acres is pending, a 3 years long request of Plaintiff. Without the jurisdictional determination and without hearing, but based upon the same purported authority, letter Exhibit 10, Defendants took control of silviculture production of six (6) land sections, 3,840 acres.

34.

Plaintiff Garry Lewis has refused to sign a tolling agreement on the 19 acres, which would extend the time limit of criminal prosecution. On information and belief, such acknowledgement would concede Defendants' unlawful attempt to withdraw Plaintiffs' right to timber production, would result in significant additional costs, and would require he concede to Federal jurisdiction without the jurisdictional determination requested November 4, 2014, especially as Plaintiff Lewis feels there is no Federal regulatory jurisdiction.

35.

Continually since November 4, 2014, Defendants failed to show U.S. jurisdiction over any wetlands on subject property, which showing must include a reasonably permanent surface connection or significant nexus to Colyell Bay the nearest navigable water, which is located more than ten (10) miles away. Additionally, for a long time, Defendants ignored Plaintiffs' private consultant reports, which document the absence of such factors (including their last report of October 31, 2016, of no "significant nexus" on the 19 acres). *See Exhibit 12.* Defendants have refused to follow its published guidance (2007 and 2008) to process jurisdictional determinations reasonably promptly or within 60 days. Defendants have refused to review, and/or ignored, other government published soils reports, national wetlands inventory maps, and F.E.M.A. maps and reports to the contrary. Defendants, in the past, refused to consider photos of dry ditches along this road during the August 2016, historic Louisiana flood, which reflect the absence of wetlands thus the absence of jurisdiction. *See Exhibits 12 and 13; photos, consultant reports, F.E.M.A. reports/findings, F.E.M.A. publications, U.S. Government wetland inventory publications, U.S. Government soils maps.* Furthermore, Plaintiffs have repeatedly asked for the intervention of Defendants' commander(s) without adequate response. For such reasons and those set out below

including due process, equity, and estoppel the Court should find no Federal regulatory jurisdiction exists, enjoin and set aside the cease and desist order and notice of violation, and reverse the taking without a hearing so that Plaintiff can begin installation of water lines and manage his own timber production without fear of prosecution.

#### **DENIAL OF DUE PROCESS**

36.

Reiterating the allegations herein, Plaintiffs, and each of them individually, are entitled to due process of law before being deprived of life, liberty, and use and enjoyment of their Property. This right includes the right to clean drinking water. Due process includes the procedural right to an administrative appeal of the jurisdictional determination, the right to a hearing, before deprivation of rights, including silviculture rights, and the right to a neutral and unbiased hearing process. Defendants' unlawful action, in refusing to process a permit for public water connection and taking a silviculture exemption without any Federal jurisdiction shown and without the required hearing, was based upon *ex parte* inter-agency communication intended to support a cease and desist order.

37.

Defendants are now directing and controlling Plaintiffs' land, two years after receiving and reviewing a timber management plan, required of Plaintiff Lewis, and after assuring Plaintiffs the plan was approved by Defendants and by the EPA. Thereafter, Plaintiffs followed the plan with no complaints from Defendants. Defendants, in doing so, repudiated the opinion of the Louisiana Department of Forestry field representative that the practices of Plaintiff were in 100% compliance with forestry Best Management Practices. Defendants' federal actions should be set aside.

## UNEQUAL ENFORCEMENT AND BIASED ACTION OF DEFENDANTS

38.

Reiterating all foregoing allegations, the actions of the Chief of the Regulatory Branch (Martin Mayer) of the New Orleans District herein reflect bias against Plaintiffs. For instance, Plaintiff Lewis previously complained of Corps delays to various congressmen (including former U.S. Senator David Vitter's office). The chief responded to Senator Vitter's inquiry in an e-mail on August 1, 2015 (See Exhibit 14), using words to the effect that Plaintiff and/or his representatives had been "very mendacious..." (habitually lied) to the Corps over their history of interactions. This letter was copied to at least one employee (Rob Heffner), at the time one of his own Corps regulatory staff. Plaintiff notified Defendant (Colonel Clancy) of this correspondence on February 1, 2017, but to Plaintiffs' knowledge, said chief continues to overreach his regulation of Plaintiff Lewis and others.

39.

Bias is also seen following the District meeting on October 5, 2015, by Rob Heffner. Though acknowledged as a "top priority" and "urgent," said chief inconsistently concurred to the U.S. Environmental Protection Agency on November 6, 2015 (See Exhibit 10), that "this [the potable water project] is only needed to facilitate future development." The latter letter is the apparent reason for an EPA letter of November 25, 2015, which led to the Corps' cease and desist order and notice of violation letters. *See Exhibit 4*, stating "this action is facilitated by the recent letter from EPA."

40.

Defendants failed to provide the same enforcement and requirements equally to Plaintiffs as an adjacent timber company, using the same practices. Neighbor Pot of Gold, waste manager, was allowed unimpeded use of identified wetlands on adjacent property for a waste site with no

permit required and no cease and desist order or notice of violations issued. This was apparently based on a finding of no jurisdiction.

41.

Defendants should be enjoined against unlawfully enforcing, the cease and desist order and notice of violation, under the CWA, against Plaintiffs.

## **ESTOPPEL**

42.

Assuming agency delay allowed some wetland plant succession to occur by 2017 on the 19 acres, Plaintiffs have been prejudiced thereby and Defendants should not profit. Plaintiff Lewis relied, to his detriment, on Defendants' promises, representations, regulations, and policies in his property usage and, in compliance, submitted requests and timber plans. Materially, Plaintiffs were subject to Defendants' "coerced" preliminary jurisdictional determination, while relying on Defendants' promise to give top priority and accelerate a permit for providing the water connection applications processed in October, 2015.

43.

Defendants further ignored its own reasonable prompt time periods, initially 60 days for jurisdictional determinations, ignored Plaintiffs' pleas for promptness, and rejected any assistance offered by Plaintiff. *See* Exhibits 12 and 13. Defendants should be estopped from seeking an "agency" remand, and submitting new evidence of Federal jurisdiction. The cease and desist order and notice of violation should be stayed, Plaintiffs allowed to go forward with public drinking water installation, and the Court determine Federal regulatory jurisdiction and application of the silviculture exemption. *See* Exhibit 6; excerpts of that permit application.

**AGENCY ACTION UNLAWFULLY OR UNREASONABLY DELAYED**

44.

Defendants ignored its published policy, 2008 (Regulatory Guidance letter ('RGL 08-02) during the jurisdictional determination process, which was to process a jurisdictional determination "promptly" or within a "sixty-day goal" of receipt. Later, the policy ('RGL 16-01) in late 2016 was changed to agency "reasonable priorities" in processing jurisdictional determination requests. Neither policy has been complied with to date by the Corps, nor has the previous District Commander's staff instructions on October 5, 2015, for "top priority" action been followed in this matter.

45.

An administrative appeal, assuming Defendants had timely made an approved jurisdictional determination, also has time limits. There is no reason to believe an administrative appeal thereof would be any more expedient than the long delayed request itself has been. The foregoing delays constitute agency unlawful action or action unreasonably delayed under 5 U.S.C. § 706(1).

46

Defendants seek to ensure that Plaintiffs will never be able to use their land, neither for timber production, nor to connect to potable water, absent ceding to unconstitutional conditions. Defendants 3 year delay in providing a jurisdictional determination is capricious and unlawful. Defendants concluded a taking, without a hearing or compensation, and capriciously denied Plaintiffs a route of appeal. Defendants now directly control the timber land use. Defendants threatened penalties against Plaintiffs if the timber harvester goes beyond Defendants' own directions to the timber harvester and damages unidentified wetlands. The culmination of the Defendants' position is that Plaintiffs can do virtually nothing without exposure to further

enforcement. This is on lands where there was no showing of Federal jurisdiction before the taking. These actions are unlawful.

**INVALID CEASE AND DESIST**

47.

Alternatively, Defendants' cease and desist order and notice of violation, issued in reliance on the EPA's November 25, 2015 letter (or order in disguise), is final agency action and therefore appealable. *See Sackett v. EPA*, 132 S. Ct. 1367 (2012). Through the letter and the cease and desist order and notice of violation, Defendants did also unlawfully withdraw Plaintiffs' rights to the silviculture exemption under the CWA, without a due process or Administrative Procedure Act hearing.

48.

Defendants, in issuing the cease and desist order and notice of violation on Milton Lane, did so while refusing to assert Federal regulatory jurisdiction as part of a Milton Lane jurisdictional determination pending Plaintiff Lewis' request. Now that request exceeds three years of age. The Defendant's cease and desist order and notice of violation are enforced now approaching two years without the necessary showing of Federal jurisdiction. Defendants' unlawful letter, cease and desist order, and notice of violation deprives Plaintiffs of clean public drinking water and use of property. The letter, cease and desist order, and notice of violation should be set aside.

49.

The Defendants ignored recent changes in agency policy, and that is further evidence of their arbitrary and unlawful actions. 33 U.S.C. § 1251, executive order 13778, Feb. 28, 2017, states the Administrator (of EPA, *sic.*) and Assistant Secretary (of Defendant, *sic*) shall promptly notify the Attorney General of the pending review to take such action as he deems appropriate

concerning the litigation. Further, that “....the Agencies will consider interpreting the term “navigable waters,” as defined in the CWA in a manner consistent with the opinion of Justice Scalia in *Rapanos*. ”

### **RELIEF REQUESTED**

WHEREFORE, plaintiff respectfully requests that after due proceedings, and evidence presented, the Court issue:

1. a declaration that Milton Lanes’ 19 acres are not within the Federal jurisdiction of Defendants, nor is the balance of Plaintiffs’ property, resolving the dispute between the parties;
2. an order enjoining the Defendants from taking any action independent of this Court in asserting Federal jurisdiction over Plaintiffs’ property during pendency of this litigation;
3. an order setting aside the cease and desist order and notice of violation and the taking of Plaintiffs’ property, including his silviculture exemption, thereby allowing property use for utility installation, including water, temporarily during pendency of this litigation, and permanently thereafter;
4. a declaration that the actions of the Defendants, in refusing to grant the approved jurisdictional determination, is arbitrary, capricious, an abuse of discretion, and a violation of law;
5. an order that Defendants’ acts make all regulatory issues determinable in Federal Court;

6. an order maintaining jurisdiction until all issues are resolved between the parties, finally allowing or prohibiting the desired installation of lines and water connection to a clean municipal supply; and
7. an order granting such other relief to which Plaintiffs may be entitled.

Respectfully Submitted:



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**DRAKE L. LEWIS**

**La Bar Roll No. 35885  
17457 Wes McIn Rd., Suite A  
Livingston, Louisiana 70754  
Telephone: (225) 686-1111  
Facsimile: (225) 686-7584  
E-mail: dlewis562000@gmail.com**

**TONY CLAYTON, No. 21191  
MICHAEL FRUGE, No. 26287  
3741 LA HWY 1 S  
Port Allen, LA. 70767  
(225) 344-7000 - Phone  
(225) 383-7631 – Fax**

**JOSHUA M. LEWIS, No. 33244  
1720 Kaliste Saloom Rd. Suite A-6  
Lafayette, LA. 70508  
(337) 552-2057 - Phone  
(225) 341-8162 – Fax**

PLEASE SERVE:

**U.S. Army Corps Of Engineers**  
Through the office of Assistant Attorney General for Administration  
**U.S. Department of Justice**  
**Justice Management Division**  
**950 Pennsylvania, NW**  
**Washington, DC 20530**

**The Honorable Jeff Sessions**  
**Attorney General of the United States**  
**Department of Justice, Room 5111**  
**950 Pennsylvania Avenue NW**  
**Washington, DC 20530**

**U.S. Army Corps Of Engineers**  
Through the office of US Attorney Middle District  
**Attn: Civil Process Agent**  
**Russell B. Long Federal Courthouse**  
**777 Florida St. Suite 208**  
**Baton Rouge, LA 70801**

**Major General Michael C. Wehr**  
**Commander for the Mississippi Valley Division**  
**Of the US Army Corps of Engineers**  
**1400 Walnut Street**  
**Vicksburg, MS 39180**

**The Honorable Corey Amundson**  
**United States Attorney's Office**  
**Middle District of Louisiana, Civil Division**  
**777 Florida St. Suite 208**  
**Baton Rouge, LA 70801**

**U.S. Army Corps of Engineers**  
**c/o Lieutenant General Todd T. Semonite**  
**Chief of Engineers and Commanding General of the**  
**US Army Corps of Engineers**  
**441 G Street NW**  
**Washington, DC 20314**

**U.S. Army Corps of Engineers**  
**c/o Colonel Michael Clancy**

**New Orleans District Commander  
7400 Leake Ave  
New Orleans, LA 70118**

**Environmental Protection Agency Region 6  
c/o Samuel Coleman PE  
Administrator for the South Central Region  
1445 Ross Avenue Suite 1200  
Dallas, TX 75202**

Exhibits:

1. Defendants' memo on Federal Jurisdiction, May 2012 (1 pg).
2. Plaintiffs, November 2014 jurisdictional request (cover page to 52 pg study) (1 pg).
3. Defendants' October 2015 coercing emails regarding preliminary vs. approved jurisdictional determinations and acknowledging the urgent water need; emails from Beard to Clancy begging for approved jurisdictional determination.
4. February 4, 2016 Cease and Desist with email explanation; December 4, 2015 notice of violation (4 pg).
5. Plaintiffs' September 7, 2016 request for "approved" jurisdictional determination in order to appeal, and selected congressional inquiries (3 pg).
6. Excerpts of Plaintiffs' permit request with Defendant filed October 29, supplemented December 21, 2015 (6 pg).
7. Photo of October 5, 2015 meeting, attendance sheet, and transcript 7-10 (6 pg). (Mr. Heffner is transcribed as saying, "I am not sure they would be jurisdictional wetlands or not," "what I meant to mean is the activities we've seen within some tight limits of this project were done under the silvicultural exemption." Further, as to the time needed to analyze whether wet areas are jurisdictional or not he indicated, "I'd say ten days to two weeks" as an estimate on the long side.

Col. Hansen stated, “Now the Corps does not make the final determination on whether a particular activity is covered under silviculture exemption or not. If called upon, the EPA makes the final decision and we can provide our input.”

8. Defendants’ exemplar intra and inter-agency email communications seeking to obstruct the jurisdictional determination request (2 pg).
9. Defendants’ Nov 6, 2015 memo seeking a concurrence letter from the EPA, stating “water to houses” and indicating “this is only needed to facilitate future development.”
10. EPA’s Nov. 25, 2015 response letter to Defendant indicating “after reviewing the additional information provided to us, we are in agreement with your assessment.” Defendant’s explanatory email of December 2, 2015; EPA email explaining November 25, 2015 letter, indicating “we don’t have authority to approve timber management plans” and “it was not a regulatory or legal action” and “the term hearing is not applicable.” Defendants’ 2012 email stating, “EPA reviewed the forest management plan” . . . “He said it looks fine” (5 pg).
11. Experts' Affidavit, *Curriculum Vitae*, and opinion of Plaintiffs' contaminated water supply (17 pg).
12. Last report and multiple email submissions of Plaintiffs' wetlands consultant indicating no jurisdiction 10/31/2016 (none-significant nexus evaluation) (32 pg).
13. Plaintiffs' exhibits cajoling Defendant to return its jurisdictional determination, no water during the major August 2016 Louisiana flood, photos, U.S. maps for soils, U.S maps of wetlands inventory, FEMA map, FEMA 4277-DR-LA report of no wetlands, La. Forester report indicating 100% compliance with BMP (13 pg).
14. Mr. Mayer to Senator Vitter letter dated August 1, 2015 (1 pg).

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<b>I. (a) PLAINTIFFS</b>		<b>DEFENDANTS</b>			
<p><b>(b)</b> County of Residence of First Listed Plaintiff _____  <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys (<i>Firm Name, Address, and Telephone Number</i>)</p>		<p>County of Residence of First Listed Defendant _____  <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (<i>If Known</i>)</p>			
<b>II. BASIS OF JURISDICTION</b> ( <i>Place an "X" in One Box Only</i> )		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> ( <i>Place an "X" in One Box for Plaintiff and One Box for Defendant</i> )			
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i>	Citizen of This State <input type="checkbox"/> PTF <input type="checkbox"/> DEF	Incorporated or Principal Place of Business In This State <input type="checkbox"/> PTF <input type="checkbox"/> DEF		
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i>	Citizen of Another State <input type="checkbox"/> PTF <input type="checkbox"/> DEF	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> PTF <input type="checkbox"/> DEF		
		Citizen or Subject of a Foreign Country <input type="checkbox"/> PTF <input type="checkbox"/> DEF	Foreign Nation <input type="checkbox"/> PTF <input type="checkbox"/> DEF		
<b>IV. NATURE OF SUIT</b> ( <i>Place an "X" in One Box Only</i> )		Click here for: <a href="#">Nature of Suit Code Descriptions</a> .			
<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<b>SOCIAL SECURITY</b>	<b>FEDERAL TAX SUITS</b>	<b>OTHER STATUTES</b>
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>Habeas Corpus:</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Other:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			<b>IMMIGRATION</b>	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	
<b>V. ORIGIN</b> ( <i>Place an "X" in One Box Only</i> )					
<input type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer <input type="checkbox"/> 8 Multidistrict Litigation - Direct File
<b>VI. CAUSE OF ACTION</b>		Cite the U.S. Civil Statute under which you are filing ( <i>Do not cite jurisdictional statutes unless diversity</i> ):  Brief description of cause:			
<b>VII. REQUESTED IN COMPLAINT:</b>		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION <small>UNDER RULE 23, F.R.Cv.P.</small>		<b>DEMAND \$</b>	CHECK YES only if demanded in complaint:  <b>JURY DEMAND:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>VIII. RELATED CASE(S) IF ANY</b>		<small>(See instructions):</small> JUDGE _____ DOCKET NUMBER _____			
DATE	SIGNATURE OF ATTORNEY OF RECORD				
<b>FOR OFFICE USE ONLY</b>					
RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE	

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

GARRY LEWIS, :  
BRENDA GAYLE LEWIS, :  
G. LEWIS LOUISIANA, LLC, :  
ROBERT BEARD, :  
CAROLYN MILTON, and :  
TOWN OF LIVINGSTON, LA, : CIVIL NO.  
*Plaintiffs,* :  
versus :  
UNITED STATES OF AMERICA, :  
THE UNITED STATES ARMY :  
CORPS OF ENGINEERS, :  
COLONEL MICHAEL CLANCY, :  
and THE UNITED STATES :  
ENVIRONMENTAL PROTECTION :  
AGENCY, :  
*Defendants,* :

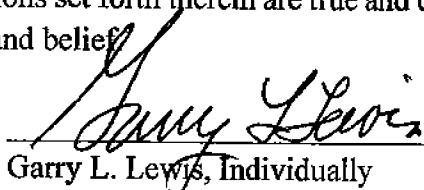
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**State of Louisiana**  
**Parish of Livingston**

**Affidavit of Verification**

BEFORE ME, the undersigned authority, a Notary Public duly commissioned and qualified in accordance with the laws of the State and Parish aforesaid, personally came and appeared Plaintiffs Garry L. Lewis, appearing personally and as manager of G. Lewis Louisiana, L.L.C., Brenda Gayle. Lewis, Town of Livingston, Robert Beard, and Carolyn Milton who each, being first duly sworn, did depose and state:

1. That he/she is a Plaintiff in the foregoing complaint;
2. That he/she has read the foregoing complaint;
3. That the facts and allegations set forth therein are true and correct to the best of his/her knowledge, information and belief

  
\_\_\_\_\_  
Garry L. Lewis, Individually

Garry Lewis  
G. Lewis Louisiana L.L.C., Garry L. Lewis, manager

Brenda Gayle Lewis  
Brenda Gayle Lewis, Individually

David McCreary  
Town of Livingston, David McCreary, Mayor

Robert H. Beard  
Robert Beard, Individually

Carolyn Milton  
Carolyn Milton, Individually

SWORN TO AND SUBSCRIBED before me, Notary, this 7th day of November,  
2017.

Drake L. Lewis  
Drake L. Lewis, #35885

Notary Public



Drake L. Lewis  
Notary Public  
Notary ID No. 140814  
Livingston Parish, Louisiana

UNITED STATES DISTRICT COURT  
for the

\_\_\_\_\_ District of \_\_\_\_\_

*Plaintiff(s)*

v.

Civil Action No.

*Defendant(s)*

**SUMMONS IN A CIVIL ACTION**

To: (*Defendant's name and address*)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

*Signature of Clerk or Deputy Clerk*

---

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

**(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))**

This summons for (*name of individual and title, if any*) \_\_\_\_\_  
was received by me on (*date*) \_\_\_\_\_.

- I personally served the summons on the individual at (*place*) \_\_\_\_\_  
on (*date*) \_\_\_\_\_; or
- I left the summons at the individual's residence or usual place of abode with (*name*) \_\_\_\_\_,  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on (*date*) \_\_\_\_\_, and mailed a copy to the individual's last known address; or
- I served the summons on (*name of individual*) \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of (*name of organization*) \_\_\_\_\_  
on (*date*) \_\_\_\_\_; or
- I returned the summons unexecuted because \_\_\_\_\_; or
- Other (*specify*): \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

*Server's signature*

*Printed name and title*

*Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT  
for the

\_\_\_\_\_ District of \_\_\_\_\_

*Plaintiff(s)*

v.

Civil Action No.

*Defendant(s)*

**SUMMONS IN A CIVIL ACTION**

To: (*Defendant's name and address*)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

*Signature of Clerk or Deputy Clerk*

---

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for (*name of individual and title, if any*) \_\_\_\_\_  
was received by me on (*date*) \_\_\_\_\_.

- I personally served the summons on the individual at (*place*) \_\_\_\_\_  
on (*date*) \_\_\_\_\_; or
- I left the summons at the individual's residence or usual place of abode with (*name*) \_\_\_\_\_,  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on (*date*) \_\_\_\_\_, and mailed a copy to the individual's last known address; or
- I served the summons on (*name of individual*) \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of (*name of organization*) \_\_\_\_\_  
on (*date*) \_\_\_\_\_; or
- I returned the summons unexecuted because \_\_\_\_\_; or
- Other (*specify*): \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

*Server's signature*

\_\_\_\_\_

*Printed name and title*

\_\_\_\_\_

*Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT  
for the

\_\_\_\_\_ District of \_\_\_\_\_

*Plaintiff(s)*

v.

Civil Action No.

*Defendant(s)*

**SUMMONS IN A CIVIL ACTION**

To: (*Defendant's name and address*)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

*Signature of Clerk or Deputy Clerk*

---

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for (*name of individual and title, if any*) \_\_\_\_\_  
was received by me on (*date*) \_\_\_\_\_.

- I personally served the summons on the individual at (*place*) \_\_\_\_\_  
on (*date*) \_\_\_\_\_; or
- I left the summons at the individual's residence or usual place of abode with (*name*) \_\_\_\_\_,  
a person of suitable age and discretion who resides there,  
on (*date*) \_\_\_\_\_, and mailed a copy to the individual's last known address; or
- I served the summons on (*name of individual*) \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of (*name of organization*) \_\_\_\_\_  
on (*date*) \_\_\_\_\_; or
- I returned the summons unexecuted because \_\_\_\_\_; or
- Other (*specify*): \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

*Server's signature*

\_\_\_\_\_ *Printed name and title*

\_\_\_\_\_ *Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT  
for the

\_\_\_\_\_ District of \_\_\_\_\_

*Plaintiff(s)*

v.

Civil Action No.

*Defendant(s)*

**SUMMONS IN A CIVIL ACTION**

To: (*Defendant's name and address*)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for (*name of individual and title, if any*) \_\_\_\_\_  
 was received by me on (*date*) \_\_\_\_\_.

- I personally served the summons on the individual at (*place*) \_\_\_\_\_  
 \_\_\_\_\_ on (*date*) \_\_\_\_\_; or
- I left the summons at the individual's residence or usual place of abode with (*name*) \_\_\_\_\_,  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on (*date*) \_\_\_\_\_, and mailed a copy to the individual's last known address; or
- I served the summons on (*name of individual*) \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of (*name of organization*) \_\_\_\_\_  
 \_\_\_\_\_ on (*date*) \_\_\_\_\_; or
- I returned the summons unexecuted because \_\_\_\_\_; or
- Other (*specify*): \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

*Server's signature**Printed name and title**Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT  
for the

\_\_\_\_\_ District of \_\_\_\_\_

*Plaintiff(s)*

v.

Civil Action No.

*Defendant(s)*

**SUMMONS IN A CIVIL ACTION**

To: (*Defendant's name and address*)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for (*name of individual and title, if any*) \_\_\_\_\_  
 was received by me on (*date*) \_\_\_\_\_.

- I personally served the summons on the individual at (*place*) \_\_\_\_\_  
 \_\_\_\_\_ on (*date*) \_\_\_\_\_; or
- I left the summons at the individual's residence or usual place of abode with (*name*) \_\_\_\_\_,  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on (*date*) \_\_\_\_\_, and mailed a copy to the individual's last known address; or
- I served the summons on (*name of individual*) \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of (*name of organization*) \_\_\_\_\_  
 \_\_\_\_\_ on (*date*) \_\_\_\_\_; or
- I returned the summons unexecuted because \_\_\_\_\_; or
- Other (*specify*): \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

*Server's signature**Printed name and title**Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT  
for the

\_\_\_\_\_ District of \_\_\_\_\_

*Plaintiff(s)*

v.

Civil Action No.

*Defendant(s)*

**SUMMONS IN A CIVIL ACTION**

To: (*Defendant's name and address*)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

*Signature of Clerk or Deputy Clerk*

---

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

**(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))**

This summons for (*name of individual and title, if any*) \_\_\_\_\_  
was received by me on (*date*) \_\_\_\_\_.

- I personally served the summons on the individual at (*place*) \_\_\_\_\_  
on (*date*) \_\_\_\_\_; or
- I left the summons at the individual's residence or usual place of abode with (*name*) \_\_\_\_\_,  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on (*date*) \_\_\_\_\_, and mailed a copy to the individual's last known address; or
- I served the summons on (*name of individual*) \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of (*name of organization*) \_\_\_\_\_  
on (*date*) \_\_\_\_\_; or
- I returned the summons unexecuted because \_\_\_\_\_; or
- Other (*specify*): \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

*Server's signature*

\_\_\_\_\_ *Printed name and title*

\_\_\_\_\_ *Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT  
for the

\_\_\_\_\_ District of \_\_\_\_\_

*Plaintiff(s)*

v.

Civil Action No.

*Defendant(s)*

**SUMMONS IN A CIVIL ACTION**

To: (*Defendant's name and address*)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

*Signature of Clerk or Deputy Clerk*

---

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

**(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))**

This summons for (*name of individual and title, if any*) \_\_\_\_\_  
was received by me on (*date*) \_\_\_\_\_.

- I personally served the summons on the individual at (*place*) \_\_\_\_\_  
on (*date*) \_\_\_\_\_; or
- I left the summons at the individual's residence or usual place of abode with (*name*) \_\_\_\_\_,  
a person of suitable age and discretion who resides there,  
on (*date*) \_\_\_\_\_, and mailed a copy to the individual's last known address; or
- I served the summons on (*name of individual*) \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of (*name of organization*) \_\_\_\_\_  
on (*date*) \_\_\_\_\_; or
- I returned the summons unexecuted because \_\_\_\_\_; or
- Other (*specify*): \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT  
for the

\_\_\_\_\_ District of \_\_\_\_\_

*Plaintiff(s)*

v.

Civil Action No.

*Defendant(s)*

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If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

*Signature of Clerk or Deputy Clerk*

---

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

**(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))**

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was received by me on (*date*) \_\_\_\_\_.

- I personally served the summons on the individual at (*place*) \_\_\_\_\_  
on (*date*) \_\_\_\_\_; or
- I left the summons at the individual's residence or usual place of abode with (*name*) \_\_\_\_\_,  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on (*date*) \_\_\_\_\_, and mailed a copy to the individual's last known address; or
- I served the summons on (*name of individual*) \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of (*name of organization*) \_\_\_\_\_  
on (*date*) \_\_\_\_\_; or
- I returned the summons unexecuted because \_\_\_\_\_; or
- Other (*specify*): \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

MEMO

On May 24, 2012, Jay Prather and I met with [REDACTED] from the [REDACTED] Section, Regulatory Branch of the New Orleans District, Corps of Engineers. The purpose of the meeting was to discuss the application of joint Corps of Engineers and EPA guidance implementing the Supreme Court decision (Rapanos v. U.S. and Carabell v. U.S.) regarding jurisdiction over waters of the U.S. under the Clean Water Act.

Although we were looking for overall information regarding the New Orleans District's application of this guidance, our focus was those waters far removed from a traditional navigable water. We were most interested in the significant nexus analysis and determination.

We discussed the key points regarding the guidance: traditional navigable waters(TNW), wetlands adjacent to TNW, relatively permanent waters( RPW), wetlands abutting RPW, waters requiring a significant nexus analysis, and the significant nexus analysis itself.

Rob explained that the hydrological water or wetlands and the new waters or wetlands identified as cumulative impacts, were either impossible to define or were outside of the hydrological space with few exceptions. Rob felt very significant nexus with a CWPV. This nexus analysis, generally concludes the water or wetland does have a significant nexus when considered cumulatively. The nexus analysis considers both hydrologic and ecological factors, cumulatively. Rob indicated, in the NOD, there had been less than 10 significant nexus analyses that concluded there was no significant nexus.

We also discussed the application of this guidance in other COE districts. Rob indicated that in the southern U.S. he did not think there has been a substantial reduction in the area of regulated waters as a result of this guidance. This conclusion is based on general discussions with many of the southern districts. He also indicated that, to his knowledge, no one in this area, has challenged a significant nexus determination in court.

Ronald J. Ventola  
*Ronald J. Ventola*  
Director, Regulatory Compliance

ELOS Environmental

May 30, 2012





November 4, 2014

ATTN: Mr. Rob Heffner  
U.S. Army Corps of Engineers  
New Orleans District  
CEMVN-OD-S  
Post Office Box 60267  
New Orleans, LA 70160-0267

RE: Request for a Jurisdictional Determination  
Milton Lane Utilities  
Garry Lewis Properties  
Livingston Parish, Louisiana

Dear Mr. Heffner:

On behalf of Garry Lewis Properties, ELOS Environmental, LLC is requesting a Jurisdictional Determination for ± 19 acres for Milton Lane Utilities located in Sections 4 and 5, Township 7 South – Range 4 East, Livingston Parish, Louisiana.

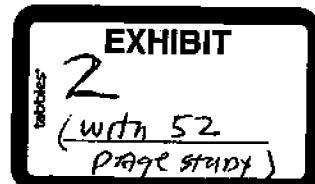
I have enclosed a proposed wetland delineation report to assist you in your determination process.

If you would like to discuss the request, please do not hesitate to contact me at the office by phone at 985-662-5501, fax at 985-662-5504, or e-mail at [kbrook@elosenv.com](mailto:kbrook@elosenv.com).

Sincerely,  
**ELOS Environmental, LLC**

A handwritten signature in black ink that reads "Kristin E. Broom".

Kristin Broom  
*Environmental Scientist*



-----Original Message-----

From: Heffner, Robert A MVN <[Robert.A.Heffner@usace.army.mil](mailto:Robert.A.Heffner@usace.army.mil)>  
To: 'LEWIS' <[bregaylew@aol.com](mailto:bregaylew@aol.com)>  
Cc: djones <[djones@townoflivingston.com](mailto:djones@townoflivingston.com)>; wayne.bares  
<[wayne.bares@bankonnet.com](mailto:wayne.bares@bankonnet.com)>; Mayer, Martin S MVN  
<[Martin.S.Mayer@usace.army.mil](mailto:Martin.S.Mayer@usace.army.mil)>  
Sent: Tue, Oct 13, 2015 3:38 pm  
Subject: RE: [EXTERNAL] wetlands drawing ELOS

Mr. Lewis,

Is a preliminary JD okay for the waterline. If so, we can issue it and move onto the 2 -20 ac sites. If not, we will conduct a site visit to gather the extra information required by the court stay on the water line and spend any remaining time on the 2-20 ac tracts. Do you know Raymond's availability? We haven't gotten any response to our previous messages that included him.

Thanks,  
Rob



-----Original Message-----

From: Heffner, Robert A MVN <Robert.A.Heffner@usace.army.mil>  
To: LEWIS <bregaylew@aol.com>; jprather <jprather@elosenv.com>;  
raymond.plauche <raymond.plauche@yahoo.com>; lwatkins  
<lwatkins@elosenv.com>  
Sent: Thu, Oct 8, 2015 2:17 pm  
Subject: RE: [EXTERNAL] preliminary vs approved JD (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

Gentlemen,

I don't know the question Jay asked but assume it was about a preliminary determination being acceptable for the Water JD. I'll be glad to answer any questions about the difference between approved and preliminary determinations that Jay can't answer for you. Your decision isn't a blanket one, you can request an approved jd for one request and a preliminary for another.

We looked at a portion of one of the 20-acre blocks before running out of time. Our opinion is the non-wetland call on the eastern tract is not accurate and additional field work will be required. Who will we be working with to finalize the 2 - 20-ac tracts?

Our intention is to focus on getting the water JD completed since it is the most urgent and then addressing your other request.

Respectfully,

Rob Heffner  
Chief, Surveillance and Enforcement Section  
U.S. Army Corps of Engineers, New Orleans District  
504-862-1288

-----Original Message-----

From: Mayer, Martin S CIV USARMY CEMVN (US)  
To: LEWIS  
Cc: Clancy, Michael N COL USARMY CEMVN (US) Nethery, William R CIV USARMY CEMVN (US)  
Sent: Sat, Dec 17, 2016 1:30 pm  
Subject: Re: [EXTERNAL] Fwd: MVN 2015-02201-CD drinking water need, flood housing need

Good afternoon Mr. Lewis,

I will check on the status of the Milton Lane AJD request on Monday and provide an update.

Have a good weekend,

Martin  
Sent from my BlackBerry 10 smartphone.

From: LEWIS  
Sent: Saturday, December 17, 2016 11:13 AM  
To: Clancy, Michael N COL USARMY CEMVN (US) ; Wingate, Mark R CIV USARMY CEMVN (US); > ; Mayer, Martin S CIV USARMY CEMVN (US); Martinez, Maria; ; Martinez, Maria; Subject: [EXTERNAL] Fwd: MVN 2015-02201-CD drinking water need, flood housing need

December 17, 2016

Dear Colonel Clancy and Mr. Martin Mayer

By the below letter. I asked Sep 7 for an APPROVED JD on the 19 acre MILTON LANE UTILITY JD to be able to appeal it, first administratively and then judicially in the middle district Federal Court. Prompt action here--so I can appeal--is one avenue of relief for residents affected by contaminated drinking water, at Livingston Parish, Satsuma Louisiana. Mr. Mayer and Col. Hansen, whose command you relieved, BOTH assured numerous elected officials and neighbors the additional time needed to obtain the nexus for an Approved JD is only 2 weeks, I have now waited 9 weeks. (you have that meeting transcript of October 5, 2015) If my Sep 7 request was overlooked, I respectfully ask that my request for the approved JD be put back in line for consideration.

Robert Beard  
P.O. Box 1146  
Livingston, LA 70754  
(225)803-9624

December 20, 2016

Col. Michael N. Clancy  
Mr. Martin Mayer  
Dept. of the Army  
Corps of Engineers, New Orleans District  
CEMVN-OD-SS  
7400 Leake Ave.  
New Orleans, LA 70118

Re: 16460 Spring Ranch Rd., Livingston, LA 70754

Dear Col. Clancy,

It's a task for me just to go home and get a hot bath.

I've had to heat water on a crawfish pot because the new hot water heater has corroded up again this year and I replaced it again two weeks ago right after I got out of the hospital. These pictures show that corroded heating elements. I have bobos on my head and body that won't clear up from washing with the water. This pot of sludge builds up in my toilet. My faucets corrode so badly I have to run water from the bath vanity to the tub.

Why don't you come and trade places with me for about a week. This contamination has got to stop. Your people didn't believe the videos and ever since we had the meeting back in October 2015, there's not nothing been done.

Sincerely,

*Robert A. Beard Carolyn A. Milton*  
ROBERT BEARD and CAROLYN MILTON

Cc: Congressman Garret Graves  
Senator Bill Cassidy  
Senator John Kennedy

Robert Beard & Carolyn Milton  
P.O. Box 1146  
Livingston, LA 70754  
(225)803-9624

February 15, 2017

Col. Michael N. Clancy  
Dept. of the Army  
Corps of Engineers, New Orleans District  
CEMVN-OD-SS  
7400 Leake Ave.  
New Orleans, LA 70118

Re: 16460 Spring Ranch Rd., Livingston, LA 70754

Dear Col. Clancy,

Attached are two letters I sent you on my water.

That new hot water heater has done burned up the heating element in the bottom and attached is the picture. I had to change it last week.

Also, the new well tank outside that I've already replaced twice, is rusting out because something is wrong with the water, eating it up and I'm gonna have to change it again. I also attach a picture of what it looks like today.

Can I come down and see you about this personally?

I know you are a powerful man and can help me.

Thanks,

*Robert A. Beard Carolyn Milton*  
ROBERT BEARD & CAROLYN MILTON

-----Original Message-----

From: Windham, Michael J MVN  
[mailto:[Michael.J.Windham@usace.army.mil](mailto:Michael.J.Windham@usace.army.mil)]  
Sent: Thursday, February 04, 2016 11:48 AM  
To: Andrew J. Harrison <[ajh@ajharrisonlaw.com](mailto:ajh@ajharrisonlaw.com)>  
Cc: Heffner, Robert A MVN <[Robert.A.Heffner@usace.army.mil](mailto:Robert.A.Heffner@usace.army.mil)>  
Subject: Milton Lane Utilities (MVN-2015-00041-SK)

Andrew,

Attached are the tolling agreement ~~and notice of violation~~, resolution documents as discussed in our phone conversation recently with Rob and myself. Currently, ~~Mr. Lewis does have a permit application in our office for these utilities. However, it is on hold pending a signed tolling agreement.~~ This action was facilitated by the recent letter from EPA concerning applicability of the Silvicultural exemption to activities conducted at the project site. If you have any questions or I can be of further assistance please let me know. Thank you.

Michael J. Windham  
Surveillance and Enforcement  
US Army Corps of Engineers  
(504) 862-1235

EXHIBIT

4  
1 of 4

Send 2/4/16



REPLY TO  
ATTENTION OF

Operations Division  
Surveillance and Enforcement Section

DEPARTMENT OF THE ARMY  
NEW ORLEANS DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 60267  
NEW ORLEANS, LOUISIANA 70160-0267  
**CEASE AND DESIST ORDER**

CASE NUMBER: MVN-2015-00041-SK

ISSUED TO: Mr. Garry L. Lewis

ADDRESS: 17457 Wes McLin Rd., Suite A, Livingston, LA 70754 PHONE: 225-686-1111

LOCATION OF WORK: Milton Lane, Sections 4 and 5, Township 7 South, Range 4 East, Livingston Parish, Louisiana. Lat/Lon (30.4698N/ 90.8206W) ✓

CHARACTER OF WORK: Deposition of fill material into a wetland.

APPARENT VIOLATION OF:  Section 10 of the Rivers and Harbors Act (RHA);  Section 13 of the RHA;  
 Section 301 of the Clean Water Act (CWA); and/or  Section 404 of the CWA.

This work was performed in waters of the United States and is therefore subject to Department of the Army (DA) regulatory authority. You are directed not to perform or allow any further unauthorized work at this site until proper authorization has been granted. Failure to abide by this Cease and Desist Order will result in appropriate legal action.

This unauthorized work could have subjected you to judicial proceedings for violation of the RHA and/or the CWA. These proceedings could have resulted in a statutory penalty, restoration, or other appropriate relief. However, due to the circumstances surrounding this violation and considering your willingness to cooperate, we have determined that judicial proceedings are not warranted in this case at this time.

Our preliminary investigation indicates that acceptance of an after-the-fact permit application will not result in additional adverse impacts to wetlands or other waters. Therefore, unless new information warrants otherwise, we will accept your application for the work conducted, as well as any additional work necessary to complete the project. If it is later found to be in the total public interest to deny the permit request, civil action to restore the area to pre-project conditions will then be considered.

The attached application and tolling agreement should be submitted to this office (ATTN: Surveillance and Enforcement Section) no later than 30 days from the date you receive this notice. Failure to submit an after-the-fact application within the allotted time will cause reconsideration of our decision not to seek judicial relief.

A record of this violation will be kept on permanent file. You are cautioned that any further unauthorized work may result in an enforcement action, including possible litigation. Your prior knowledge of Federal permitting requirements and the activities associated with the previous enforcement action will be taken into account.

Should you wish to discuss this matter further, or if you have any questions concerning wetlands and the permitting process, please contact the undersigned issuer at (504) 862-1235, or -2270.

Sincerely,

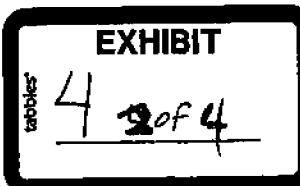
Richard L. Hansen  
Colonel, US Army  
District Commander

ISSUED BY: Mr. Michael Windham JOB TITLE: Botanist, Surveillance & Enforcement

RECEIPT ACKNOWLEDGED: \_\_\_\_\_ DATE: \_\_\_\_\_

CED-Cmb

Jun 13





REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, NEW ORLEANS DISTRICT  
P.O. BOX 60267  
NEW ORLEANS, LOUISIANA 70160-0267

DEC 8 4 2015

Operations Division  
Regulatory Branch

Mr. Garry Lewis  
17457A Wes McLin Road  
Livingston, Louisiana 70754

Dear Mr. Lewis:

This letter is to notify you that the U.S. Army Corps of Engineers has reason to believe, and alleges, that you are responsible for the recent deposition of fill material into a wetland, a waters of the United States, resulting from the excavation and side casting of material from a waterway locally known as Switch Cane Bayou. The location ✓ is north of Milton Lane in Satsuma, Livingston Parish, Louisiana at coordinates 30.4689° North and 90.8237° West. Information received in this office indicates you are a party associated with this activity, either as a property owner or as a person performing or causing the performance of this work.

Based on information gathered during a field investigation on October 7, 2015, we determined that fill material was discharged in a wetland, a waters of the United States. Section 404 of the Clean Water Act (CWA), 33 U.S.C. § 1344, prohibits discharges of dredged or fill material into waters of the United States unless the work has been authorized by a Department of the Army (DA) permit. This law requires that you cease and desist such activity unless and until the activity has been authorized by a DA permit. This activity was performed without the required DA authorization and is in violation of Section 301 of the CWA. Therefore, this letter is to advise that you cease and desist conducting such activity in waters of the United States pending a resolution. In addition, this letter serves to inform you of the consequences for engaging in unauthorized activities and the potential options for resolving this matter.

You are requested to submit a letter of comments explaining why the work was performed without a valid DA permit. Further, please include the names, addresses, and telephone numbers of any/all environmental consultants and construction contractors performing work on the project. You may include any other information relating to this activity that you wish to furnish us. Based upon your responses to this notification and any available information, the Corps will determine the appropriate course of action to resolve this matter. Potential resolutions include restoration of the affected area, issuance of an after-the-fact permit in accordance with 33 CFR 326.3(e), and/or legal action. If an after-the-fact permit is issued, you may appeal the permit and the jurisdictional determination in accordance with 33 CFR 331. Since the information provided will become a part of the public record, it may be presented in any court action that could result from this investigation.

EXHIBIT

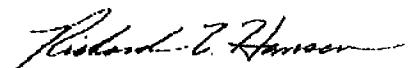
430F4

-2-

If we do not receive a written response from you within 30 days after the receipt of this letter, we will proceed with appropriate action for resolution of the legal issues based on the information in our files. These options could include an order to restore the site, a referral to the Environmental Protection Agency for assessment of an administrative penalty, and/ or a referral of the case to the Department of Justice.

If you have any questions, please reference case number MVN-2015-02114-SK and contact Mr. Michael Windham at 504-862-1235 or email to michael.j.windham@usace.army.mil.

Sincerely,



Richard L. Hansen  
Colonel, U.S. Army  
District Commander

EXHIBIT

tabbed  
44 of 4

*Garry L. Lewis*  
17457 Wes McLin Rd. Suite A  
Livingston, Louisiana 70754  
(225)686-1111; Fax 686-7584

September 7, 2016

Col. Michael N. Clancy  
Mr. Martin Mayer  
Mr. Robert Heffner  
Department of the Army  
Corps of Engineers, New Orleans District  
CEMVN-OD-SS  
7400 Leake Avenue  
New Orleans, LA 70118  
504-862-1288

Re (Milton Lane utilities) MVN 2015-02201-CD and JD 2015-00041

Dear Mr. Heffner,

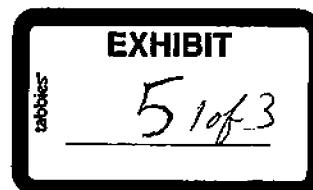
I am respectfully requesting an approved JD for the Milton Lane Utilities tract for purposes of appeal.

My delay in making this request was in reliance on Col. Richard Hansen's assurance that he and his staff would assist in the prompt processing of any permit if required to get water to this community.

Sincerely,

*Garry L. Lewis*  
GARRY L. LEWIS

#B



GARRET GRAVES  
6th District, Louisiana

204 Cannon House Office Building  
Washington, DC 20515  
(202) 225-3904

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-1806**

Colonel Michael Clancy  
Commander and District Engineer, New Orleans District  
U.S. Army Corps of Engineers  
PO Box 60267  
New Orleans, LA 70160

August 1, 2016

Dear Colonel Clancy:

I am writing to follow up on a conversation with your office today and previous meetings related to my constituents in Livingston Parish. We are very concerned about long delays apparently caused by the Corps of Engineers regarding access to a safe and reliable drinking water source for the Satsuma area.

As you may know, Livingston is the fastest growing parish in the state. Along with this growth comes a rising demand for water and wastewater services. A proposal has been proffered that would construct a water tower in the vicinity of Milton Lane, just south of Interstate 12. The only water source available for some community members is contaminated – unfit for consumption. We have recently seen similar issues in Flint, Michigan and other areas of the nation – resulting in significant health and monetary liabilities. Yet, the Corps appears responsible for delaying a viable solution for Livingston Parish's water issues for over 20 months.

Dating back to 2014 efforts have been underway to provide a safe drinking water solution to this community. Parish elected leaders, local elected leaders and community leaders have voiced their support for this solution. I joined other congressional offices, parish and local leaders at a meeting at the Corps' New Orleans office on October 5, 2015, where this topic was discussed. We left that meeting believing that a viable path forward would be found. Unfortunately, according to your July 07, 2016, correspondence (enclosed) it appears that little progress has been made. The same issues are being discussed today as were discussed last year.

It is 2016 and unacceptable for the Corps of Engineers' actions to result in forcing people to consume unsafe water when viable solutions are available. If I have this wrong, please help to set the record straight.

In an effort to help break this logjam and to provide our communities access to safe water, please provide answers to the following questions by Friday, August 12, 2016:

- 1) The Corps appears to be delaying permit consideration based upon previous alleged actions of the permit applicant. What authority does the Corps have to be prejudicial in

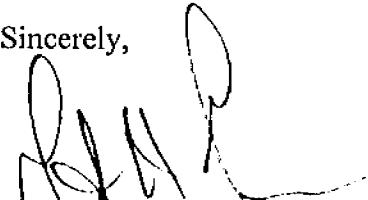
5 2 of 3

their permit decisions based upon a permittee's previous actions? Please cite the statutory authority and associated regulation.

- 2) The Corps appears to be attempting to leverage the consideration/approval of one permit to force action by the same permittee on a separate matter. What authority does the Corps have to make consideration of one permit contingent upon a separate matter? Please cite the statutory authority and regulation.
- 3) Recognizing that the Corps' action or inaction is resulting in forcing the community to continue to use a water source that is unfit for consumption and could result in health, monetary and other liabilities, what solution does the Corps have to address this urgent situation?
- 4) At a March 17, 2016, Congressional hearing, the Administrator of the U.S. Environmental Protection Agency stated, "*I want to start by saying what happened in Flint should not have happened and can never happen again... I'm personally committed to doing everything possible to make sure a crisis like this never happens again.*" However, the Corps' actions over the past nearly two years appear to result in similar outcomes. Does the federal government consider the people of Flint, Michigan to be more important than those in the Satsuma, Louisiana area?
- 5) Based upon numerous discussions, it has been alleged that there could be some personality issues affecting this permit application. Would you commit to taking a personal interest in this case to ensure that a fair and impartial solution – following appropriate guidelines – be applied in this case that would result in safe water for the Satsuma community?

I appreciate your timely consideration of this matter. If you have any questions, concerns or require additional information, please feel free to contact me or my staff at any time.

Sincerely,



Garret Graves  
Member of Congress

**Garry L. Lewis**  
17457 Wes McLin Rd, Suite A  
Livingston, Louisiana 70754  
(225)686-1111; Fax 686-7584

December 21, 2015

Attn: Neil T. Gauthier  
Attn: John Herman  
U.S. Army Corps of Engineers  
New Orleans District - Executive Office  
CEMVN-OD-SC  
P.O. Box 60267  
New Orleans, LA 70160  
(504)862-1301; Fax (504)862-1697

Re: MVN 2015-02201CM

Dear Sir,

I am assuming you do not require a resubmission of the whole application but just answers to your letter of December 11. Those are attached as supplemental pages 11-2, 3, with page 11-3 being a drawing by McLin Taylor Engineers, assisted by city planner, Doug Villien. Call if I need to provide anything additional.

Kindest regards,

  
HELENE M. BROWN

EXHIBIT

6  
1 of 6

MILTON LANE UTILITIES - SATSUMA COMMUNITY, LIVINGSTON PARISH, LA  
GARRY AND GAYLE LEWIS INDIVIDUALLY, AND FOR TOWN OF LIVINGSTON  
SUPPLEMENTED DECEMBER 21, 2015 SHEET 11 - 2  
MVN 2015-02201CM SUPPLEMENT TO BLOCK 19 PURPOSE

QUESTION 1. Your current stated purpose for this project is road improvements, utility installation, and the construction of a water tower and maintenance shed. (A) Please explain what area the water tower will serve and where the incoming and distribution pipes are located on the drawings. Will this water tower serve existing need only or will it serve future development? (B) What does the current road lack in providing access for the construction of the tower and the shed? (C) Are the utilities in the road for the sole purpose of the water tower and the shed or for future residential development? (D) The road as it exists is not a thruway to provide access for the general public. Please explain how you plan to facilitate public access.

**ANSWER:**

1A See Drawing 11-3 (Current pressure originates at existing well North of I-12; water tower will increase volume and water pressure which will originate at new tower.)

1B The current road is a heavily used timber road and becomes muddy and impassable and will not serve year round access or emergency access but would provide access during the construction period because the equipment used is suitable.

1C They are adequate to serve tower and any proposed land use shown on drawing 11-3.

1D The road would be dedicated to the Parish of Livingston and constructed according to Parish standards so they would accept for public maintenance.

QUESTION 2. Based on your letter to Mike Windham dated March 18, 2015, you explain the water tower will be for the nearby Hospital, a planned new fire station and a school. (C) Where are the waterlines from this tower to the hospital, the new firehouse, and the school on the drawings? (D) Again, will this water tower provide pressure for existing residential homes or future residential development?

**ANSWER:**

2C The Fire house, School, and Hospital are 1 1/2 miles and 1/2 mile respectfully from the water tower, see drawing 11-3.

2D Yes, the Town of Livingston expects it will be adequate to serve anticipated use including that proposed on drawing 11-3 as well as existing uses.

QUESTION 3. (A) Please show the intentions in detail for development in those areas on a revised application and new set of drawings. Proposed projects that include road improvements and infrastructure with no mention of the development often result in placemealing. This means separating stages of a project in the permit process so that an intended large scale project with large scale impacts is processed as several small projects with the appearance of having minimal impact on wetland resources.

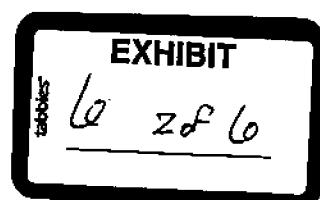
**ANSWER:**

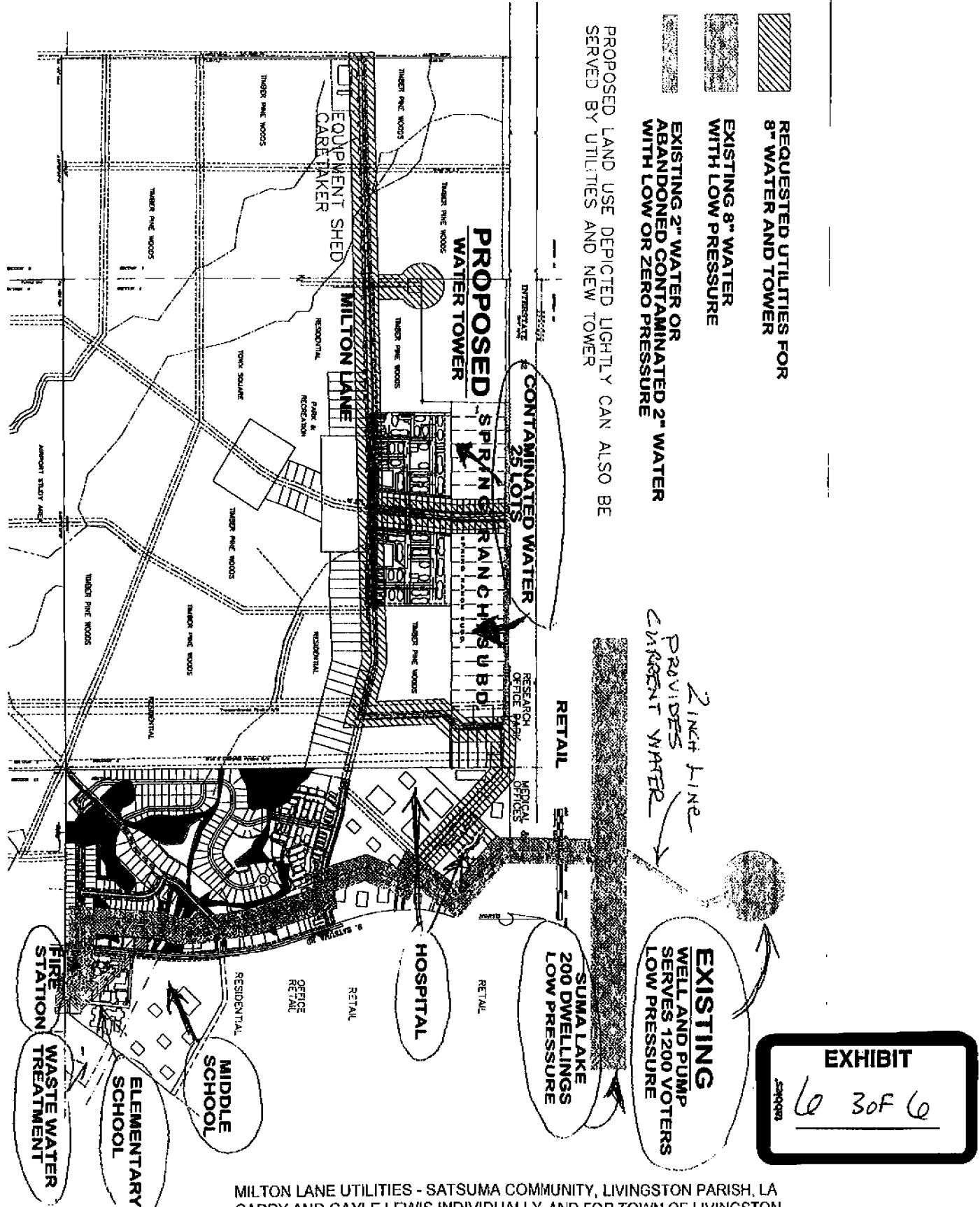
3A Please see the above answers. The current need is critical and an emergency need regardless of development that may or may not occur in the future. There is inadequate fire protection for current medical needs, there is inadequate pressure to meet early morning residential loads, and numerous residents along Spring Ranch Road have water contaminated by sand and HCL. Some of them have filed lawsuits for personal injuries from its use and have petitioned for help to get potable water. Those petitions and names have been forwarded and Colonel Hansen and Mr. Martin Mayer are aware of the need.

Future residents will benefit as well, they can not be predicted accurately. An attempt was made to show all potential development expected to occur 10 years by the previous Baton Rouge city planner, Doug Villien on the attached drawing 11-3. Additionally, there is an airport study being conducted for this area that likely will use the same water source. (The hospital, fire station, and school usage referenced in the Windham letter are shown on drawing 11-3)

Sincerely,

  
HELENE M. BROWN







REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, NEW ORLEANS DISTRICT  
P.O. BOX 60267  
NEW ORLEANS, LOUISIANA 70160-0267

DEC 11 2015

Operations Division  
Central Evaluation Section

SUBJECT: MVN 2015-02201 CM

Garry Lewis Properties  
17457 A Wes McLin Road  
Livingston, LA 70754

Mr. Lewis,

This is in reference to your application (MVN 2015-02201 CM) dated October 29, 2015, requesting Department of the Army (DA) authorization to construct a road within an 80-foot right of way to include roadside ditching and the installation of above and below ground utilities for a water tower and a shed, in Livingston, Louisiana, in Livingston Parish.

We have received your additional information package dated November 21, 2015, and have determined that more information is needed to complete your application and drawings which at this time is still considered incomplete. In order to continue processing your DA application, it is necessary that you provide us with the following requested information:

1. Your current stated purpose for this project is road improvements, utility installation, and the construction of a water tower and maintenance shed. Please explain what area the water tower will serve and where the incoming and distribution pipes are located on the drawings. Will this water tower serve existing need only or will it serve future development? What does the current road lack in providing access for the construction of the tower and the shed? Are the utilities in the road for the sole purpose of the water tower and the shed or for future residential development? The road as it exists is not a thruway to provide access for the general public. Please explain how you plan to facilitate public access.
2. Based on your letter to Mike Windham dated March 16, 2015, you explain that the water tower will be for the nearby hospital, a planned new fire station, and a school. Where are the waterlines from this tower to the hospital, the new firehouse, and the school on the drawings? Again, will this water tower provide pressure for existing residential homes or future residential development?
3. It is important to establish a clear purpose and need for this project. The information that you have provided thus far indicates that this project is to provide infrastructure for the development of residential subdivisions in the areas adjacent to the

EXHIBIT

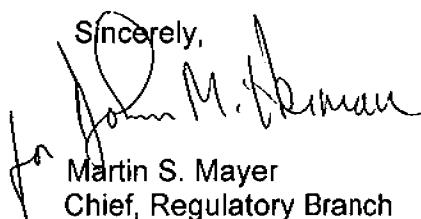
6040F6

road that are now being used for silviculture. Please show the intentions in detail for development in those areas on a revised application and new set of drawings. Proposed projects that include road improvements and infrastructure with no mention of the development often result in piecemealing. This means separating stages of a project in the permit process so that an intended large scale project with large scale impacts is processed as several small projects with the appearance of having minimal impact on wetland resources.

Please email revisions directly to Neil Gauthier at [Neil.T.Gauthier@usace.army.mil](mailto:Neil.T.Gauthier@usace.army.mil). If sending by mail, please send to US Army Corps of Engineers, New Orleans District, CEMVN-OD-SC, Post Office Box 60267, New Orleans, Louisiana 70160, Attn: Neil Gauthier.

If we do not receive the requested information within 20 days from the date of this letter, or have contacted us with your intention, we will withdraw your application from our active files and return it to you. When you are able to provide the information, you may reapply and we will resume our evaluation. Please be advised that performing work without a permit may subject you to civil and/or criminal action for violation of Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act (33 U.S.C. 1344).

If you have any questions or need a time extension please contact Neil Gauthier (504) 862-1301.

Sincerely,  
  
Martin S. Mayer  
Chief, Regulatory Branch



**U.S. ARMY CORPS OF ENGINEERS  
APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT**  
33 CFR 326. The proponent agency is CECW-CO-R.

Form Approved -  
OMB No. 0710-0003  
Expires: 30-SEPTEMBER-2015

Public reporting for this collection of information is estimated to average 11 hours per response, including 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 the collection of information, including suggestions for reducing this burden, to Department of Defense, Budget, Paperwork Reduction Project (0710-0003). 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.

**PRIVACY ACT STATEMENT**

Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Programs of the Corps of Engineers; Final Rule 33 CFR 320-332. 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, and the public and may be made available as part of a public notice as required by Federal law. Submission of requested information is voluntary; however, if information is not provided the permit application cannot be evaluated nor can a permit be issued. 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/or 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.

**(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)**

1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETE
--------------------	----------------------	------------------	------------------------------

**(ITEMS BELOW TO BE FILLED BY APPLICANT)**

5. APPLICANT'S NAME  First - GARRY      Middle - L      Last - LEWIS  Company - GARRY LEWIS PROPERTIES  E-mail Address - giprops@bellsouth.net	8. AUTHORIZED AGENT'S NAME AND TITLE (agent is not required)  First - LUKE      Middle -      Last - WATKINS  Company - ELOS  E-mail Address - lwatkins@elosenv.com
6. APPLICANT'S ADDRESS:  Address- 17457A Wes McLin Rd  City - Livingston      State - LA      Zip - 70754      Country - USA	9. AGENT'S ADDRESS:  Address- 43177 E PLEASANT RIDGE RD  City - HAMMOND      State - LA      Zip - 70403      Country - USA
7. APPLICANT'S PHONE NOS. w/AREA CODE  a. Residence      b. Business      c. Fax 225-803-1206      225-686-1111      225-686-7584	10. AGENTS PHONE NOS. w/AREA CODE  a. Residence      b. Business      c. Fax 985-662-5501      985-662-5504

**STATEMENT OF AUTHORIZATION**

11. I hereby authorize, ELOS ENVIRONMENTAL, 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.

*Action DIRECT 47*

*Cherry Lewis*  
SIGNATURE OF APPLICANT

*Oct 29, 2015*  
DATE

**NAME, LOCATION, AND DESCRIPTION OF PROJECT OR ACTIVITY**

12. PROJECT NAME OR TITLE (see instructions)

MILTON LANE UTILITIES

13. NAME OF WATERBODY, IF KNOWN (if applicable)  
NONE

14. PROJECT STREET ADDRESS (if applicable)

Address SOUTH OF SPRING RANCH RD

15. LOCATION OF PROJECT

Latitude:  $\Delta$ N 30 28' 12.57"      Longitude:  $\Delta$ W 90 49' 40.56

City - LIVINGSTON      State- LA      Zip- 70754

16. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions)

State Tax Parcel ID 0519744

Municipality LIVINGSTON PARISH

Section - *4*

Township - 7S

Range - 4E

**EXHIBIT**

tables

*6 6 of 6*

*mark.r.wingate@usac.edu.mil*

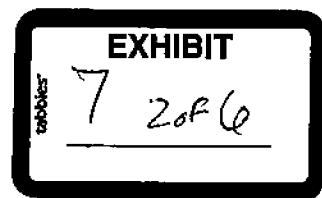
October 5, 2017 sign in sheet:



Mr. Robert Heffner

Mr. Martin Mayer

October 5, 2015



**OCT 5, 2015 MEETING TRANSCRIPT PAGES 7 THRU 10**

**Col. Hansen:** Thanks Senator. Utility projects such as this I can't commit to this without seeing an application but they are often covered under what we call a Nationwide permit- This would be I think a section 12 nationwide permit which allows for expedited processing but the first step is to get the map of the current wet areas wet areas in the project foot print, I believe we are still searching for that so' We've had some submissions that didn't have any wet areas on there and a recent submission that we received last week . I know our folks have been looking at that since we got it. It doesn't involve a lot when you add up all the small dots, its not a lot of acreage, its not extensive impacts, but the thing is these roads and swales off of those roads can be cut under a silvicultural exemption but once you convert the property from none silviculture to none forestry then that exemption no longer applies'. ~~Now the Corps does not make the final determination on whether a particular activity is covered under a particular permit.~~

If called upon the EPA makes the final decision and we can provide our input to them but they make the final decision. That may be where this one needs to go' Rob I know that you have seen this, I know there were two versions of this. One that contained no wet areas and then one that contained a lot of small isolated areas, so what do you think you need to look at this? When will we have an evaluation of this and does this require verification?

**Rob Heffner:** yes we will have to go out in the field and establish the extent of those wetlands'. It's a very unusual pattern to see in South Louisiana. ~~For example, when they would try to delineate wetlands or not, so we need a site visit to confirm and look at that data. It came with 4 data points there's obviously a lot more wet and non-wet documented out there.~~

**Col Hansen:** Is that the plot 1, plot 2, plot 3, plot 4 but then I see a lot of measles sheet of a lot of small red dots there

**Rob Heffner:** Right

**Atty Stan Millan:** It's depressions of maybe totaling an acre if you add them all together but they're small depressions. If I could say something Colonel with what the gentleman raised? To make sure everybody is clear wetland permits, not permits, but the first step of the wetland game is like if you went to the saints game and somebody sings the national anthem and starts the game. well Garry sang his anthem he gave the Corps reports and the game gun doesn't go off. Instead you had a black out like in the Super Bowl 2 years ago, a black out for

EXHIBIT

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TRANSCRIPT 7-8

several years. We need the lights back on Colonel and I think you are encouraging that today. one final point on this, I think I heard you mention, correct me if I'm wrong about the silviculture exemption, which of course the EPA has the final determination, I'm going to request and refer this to the EPA for such a determination or where does that stand, we're not asking that be done or that it's necessary but it sounds like EPAs involved and we need some clarification! Have they been formally tasked to do this?

**Col Hansen;** Let's answer the first part of the question in regards to the Saints game and the gun going off, from our perspective it doesn't go off until we have a jurisdictional determination a drawing that is accurate and we've looked at several versions, we've sent it back saying this doesn't appear to contain everything it should and I think we've been caught between that since the end of June and now, cause I know we out there when? the 25th of June, but the thing is we've got a recent submission from last week, we want the JD to be done so we can move on, get in that Nationwide permit process which does not need to take long for the evaluation of course we'd have to have an application next but I certainly recognize the urgency of a reliable water utility both for the residents that live along the highway and then also for the hospital. It certainly makes a lot of sense, but again, Martin or Rob what would you propose to do if you went out and looked at this area and the 2nd part of the question was the silviculture exemption,

~~Is it EPA  
Drew wetland necessary or not do you believe in this case if there would be no  
dry wetland~~

**Mr. Martin Mayer:** We've been discussing the inhouse EPA employee, we've apprised him of the situation' and asked its kind of a complex situation, and there's some activities that have occurred reportedly under the silviculture exemption.

~~As we seen, we can not make that determination on those areas that we have been addressing it with them.~~

**Col Hansen:** Going back to the latest guidance, that we received in August on waters of the U.S. How is that potentially going to play in here? Is it going to make this, I'm not saying its going to make it any easier, but are there areas marked previously that would have been considered wet, that are potentially nonwet or is it the other way around?

**Mr. Martin Mayer:** I think ~~that what we need to do is~~ get the areas that are ~~wetlands~~ marked, identify them and then determine if they are preexisting.

Transcript 8-9

EXHIBIT

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7 4 of 6

**Col. Hansen:** So it doesn't change whether they are wet or non wet, [REDACTED]  
[REDACTED]

**Mr. Martin Mayer:** Yes sir

**Col Hansen:** Ok and so, have you done any aggregation of these areas as to come up with an amount that is shown on this JD right now, what is potentially at stake?

**Mr. Martin Mayer:** Well we just received that last week, I believe, last Thursday, Rob maybe you could speak of that, but we just got that so we still have to evaluate that.

**Mr. Robert Heffner:** I can't say we quantified it and as far as the silvicultural exemption [REDACTED] I know out in the field Mr. Suggs talked about there's an area at the end of the road to the far west that was going to be used as a place to keep equipment for his business, well at that point we are talking about a driveway, so if you sort of get past the point of these are now business driveways for other uses, [REDACTED]

**Col Hansen:** I would prefer to move on without a hearing to see back and aggregation City providers according whether it goes on with the same kind of silviculture exemption. I think, and I don't want to confuse anybody but doing so I do not want to have to say that there have been violations, to move forward with the current....

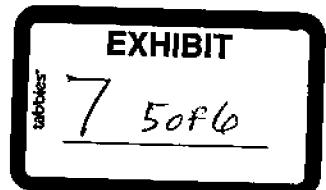
**Mr. Robert Heffner:** [REDACTED]

**Col. Hansen:** .....JD and the current plan and go from there.

**Mr. Robert Heffner:** And that is [REDACTED] project to me is the water tower site we've been within some right [REDACTED] this project were above ground the silvicultural exemption and now we are just moving beyond that cause the exemption will no longer apply because this area will no longer be, again we're talking about the road, perhaps the business location, the water well site would be beyond, they are not going to be part of the silviculture. The water tower site is not going to be silviculture.

**Col Hansen:** It's the blue lines, then plot 1, plot 2, plot 3, here..... is that what I'm looking at?

TRANSCRIPT P. 9



**Al Suggs, timber harvester:** (discussions with Robert Heffner omitted)

**Mr. Robert Heffner:** (discussions with Al Suggs, timber harvester, omitted)

**Col Hansen:** I want to stay focused on what the next step would be, so it would be for our folks to do a field visit and look at the site, evaluate the submission does it include the wet areas, and then make the determination whether they are jurisdictional or not based on the latest guidance. Let's [assume that you have the data, and go to the field site you have offered where the wet areas are] and relatively small project footprint, [how long would it take to then determine whether they are jurisdictional or not?] Give me a risk informed estimate but on the [wet areas]

[Mr. Robert Heffner: On the legal side, I'll say from [ ] days to [ ] weeks]

**Attny Stan Millan:** "New guidance" which is really the [regulation]. This time [ ] finally exempted puddles which are depressions in uplands and roads that are poorly drained and hold water during rainstorms and slowly drain. Your call, but I think that is an exemption that might apply to these little areas because we don't want, considering the need for the project that is going to follow, we don't want puddles to come over people.

**Mr. Robert Heffner:** [and I know he laughs], cause I can't believe they put puddles in there, because we never regulated them before and [don't even consider letting them now] but they put that in there anyway

**Attny Stan Millan:** There you go Colonel.

**Col Hansen:** [immediately this one field following priorities] Us getting out here in the field here very soon. Could do this this week if we can support that. Whether its your agent or whether its you sir. Given that Mr. Heffner has been out there before, other members of the regulatory staff have been out there before, I plan on having someone else from outside the regulatory branch accompany him, an employee by the name of Mr. Brad Inman in the District that worked for years as a URS consultant in other states representing developers putting together JDs and permit applications and his job at that point was to make the argument from the other side that a particular area was not in fact wet, not jurisdictional, or at least if it was wet it was not jurisdictional.

EXHIBIT

tables:  
7  
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TRANSCRIPT /0

**From:** Heffner, Robert A MVN  
**To:** "Gutierrez, Raul"  
**Cc:** Mayer, Martin S MVN  
**Subject:** request for determination regarding the applicability of the 404(f) exemption for silviculture  
**Date:** Friday, November 06, 2015 3:23:20 PM  
**Attachments:** Exhibit 3 2015-00041-SK Broom.pdf  
Exhibit 1 2012 and 2014 aerials JD locations.pdf  
Exhibit 2 Lewis Basemap with 2001 Id.pdf  
151106 epa silvi exempt memo lewis ppty and black mud rd.docx

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Raul,

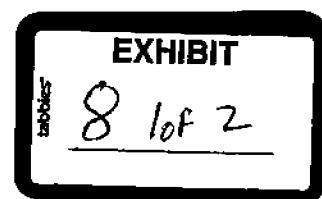
Attached is the memo we discussed for EPA's consideration. I'll be glad to provide additional information or clarification.

Respectfully,

Rob Heffner  
Chief, Surveillance and Enforcement Section  
U.S. Army Corps of Engineers, New Orleans District  
504-862-1288

**mailing address:**  
U.S. Army Corps of Engineers, New Orleans District  
OD-SS  
P.O. Box 60267  
New Orleans, LA 70160-0267

**physical address:**  
7400 Leake Ave  
New Orleans, LA 70118



Original Message

From: Heffner, Robert A MVN [mailto:Robert.A.Heffner@usace.army.mil]  
Sent: Friday, July 17, 2015 3:20 PM  
To: Martinez, Maria; Gutierrez, Raul  
Cc: Mayer, Martin S MVN  
Subject: RE: Lewis 404f silviculture exemption requirements (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

Maria and Raul,

I may be missing something but this letter falls short of the EPA stating that the operation as conducted to date does not qualify for the silvicultural exemption as I had hoped it would. It states what is needed to qualify but not whether what has been done satisfy the requirements for forest roads. It also fails to discuss the draining of wetlands and resulting reduction of the reach of waters of the U.S., that is not allowed under the exemption. Should we issue a C&D based on activities that are claimed to have been conducted as normal silviculture? If so, what portion, if not all of the property would it address.

My personal opinion is the activities on the portion of the property I've seen exceeds what is allowed under the exemption. If necessary, what about reaching out to the U.S. Forest Service to have one of their experts weigh in on whether the activities are normal silvicultural activities.

By the way, today we received a jurisdictional determination request from Mr. Lewis for the 2 plots that have perimeter ditches needed to drain the site to increase production (the loggers words, not mine).

Respectfully,

Rob Heffner  
U.S. Army Corps of Engineers, New Orleans District  
504-862-1288

EXHIBIT



ZoF2



REPLY TO  
ATTENTION OF  
CEMVN-OD-SS

DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, NEW ORLEANS DISTRICT  
P.O. BOX 60267  
NEW ORLEANS, LOUISIANA 70160-0267

FROM MAYER AND HEFFNER

November 6, 2015

MEMORANDUM THRU Chief, Regulatory Branch

For: Maria Martinez, Chief Wetlands Section, EPA Region 6

Subject: Applicability of Silvicultural Exemption on tracts of land owned by Mr. Garry Lewis.

It is the opinion of the U.S. Army Corps of Engineers, New Orleans District that certain activities on a large tract of land in Livingston Parish do not qualify for the silvicultural exemption as described at 33 CFR §323.4.

This opinion is based on excessive ditching and draining occurring on the property, the failure to establish a new crop of trees for 2-5 years following the previous harvest, and the construction of roads that don't appear to be associated with on-going or current harvests.

Exhibit 1 shows 4 pending actions totaling approx. 120 acres within a much larger tract, estimated to be 1000 acres or more, and illustrates a number of these concerns.

- The area outlined in yellow is the footprint of a water tower and utility line project that will provide water to houses to the north along Spring Ranch Road, to the hospital and also runs through the silvicultural land. This is only needed to facilitate future development.
- The 2 – 20-ac blocks outlined in orange had timber harvest in 2012 or 2013 and was planted in longleaf pine in 2014. Shallow interior ditches have been constructed to remove surface water within these blocks and a 3 foot deep perimeter ditch has been excavated around both blocks. The explanation given was surface water had to be removed to grow longleaf and the silvicultural exemption allows minor drainage work.
- We recently learned the blocks outlined in orange and the polygon in light green are both slated for development needed to secure a loan for the waterline project.
- The 2014 aerial photo overlay shows extensive road building and drainage work to the south and west of the pending actions.

Exhibit 2 is an aerial photo with a 2001 jurisdictional determination overlay.

- The majority of the pending action outlined in light green was 49% wetland based on a previously issued delineation. The recent submittal by the consultant for this area failed to identify wetlands in an area previously determined to be 49% wetlands. Coordination to identify wetlands remaining on the site is ongoing. While wetlands are still present, the wetland acreage has been reduced. Probable cause is activities undertaken following the last timber harvest that indicate a change in use to something other than silviculture.

EXHIBIT

9



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

10/12/2015

Mr. Martin Mayer, Chief  
 Regulatory Functions Branch  
 New Orleans District  
 U.S. Army Corps of Engineers  
 P.O. Box 60267  
 New Orleans, LA 70160-0267

Dear Mr. Mayer:

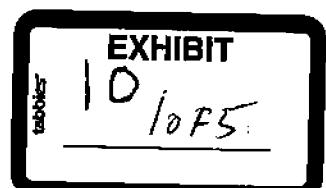
This letter responds to your request for the Environmental Protection Agency's (EPA) concurrence on whether or not a logging operation by Mr. Garry Lewis is subject to exemptions for normal silviculture activities and forest roads pursuant to Clean Water Act (CWA) Sections 404(f)(1)(A) and (E). The operation is located on and south of Spring Ranch Road, west of South Satsuma Road, and north of Drakford McMorris Road in Sections 4, 5, 8, 9, 16 and 17, Township 7 South, Range 4 East, in Livingston Parish, Louisiana.

It appears that the logging operation fails to adhere to the requirements for silviculture activities exempted by 40 C.F.R. 232.3. Specifically, the following are cited as examples that demonstrate that the CWA Section 404(f) exemptions do not apply to this operation:

- Logging roads appear to exceed the minimum feasible number, width, and total length necessary, consistent with the purpose of this operation and site conditions (40 C.F.R. 232.3(c)(6)(i));
- Some roads are to be located along streams and other water bodies, with significant vegetative disturbance in waters of the United States (40 C.F.R. 232.3(c)(6)(ii) and (vi)).
- Perimeter ditches surrounding each forest block drain and significantly modify wetland areas within each block (40 C.F.R. 232.3(d)(3)(ii)).

Additionally, there are practices listed by the Southern Group of State Foresters (2009) in their recommendations to determine ongoing silviculture in bottomland hardwoods and cypress swamps that may indicate a change in use or a non-silviculture use. Some of these practices used in this logging operation include:

- The presence of intensive mechanical site preparation such as shearing, root raking, windrowing debris or "stumping" of the site.
- Road construction that is not consistent with the practice and purpose of forestry and that is not in compliance with silviculture BMPs for forest roads



- The presence of surveyed lot lines, utility easements, or similar indicators of planned development activities.
- Recently dug drainage ditches or old drainage ditches that have been recently maintained.

After reviewing the additional information provided to us, we are in agreement with your assessment that these activities are not exempt under Section 404(l)(A) and (E) of the CWA.

Thank you for the opportunity to provide comments regarding the applicability of CWA 404(l) exemptions. We remain eager to work collaboratively with you and other stakeholders in the review of this important matter. If you have any questions or wish to discuss this issue further, please feel free to contact me or your staff may call Dr. Raul Gutierrez, of my staff, at (504) 862-2371.

Sincerely,



Maria Martinez  
Chief  
Wetlands Section

EXHIBIT

10  
20F5

**From:** Heffner, Robert A MVN <Robert.A.Heffner@usace.army.mil>  
**To:** LEWIS <bregaylew@aol.com>  
**Cc:** Mayer, Martin S MVN <Martin.S.Mayer@usace.army.mil>; Gutierrez, Raul <Gutierrez.Raul@epa.gov>; Wingate, Mark R MVN <Mark.R.Wingate@usace.army.mil>  
**Subject:** EPA determination re: applicability of silvicultural exemption  
**Date:** Wed, Dec 2, 2015 2:28 pm  
**Attachments:** EPA silviculture non exempt letter.pdf (436K)

Mr. Lewis,

Attached is a letter the Corps received in response to a request for EPA to determine the applicability of the silvicultural exemption for activities conducted on property in the SE quadrant of the Satsuma Exit on I-12, specifically in Sections 4, 5, 8, 9, 16, and 17, Township 7 South, Range 4 East in Livingston Parish.

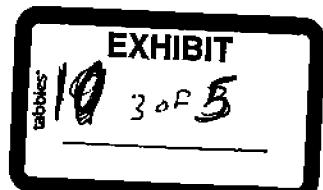
This opinion will not hinder our continued effort to complete and issue the wetland delineation on the 2 - 20 acre parcels but does raise issues that will have to be addressed.

Respectfully,

Rob Heffner  
Chief, Surveillance and Enforcement Section  
U.S. Army Corps of Engineers, New Orleans District  
504-862-1288

mailing address:  
U.S. Army Corps of Engineers, New Orleans District  
OD-SS  
P.O. Box 60267  
New Orleans, LA 70160-0267

physical address:  
7400 Leake Ave  
New Orleans, LA 70118



-----Original Message-----

**From:** Martinez, Maria <[Martinez.Maria@epa.gov](mailto:Martinez.Maria@epa.gov)>  
**To:** LEWIS <[bregaylew@aol.com](mailto:bregaylew@aol.com)>; lanaacp1 <[lanaacp1@gmail.com](mailto:lanaacp1@gmail.com)>; SUGGSJR <[SUGGSJR@aol.com](mailto:SUGGSJR@aol.com)>  
**Sent:** Mon, Oct 3, 2016 8:35 am  
**Subject:** RE: [REDACTED]

Mr. Lewis,

We understand the sensitivity behind the timing of a meeting. Please keep us posted on the timing of a potential meeting.

Let me coordinate with the Corps on what pieces of information would be advised for the potential meeting. In the meantime [REDACTED] We did review the plans that were available, as technical information to inform our technical recommendation to the Corps on the silviculture exemption.

Maria

*Maria L. Martinez*

Chief, Wetlands Section

[REDACTED]

1445 Ross Avenue, Suite 1200

Dallas, Texas 75202-2733

-----Original Message-----

**From:** Martinez, Maria <[Martinez.Maria@epa.gov](mailto:Martinez.Maria@epa.gov)>  
**To:** LEWIS <[bregaylew@aol.com](mailto:bregaylew@aol.com)>; lanaacp1 <[lanaacp1@gmail.com](mailto:lanaacp1@gmail.com)>; SUGGSJR <[SUGGSJR@aol.com](mailto:SUGGSJR@aol.com)>  
**Sent:** Tue, Sep 27, 2016 11:35 am  
**Subject:** RE: [REDACTED]

Mr. Lewis,

We appreciate that the complexity of the situation and your concerns. However, I feel compelled to restate that [REDACTED] to the Corps. [REDACTED] would be beneficial in helping address needed information and remaining questions.

Do you have any recommend days or times for the meeting?

Maria

*Maria L. Martinez*

Chief, Wetlands Section

[REDACTED]

1445 Ross Avenue, Suite 1200

Dallas, Texas 75202-2733

EXHIBIT

104 of 5

----Original Message-----

From: Nethery, William R MVN <[William.R.Nethery@usace.army.mil](mailto:William.R.Nethery@usace.army.mil)>  
To: Bregaylew <[Bregaylew@aol.com](mailto:Bregaylew@aol.com)>; Raymond Plauche <[raymond.plauche@yahoo.com](mailto:raymond.plauche@yahoo.com)>  
Sent: Mon, [REDACTED]

Classification: UNCLASSIFIED

Caveats: NONE

Hi guys, just [REDACTED] and we will just remove portions of wetland from the plantation/silviculture plan as needed for development of utilities, road rights-of-way, commercial or residential subdivisions and other developments.

Classification: UNCLASSIFIED

Caveats: NONE

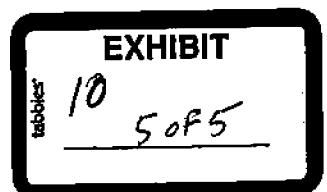
----Original Message-----

From: Helene Brown <[helenebrown@bellsouth.net](mailto:helenebrown@bellsouth.net)>  
To: 'Nethery, William R MVN' <[William.R.Nethery@usace.army.mil](mailto:William.R.Nethery@usace.army.mil)>  
Sent: Mon, [REDACTED]  
Subject: RE: [REDACTED]: FMPLAN3, FMPLAN2, FMPLAN1, FMPLAN5, FMPLAN4 (UNCLASSIFIED)

Dear Bill,

You earlier received from Helene the format of timber management plan. It [REDACTED] and they will be ceased or revised. Attached is the only change to the Timber Management Plan, as originally drafted to meet your questions. It reflects the anticipated development area across from the school. It was prepared by Mitch Wilson August, 2012, with review by Mr. Plauche and Mr. Suggs, and includes large adjacent tracts that will remain in timber production including the August 29 purchase from Weyerhaeuser. (It was harvested prior to sale under poor conditions.) I started work in accordance with Page 3 "Forestry Management Goals" of the plan, improving drainage for healthy pine timber, with necessary road access to prevent future rutting of the property during harvest. Please visit the site for Corps or EPA purposes as you believe necessary. If changes are needed in plan or activities advise me or Raymond Plauche promptly or Mr. Mitchell Wilson or Mr. Jay Prather.

Sincerely,  
GARRY L. LEWIS



**AFFIDAVIT OF PETER B. LEE, M.S., P.G., P.H.**

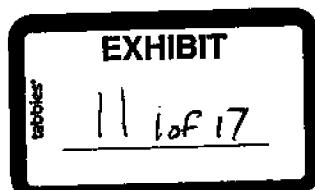
COMES NOW the affiant Pete Lee and states under oath and affirmation as follows:  
Attached is my CV and resume (Enclosure 1).

It is my opinion the damage to the well, plumbing and water quality of Mr. Robert Beard was caused by the close proximity of the seismic blasting to the private domestic water well servicing the Beard residence. Reportedly by Mr. Beard, failure of the well and associated piping and plumbing was accompanied by strong odor of rotten eggs typical of hydrogen sulfide. The well began producing sand and the pump had to be raised, which indicates well failure. On information and belief, this seismic blasting was done by Strand Energy LLC and TGC Industries Inc, dba Tidelands Geophysical.

Attached are some of my findings based upon examination of the damaged equipment which Mr. Beard brought to me upon replacing it, my inspection in 2013 and further inspection evaluation in 2016, which resulted in a report to Mr. Beard on November 7, 2016 (Enclosure 2).

On May 9, 2013, I advised Mr. Beard of the following and my opinion remains the same. Hydrogen sulfide (H<sub>2</sub>S), which smells like rotten eggs, is highly corrosive and very hazardous (even fatal) to your health. Prior to seismic activities in the area, Mr. Beard reportedly had no problems with the well water and there was no odor or corrosion. Water quality has been affected by the well failure.

I have been advised that Mr. Beard and Ms. Milton have ingested the well water during the time it had the strong sulfur smell through drinking, bathing or cooking. I understand Mr. Beard was hospitalized on numerous occasions and that Ms. Milton was hospitalized on one or more occasion with complaints ranging from skin disorders to kidney/liver symptoms.



Based upon that advice, and assuming that H2S was ingested, it is my opinion they have suffered or will suffer personal injury.

Further the affiant sayeth not.

Enclosure 1: CV

Enclosure 2: Report

Peter B. Lee

9/27/17

Peter B. Lee

Date



NOTARY PUBLIC



Drake L. Lewis  
Notary Public  
Notary ID No. 140814  
Livingston Parish, Louisiana

11  
2017

EcoScience Resource Group, L.L.C.

---

## Peter B. Lee, M.S., P.G., P.H.

### Areas of Expertise

- 30 years of environmental, geological and geophysical project management experience.
- Technical and management skills in marine, coastal and environmental geology and geophysics for natural resource development and environmental management.
- Extensive experience in DNAPL and chlorinated hydrocarbon investigations and remediation.
- Management of CERCLA, RCRA and UST projects.

### Professional Experience

#### **Principal Hydrogeologist**

- Marine geologist/geophysicist providing geophysical interpretation and geological hazard reports to marine survey contractors and oil companies.
- Expert witness/litigation support for environmental law cases involving oil and gas, dry cleaners and hydrology investigations.
- Response Action Contractor (RAC) for leaking underground storage tank (LUST) investigations and remediation.
- Project Manager for RCRA Facility Investigation/Corrective Measures Study for chemical plant with chlorinated hydrocarbon release.

#### **Chief Hydrogeologist**

- Provided technical services both as an employee and contractor for DNAPL recovery and containment at a Superfund site in Baton Rouge. Responsible for \$3million annual budget.
- Managed field drilling, sampling, and documentation of over 190 recovery wells and 350 test borings and wells.
- Applied groundwater and fate & transport modeling, geostatistics, ecological risk assessment, natural attenuation, geological data base management, 3-D stratigraphy, and geophysics to cost-effectively characterize subsurface conditions.
- Prepared Remedial Investigation/Feasibility Studies reports for two areas of a Superfund site.

EcoScience Resource Group, L.L.C.

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- Provided geological and hydrogeological assessment for solid waste permit application.

**District Hydrogeologist**

- Provided technical support for industrial and petroleum site investigations and remediation in Louisiana, Mississippi, Arkansas, and Texas.
- Co-authored RFI work plan for chemical plant in Lake Charles, LA.
- Performed assessments and corrective action for over 150 LUST sites.
- Used surface geophysics to define groundwater contamination at two landfill sites.

**Geophysicist/Geophysical Technician**

- Performed marine geophysical (deep and high-resolution seismic) surveys as technician and party manager.
- Performed geophysical processing and provided interpretation for geological hazards assessments for petroleum exploration.

**Education**

**Louisiana State University**

**Coastal Studies Institute**

Baton Rouge, LA

*M.S. Marine and Coastal Geology, 1986*

**University of Southern Mississippi**

Hattiesburg, MS

*B.S. Marine Biology, 1977*

Majored in Geology, 1982-83

**University of New Orleans**

Advanced Hydrogeology Graduate Course, 1991

EcoScience Resource Group, L.L.C.

---

### Professional Accreditations

Certified Professional Hydrologist -- American Institute of Hydrogeology.  
Registered Professional Geologist – Mississippi.  
Registered Professional Geologist – Louisiana.  
Registered Professional Geologist – Arkansas.  
Licensed Water Well Contractor – Louisiana.  
40 Hour HAZWOPER Training.

### Publications and Presentations

Clement, T.P., M.J. Truex, and P.B. Lee, 2002, *A Case Study for Demonstrating the Application of U.S. EPAs Monitored Natural Attenuation Screening Protocol at a Hazardous Waste Site*, Journal of Contaminant Hydrology, 59 (2002), pp. 133-162, Elsevier Press.

**Lee, Peter B.**, 1998, *Application of Hydraulic Containment and Natural Attenuation of Chlorinated Organics*, in Proceedings of the National Ground Water Association, 50<sup>th</sup> Annual Meeting, Las Vegas.

Chaphalkar, P.G., K.T. Valsaraj, W.D. Constant, D. Roy, and P.B. Lee, 1996, *Application of Anionic and Nonionic Surfactants in the Enhancement of Pump and Treat Remediation Using Colloidal Gas Dispersions*, in Proceedings of the American Chemical Society I&EC Special Symposium, Birmingham, AL, September 9-11.

**Lee, Peter B.**, 1994, *Management of Long-Term Drilling Program at a NPL Site*, in Workshop Notebook, National Ground Water Association, 8<sup>th</sup> Annual National Outdoor Action Conference, Minneapolis.

**Lee, Peter B.**, 1994, *Application of a High-Resolution Seismic Survey at a NPL Site in Louisiana*, in Proceedings of the National Ground Water Association, 8<sup>th</sup> Annual National Outdoor Conference, Minneapolis.

**Lee, Peter B.**, and Charles Sprague, 1991, *Application of Aquifer Characteristic Testing Methods in Low-Yield Formations*, in Proceedings of Association of Engineering Geologists, 34<sup>th</sup> Annual Meeting, Chicago.

**Lee, Peter B.**, 1986, *Geomorphology of the Modern Mississippi Delta Front*, M.S. Thesis, Louisiana State University Library.

Guest Instructor of Dr. Dale Easley for Field Methods and Advanced Hydrogeology courses at the University of New Orleans (1991-1994).

EcoScience Resource Group, L.L.C.

---

Guest Instructor of Brad Hanson for Environmental Geology course at Louisiana State University (1994-1996).

---

November 7, 2016

Mr. Robert Beard and Ms. Carolyn Milton  
16460 Spring Ranch Road  
Livingston, LA 70754

Re: Water Well Assessment

Dear Mr. Beard and Ms Milton:

At your request, an assessment of your domestic water well, associated equipment and water quality was performed.

#### **Background**

In 2013 after seismic testing using shotholes and explosives, your domestic well failed at your property. The well started pumping sand, which is an indication of well screen or casing failure. The casing prevents shallower poor quality groundwater from entering the well. You indicated that you moved the pump to a shallower depth (40 feet) and sand continued to be produced preventing water production and plugging piping. Finally, you moved it shallower (14 feet) and it is now free of sand. I inspected the well at that time and witnessed the production of sand.

From 2013 to the present, you have replaced two well tanks due to corrosion causing holes in the tanks (Photos 1-4, Attachment 1). The piping and plumbing system from the well to the faucets has failed at various locations. The hot water heater has become plugged with scale (Photos 6 and 7) and plumbing fittings have corroded and failed (Photos 8 and 9). In addition, you and visitors have reported skin irritation and ear infections from contact with the well water.

#### **Assessment**

I inspected the potable water supply system in 2013 and again on August 5, 2016. I collected a water sample (RB HW) from the hot water heater and analyzed the sample for typical water quality parameters to assess the causes for the corrosion and affect on human health. On September 19, 2016, a tap water sample (GLP) from the Town of Livingston system at the offices of Mr. Garry Lewis was collected and analyzed for comparison. The sample results are compared to U.S. E.P.A. Primary and Secondary Drinking Water Standards. Primary standards are enforceable national limits for drinking water quality that affect human health from long-term exposure. Secondary standards are those that do not necessarily affect human health but cause cosmetic effects such as skin or tooth discoloration or aesthetic effects such as taste, odor or color in drinking water. The Secondary standards are recommended for water systems.



11827 Sunray Avenue  
Baton Rouge, LA 70816  
225.755.8844

11 7 of 17

Mr. Beard  
 November 7, 2016  
Page 2 of 3

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### **Results and Discussion**

The results are summarized in the attached Table 1. There are primary standards for barium, cadmium, copper, selenium, nitrate and nitrite; none of these were exceeded. The RB HW sample exceeded secondary standards for manganese and chloride and was below the minimum pH limit unlike the GLP sample. Compared to the GLP sample, the RB HW sample results were much higher for aluminum, barium, calcium, magnesium, manganese, sodium, chloride, total alkalinity and conductivity. The percentage of the concentrations of the RB HW sample above the GLP sample is shown on Table 1 for comparison.

Both samples had a positive indication for corrosivity toward steel above the recommendation of zero. The pH was 5.05 Standard Units (S.U.). Corrosivity will degrade steel tanks, pipes and fitting. Corrosive potential of water is increased by pH lower than 6.5 S.U., higher water temperature (i.e., hot water heater), high conductivity, high dissolved solids, high chlorine and high suspended solids (sand). The water system has all of these factors to increase corrosivity.

Total alkalinity above 150 mg/L causes scaling, which has occurred in the hot water heater. The RB HW result was 542 mg/L and the GLW result was 126 mg/L. Water described as "hard" is high in dissolved minerals, specifically calcium and magnesium. Heated hard water forms a scale of calcium and magnesium minerals that can contribute to the inefficient operation or failure of water systems. Pipes, fittings and hot water heaters can become clogged with scale that reduces water flow and ultimately requires replacement. The high results for calcium, magnesium and manganese contribute to the precipitation of the scale on piping and plumbing.

Conductivity is a measurement of dissolved solids in the water caused by elements; the RB HW sample was 2,160, which is very high, vs. 300 mmhos/cm for GLP. Minerals dissolved in water separate into charged particles (ions) that conduct electricity. Conductivity is a problem only when water has a high mineral content; pure water does not conduct electricity. Plumbing systems use several types of metals. When different metals are in contact with each other and a solution that conducts electricity, the result is a galvanic cell. The cell generates electricity, which corrodes one of the metals. Galvanic corrosion occurs at or very near the joint between the two metals. Plumbing systems that use galvanized pipe often have brass valves. Likewise, copper plumbing often has solder joints and valves made of a different alloy. Every joint where different metals connect is a potential site for galvanic corrosion if the water has high amounts of dissolved minerals.

Water with high chloride content may also have high sodium content. The RB HW sample concentration for chloride was 414 mg/L compared to 6.59 mg/l for the GLP sample. The sodium concentration from the RB HW sample was 131,000 mg/L compared to the GLP sample of 60,200 mg/L. High chloride accelerates corrosion. Chloride has no health standards but levels



11827 Sunray Avenue  
 Baton Rouge, LA 70816  
 225.755.8844

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Mr. Beard  
November 7, 2016  
Page 3 of 3

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less than 10 mg/L are desirable. Concentrations above 250 mg/L, the EPA Secondary Standard, may cause a salty taste and corrosion and may be a health concern for individuals with restricted salt intake.

### Opinion

The well failed after seismic testing in this area. The produced sand indicates that the well screen or casing has been broken and allowing sand into the well, which is normally prevented by the well screen and casing. Groundwater with poor quality and sand is apparently entering the well through fractures in the screen or casing. Since the pump continued to produce sand at 40 feet, the groundwater entering the well is likely not from the deeper screened aquifer but from at depths shallower than the screen; this groundwater is not potable (i.e., usable) and may contain other contaminants such as fecal coliform, which causes illness. Use of this well will continue to corrode, degrade and damage the water system.

The very poor quality of the water is not in compliance with state and federal regulations. When compared to the Town of Livingston system, the RB HW sample results were much higher for aluminum, barium, calcium, magnesium, manganese, sodium, chloride, total alkalinity and conductivity. Reported health problems must be attributed to the water quality due to the low pH, high corrosivity, high alkalinity, high conductivity, high dissolved metals and scaling.

I recommend that the use of this well as a potable water supply be discontinued. The poor water quality in the aquifer will preclude installation of another well for use. The residence should be connected to a public water system with good quality water regulated by state and federal agencies to insure the health of the residents.

If you have any questions, please contact me.

Respectfully,



Peter B. Lee, P.G., P.H.  
Principal Hydrogeologist  
LA Professional Geoscientist #1065  
LA Water Well Contractor #421

Attachments:

- Table 1  
Attachment 1-Photographic Documentation



11827 Sunray Avenue  
Baton Rouge, LA 70816  
225.755.8844

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## TABLE 1

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10/9/17

**Table 1**  
**Drinking Water Quality Comparison**  
**Robert Beard Water Well**

Sample		RB HW	GLP	EPA Primary	EPA Secondary	% RB HW Higher than GLP
Sample Date		5-Aug-16	19-Sep-16			
Analyte	Units	Result	Result			
Aluminum	ug/L	36.5	ND		200	
Arsenic	ug/L	ND	ND			
Barium	ug/L	1,100	6	2,000		18,333
Cadmium	ug/L	ND	ND	5		
Calcium	ug/L	191,000	1,270			15,039
Chromium	ug/L	ND	ND			
Copper	ug/L	1.75	10.7	1,300		
Iron	ug/L	ND	ND		300	
Lead	ug/L	ND	1.91			
Magnesium	ug/L	90,400	2,390			3,782
Manganese	ug/L	106	20.1		50	527
Selenium	ug/L	ND	ND	50		
Silver	ug/L	ND	ND		100	
Sodium	ug/L	131,000	60,200			217
Zinc	ug/L	ND	ND		5	
Mercury		ND	NS			
Corrosivity Toward Steel	mmpy	0.1698	0.2537		0	
Chloride	mg/L	414	6.59		250	6,288
Nitrate	mg/L	ND	ND	10,000		
Nitrite	mg/L	ND	ND	1,000		
Sulfate	mg/L	7.98	8.37		250	
Total Phosphorus	mg/L-P	ND	0.39			
Total Alkalinity	mg/L CaCO <sub>3</sub>	542	126			430
Sulfide	mg/L	ND	ND			
pH	S.U.	5.05	7.1		6.5-8.5	
Conductivity	mmhos/cm	2,160	300			720

ND=Not Detected

RB HW=Sample from Robert Beard's hot water heater

GLP=Sample from Town of Livingston system at Garry Lewis' office

(1)

110P17

**ATTACHMENT 1**  
**Photographic Documentation**

11  
12 of 17

**Robert Beard**

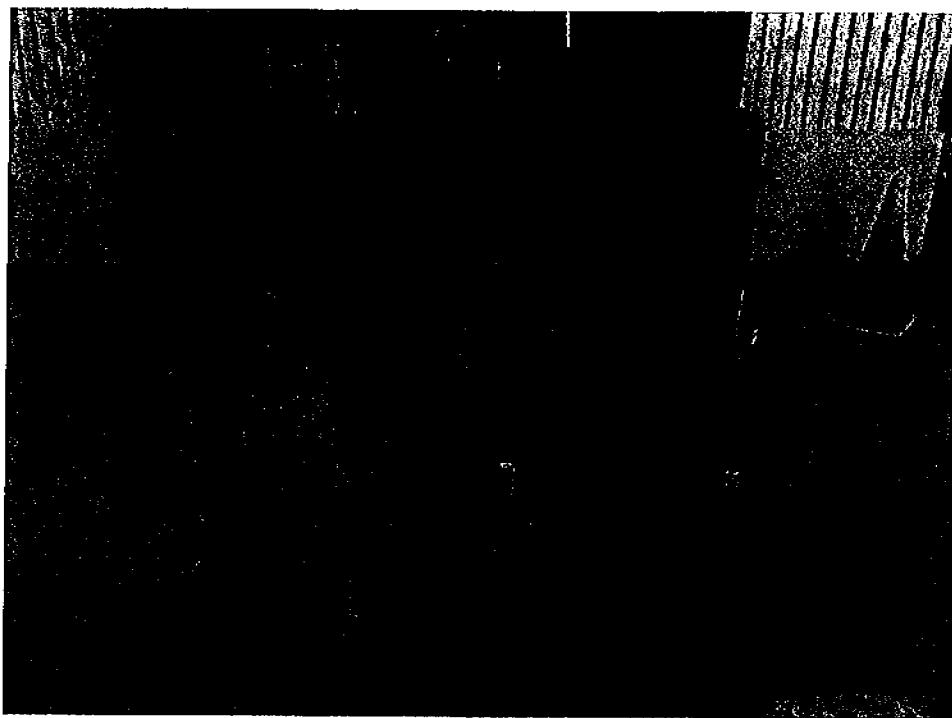


Photo 1: Two water well tanks replaced from 2013 to 2016.

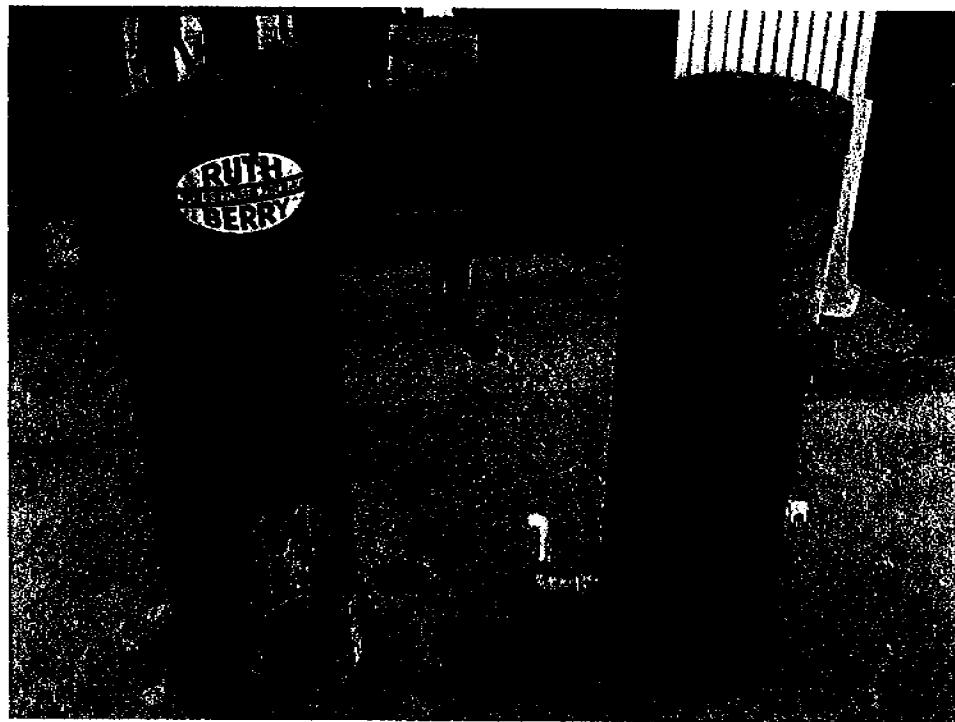


Photo 2: Two water well tanks replaced from 2013 to 2016.

**Robert Beard**

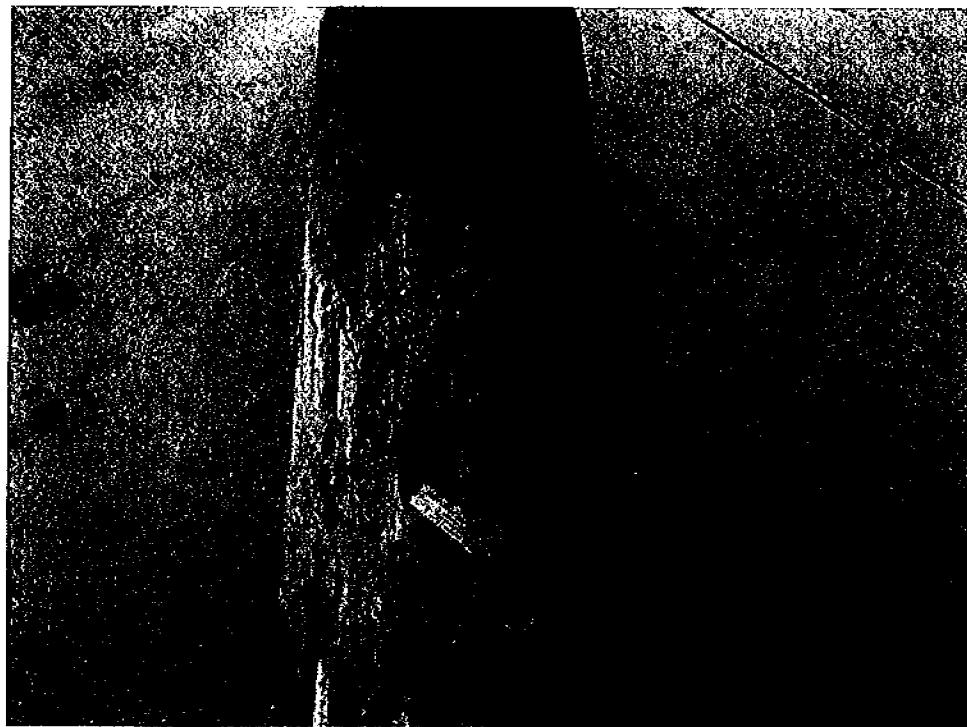


Photo 3: Water tank with corrosion and attempts to plug holes.

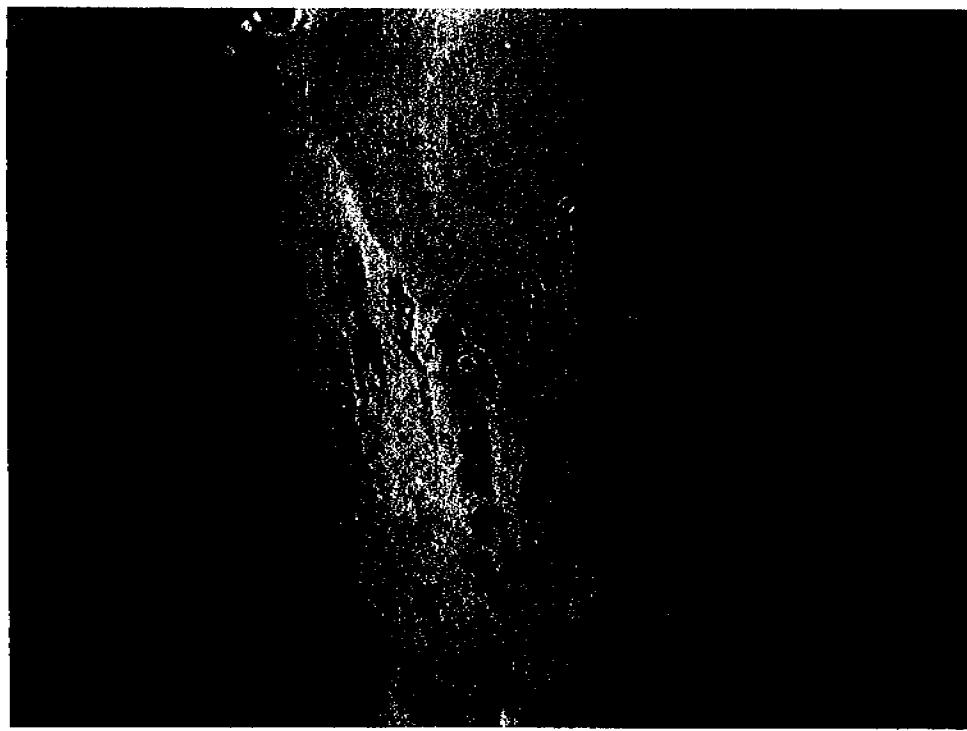


Photo 4: Water tank with corrosion and attempts to plug holes.

**Robert Beard**



Photo 5: Hot water tank in residence.

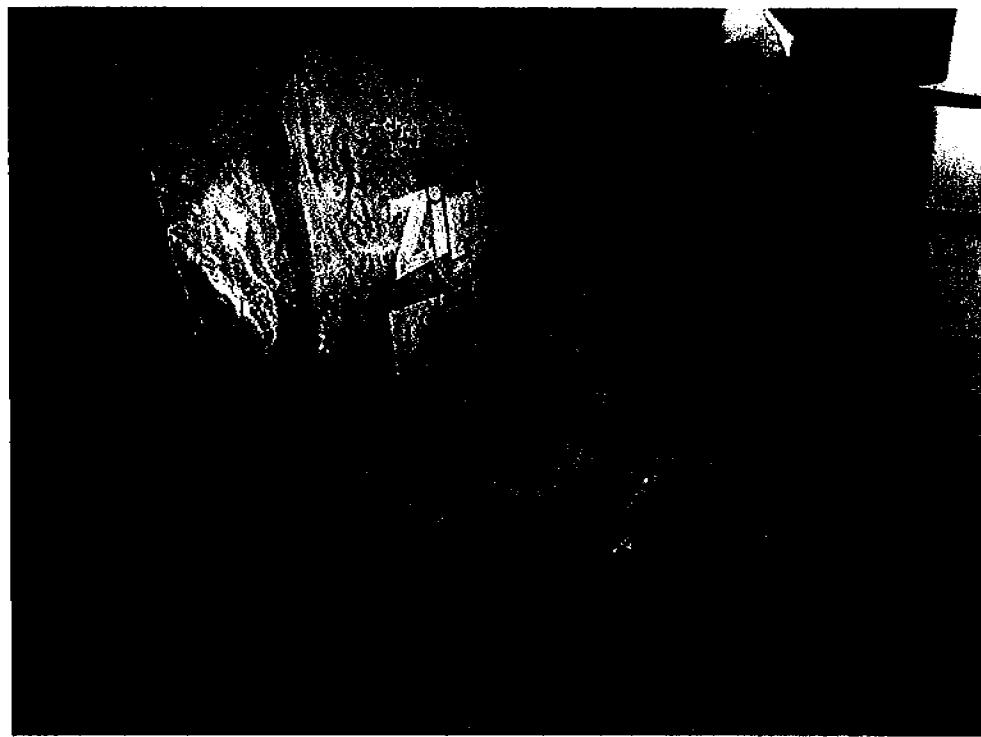


Photo 6: Scale removed from hot water tank in November 2013 that had plugged piping.

**Robert Beard**



Photo 7: Scale removed from hot water tank in July 2016 that had plugged piping.

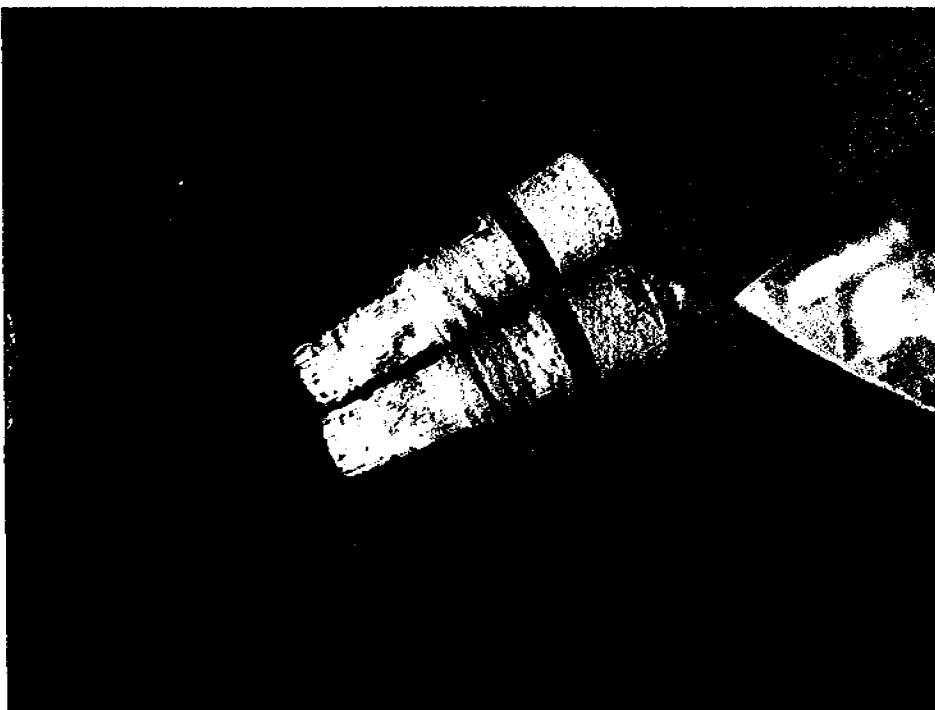


Photo 8: Corroded plumbing fittings.

**Robert Beard**



Photo 9: Corroded plumbing fitting.

**From:** Luke Watkins [mailto:[lwatkins@elosenv.com](mailto:lwatkins@elosenv.com)]  
**Sent:** Tuesday, November 01, 2016 10:55 AM  
**To:** 'Michael.J.Windham@usace.army.mil' <[Michael.J.Windham@usace.army.mil](mailto:Michael.J.Windham@usace.army.mil)>  
**Subject:** Milton Lane/Garry Lewis MVN 2015-00014-SK

Mike,  
Attached is additional information pertaining to the Milton Lane JD for Mr. Garry Lewis.  
Please confirm this came through. We've been have some email issues.  
Thanks,  
Luke  
985-662-5501

----- Original Message -----

**From:** Heffner, Robert A MVN [mailto:[Robert.A.Heffner@usace.army.mil](mailto:Robert.A.Heffner@usace.army.mil)]  
**Sent:** Monday, October 31, 2016 09:40 AM Eastern Standard Time  
**To:** Millan, Stan; Mayer, Martin S MVN <[Martin.S.Mayer@usace.army.mil](mailto:Martin.S.Mayer@usace.army.mil)>  
**Subject:** RE: Pending Approved JD on Lewis 19 acres (Milton Land Utilities/preliminary JD MVN-2015-00041-SK)

Mr. Milan,

Thank you for providing the information. It will be added to our file and given due consideration.

Respectfully,

Rob Heffner  
Chief, Surveillance and Enforcement Section U.S. Army Corps of Engineers,  
New Orleans District  
504-862-1288

-----Original Message-----

**From:** Millan, Stan [mailto:[smillan@joneswalker.com](mailto:smillan@joneswalker.com)]  
**Sent:** Friday, October 28, 2016 11:15 AM  
**To:** Heffner, Robert A MVN <[Robert.A.Heffner@usace.army.mil](mailto:Robert.A.Heffner@usace.army.mil)>; Mayer, Martin S MVN <[Martin.S.Mayer@usace.army.mil](mailto:Martin.S.Mayer@usace.army.mil)>  
**Subject:** [EXTERNAL] Pending Approved JD on Lewis 19 acres (Milton Land Utilities/preliminary JD MVN-2015-00041-SK)

On behalf of Mr. Lewis, attached is an article and a diagram with superimposed photos (see e.g. photo 4) that I believe you've seen before but I want to forward this information to you for the subject JD too. The area in question did not flood.

Thank you for your consideration.

Stan Millan| Attorney, Counsel

EXHIBIT

tables

12 10F32

# **WETLAND NON-SIGNIFICANT NEXUS EVALUATION**

Milton Lane

In

**Livingston Parish, Louisiana**

Prepared for

**Garry Lewis**

By



43177 East Pleasant Ridge Road  
Hammond, LA 70403  
985-662-5501 (Office) • 985-662-5504 (Fax)

October 31, 2016

EXHIBIT

12  
2 of 32

## SITE DESCRIPTION

### General Location

The subject site consists of approximately 19 acres of property consisting largely of a roadway and attendant road side drainage ditches, and a small recently logged parcel slightly north of the east/west roadway. The area is historically managed for timber production. The property is generally located in Section 3, Township 7 South, Range 4 East, in Livingston Parish, Louisiana. It is situated west of South Satsuma Road and south of Spring Ranch Road, southwest of the Interstate 12 intersection with South Satsuma Road. For the purposes of this review, the approximate local watershed boundaries encompassing the subject parcel were used. A preliminary Jurisdictional Determination was issued for the parcel on October 14, 2015. This document addresses the potential "nexus" of identified wetlands and the nearest navigable water, Colyell Bay.

### Hydrology

The majority of the subject site is gravel surfaced timber roads, crowned to drain from the center into roadside ditches that parallel the roadway on both sides. The roadside ditches capture and direct water from the road surface, and from areas offsite adjacent to the road on either side. Outside of the roadside ditches, the site consists of a narrow strip of herbaceous vegetation, very flat and relatively featureless from a relief standpoint. Many distinct drainage features direct water from lands surrounding the subject site layout, distributed more or less evenly along the length of the site. These small features, and general overland sheet flow drain the areas outside of the project site into the roadside ditches. Water in the roadside ditches flows toward one of three primary collector features that receive water and move the flow downstream toward Colyell Creek, the ultimate receiving water in the area for the parcel. One parcel of unimproved land within the site footprint and north of the roadway includes recently logged vegetated surface, while the predominant condition of the site is road surface, constructed roadside drainage ditches, and mowed herbaceous cover graded toward the roadside drainage. Lateral roadway crossings of the drainage ditches are accommodated by culverts of various sizes and where the collector features encounter the site, culvert crossings permit the flow of water under the main roadway.

Storm water falling on the land surface is directed by gradient to sheet flow into the roadside ditches, often by distinct rills located along the site length. Some lateral ditches, or ditches along unimproved roadbeds perpendicular to the main gravel road, also drain water from offsite, into the roadside features. From field observations over time, it is apparent that portions of the roadside ditches dry up in times between significant precipitation, and some portions of the ditches hold water for longer periods.

Natural, or modified natural, hydrologic features tend to intersect the project site, and while roadside drainage is directed to these features for collection and flow further downstream, none of these features directly drain land surface within the site footprint.

The western portion of the site drains along both sides of the gravel roadway into a formerly natural drainage feature that has been modified and excavated to resemble a larger drainage ditch which flows over two miles to its confluence with Colyell Creek. This feature is approximately 10-20 feet wide at its top, 3-5 feet in depth from top of bank, and demonstrates scour. Field observations indicate flow in this feature.

The central portion of the site drains similarly into the roadside ditches, and then is directed by gradient into another modified natural channel that begins at a cross culvert under the main roadway and flows southeast toward its outfall into Colyell Creek 1-2 miles from the subject parcel. This feature is 5-10 feet wide at its top bank, and 3-5 feet deep. This channel has an identifiable scour line. Field observations indicate flow in this feature.

The eastern portion of the site drains from the roadside into lateral ditches constructed along two pipelines that traverse the site from south to north. Roadside drainage within the subject parcel is graded toward the lateral drainage and then flows south into the same channel that drains the central portion of the site. These ditches are approximately 3-5 feet wide and 2-3 feet deep and flow directly south until they outfall into the modified natural channel flowing toward Colyell Creek. Similar to the roadside ditches, flow is predominantly precipitation driven, with portions of the ditches appearing to hold persistent water.

In general terms, observations in the field indicate that the flow regime within the subject parcel is from an offsite flat landscape with possible wetlands interspersed, through sheet flow into a non-relatively permanent waterway (non-RPW) roadside ditch, or small local lateral ditch into a roadside ditch. From the roadsides, the western and central drainage areas of the site flow into modified natural waterways that are likely to be Relatively Permanent Waterways (RPWs) at some point in their path below the site nearer to Colyell Creek. Both of these waterways flow into Colyell Creek to the southeast. The eastern drainage flows from roadside ditches into laterals flowing south which also may be persistent enough to be considered RPWs at some point in their flow path below the site nearer the creek. These laterals flow into the modified natural channel accepting drainage from the central portion of the site, then flow generally southeast into Colyell Creek.

### Vegetation

Vegetation on the site is characteristic of mowed and maintained pasture in the areas adjacent to the roadside drainage ditches. While scattered loblolly pine occurs in areas, the site is predominantly vegetated in an herbaceous strata consisting of various grasses and sedges,

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frequently mowed. Vegetation occurring on the parcel includes vasey grass (*Paspalum urvillei*), bahaia grass (*Paspalum notatum*), spike rush (*Eliocharis spp.*), thistle (*Cirsium horridulum*), beak sedges (*Rhynchospora spp.*), spike grass (*Chasmanthium laxum*), Brazilian vervain (*Verbena brasiliensis*), and dog fennel (*Eupatorium capillifolium*).

### Soils

Soils are composed of a wide variety of soil types along the more or less linear subject parcel. Both hydric and non-hydric soil types are found within the site, with the hydric soils mostly associated with natural drainage features that traverse the site. The majority of the site is characterized as Deerford-Verdun and Colyell silt loams according to the United States Department of Agriculture, Natural Resource Conservation Service's Web Soil Survey. These soil types are typically non-hydric. Hydric soil types include Gilbert-Brimstone and Encrow silt loams. Field observations indicate the presence of low matrix chromas and redox features such as bright and distinct mottles in both the matrix and pore linings, and oxidized rhizospheres in depressional wet areas. Fewer indicators of extended soil hydrology were observed in the upper elevations of the site, which tend to be well drained by the roadside drainage features.

### **RELATIONSHIP TO TRADITIONALLY NAVIGABLE WATERS**

As previously noted, the parcel outside of the roadway and associated ditches is predominantly flat with slight rises and depressions. The overall slope of the general vicinity is varied and the site is located across three separate drainage basins, as indicated by the Digital Elevation Model of the area. The land is assisted in drainage by swale features along the outer ditch banks, and the roadside ditches themselves, which drain to one of three features which carry water offsite.

On the western end of the site, a modified natural creek channel flows south, taking water from the roadside ditches where it crosses the project site. As evident from site visits, this modified channel experiences some level of persistent flow, with precipitation events causing a temporary extensive flow, while during dry times, the flow may be barely perceptible. This feature runs generally southeast to its confluence with Colyell Creek gathering small tributaries along its course. This waterway could reasonably be considered a relatively permanent waterway in its lower reaches nearer the creek. Colyell Creek is a relatively permanent waterway.

The distance from the project site to the confluence with Colyell Creek along this feature is approximately 3 miles along the stream course. From the outfall in Colyell Creek, it is approximately 8.5 miles to Colyell Bay, the nearest Traditionally Navigable Waterway.

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The central portion of this linear site is drained by another modified natural channel that begins more or less at the site. Lands adjacent to the central portion of the site flow via overland sheet flow into the roadside drainage along the site is channeled by ditches into the feature which also flows generally southeast toward Colyell Creek gathering tributaries over its course. Field observations indicate that this feature demonstrates persistent flow from roadside drainage after a rain. During dry periods, flow can be reduced to a very light rivulet. From the project site, it is approximately 1.5 miles to the confluence with Colyell Creek. Approximately 0.9 miles downstream from the subject parcel, a large concrete lined drainage feature combines with the modified natural channel. At 0.4 and 0.55 miles below the parcel, two large constructed drainage ditches that drain the eastern portion of the site flow into the modified natural channel, combining the water from both the central and eastern portions of the subject parcel. From the outfall of this drainage feature in Colyell Creek. It is approximately 9.1 miles to Colyell Bay, the nearest Traditionally Navigable Waterway in the flowline.

## **POTENTIAL AFFECT ON TRADITIONALLY NAVIGABLE WATER**

### **Flood control**

The subject parcel has a few depressional areas that provide some basic hydrologic retention in times of heavy precipitation. In occasions of light precipitation, areas such as this within the subject watershed may retain some surface flow. Wetlands on this site are predominantly situated as conveyances concentrating sheet flow from lands off site into the roadside ditches. In its current condition, some initial flood flow moderation is provided by the slight grade of the depressional areas, but the primary function of those areas appears to be concentrating overland flow into the roadside drainage. The site is located outside of the 100 year floodplain as shown on the current FEMA FIRM maps, except for a very small portion of the western portion of the site near the modified channel that drains that section. The site's wetlands are expected to have insignificant effect on flood moderation, as they chiefly consist of small, distinct drainage features that direct water into roadside ditches. The ditches appear to be designed primarily as conveyances, not storage features.

Of note are photos included herein which illustrate that during the recent 1000 year flood event in Livingston Parish, there was no apparent prolonged inundation of the subject property. The subject parcel does not appear to have a significant role in storing flood waters within the Colyell Creek basin.

### **Nutrient loading**

Nutrient sources appear limited to the natural production of nutrients found in decaying organic matter typical of a mowed grassland and pine timber lot. No abnormal or problematic nutrient

source is known to originate or flow through the subject parcel. The wetlands within this site appear to function primarily as conveyances, bringing sheet flow into the drainage ditches along the road. Nutrients are more likely to be present as transient constituents moving into and through the ditch flow. Nutrients originating from the site are expected to be insignificant. Persistent still water in the roadside ditches can serve as nutrient sinks. Vegetation in the depressional wetlands can act to fix nutrients before they move into the ditch. Vegetation in the roadside ditches can also fix nutrients in those features.

### **Pollutants**

Potential non-naturally occurring pollutants on site with the potential for excursion include any fertilizers and/or herbicides applied during timber management activities, sediments from disturbed surfaces, sediments running off from the gravel and dirt road surfaces, and any trace amounts of hydrocarbons from fuels and lubricants used in mowing or harvesting equipment, or from vehicular traffic along the road. No evidence of hydrocarbon or chemical pollution was observed during site visits. Pollutants are likely to be captured by any depressional area retaining overland flow and the roadside ditches during dry periods. To the extent that precipitation exceeds the absorption and retention capacity of the land surface, constituents in the surface water may be expected to migrate with the storm flow away from the site. Eroded sediment was observed in the ditch bottom and evidence of sediment erosion was observed near where roadside features drained into the modified lateral drainage features. From observations made on-site, sediment is the most problematic pollutant.

### **Storm water storage**

In the recent flooding event in Livingston Parish, photos indicate that the site did not experience prolonged inundation. Depressional areas and unimproved channels have the effect of buffering initial flood flows by retaining a certain amount of initial precipitation before flood flow occurs. The site contains a few small depressional areas which may serve this function. However, the predominance of the site is characterized by distinct drainage features channelizing water into roadside drainage ditches, which are designed to move water efficiently to collector laterals, and into larger flow features as it progresses downstream. Culverts provide restriction and meter the water flowing through the ditches. To the extent more water is in the ditch system than can effectively move through the culverts, water can be retained by the ditches themselves when flow exceeds culvert flow capacity.

Storm water moving through the modified natural features is moderated by the rougher texture and meander of the bottom channel and adjacent wet areas along the feature can accept and temporarily store storm waters as the natural capacity of the channel is filled. More permanent storm water storage occurs in the depressional areas below the invert of the culverts, where storm water will remain until evaporation or percolation dry the surface. Retention can also occur where the water moving in the channel exceeds the capacity of road crossing meter points.

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Engineering modifications to the improved channels have eliminated the natural bottom and channel conditions, and it is likely that storm water storage and flow moderation no longer occurs on any significant level within these features.

### **Habitat**

The bulk of the parcel can be described as either open grassy field or improved road surface and adjacent ditches. One small depressional area is vegetated with a variety of hydrophytes which could provide habitat for small birds, mammals, amphibians or reptiles, however observation revealed no obvious or significant signs of use. Areas along the road right-of-way provide very little habitat as they are mowed and maintained in a lawn-like condition. In the ditches can be found small fishes and juvenile and adult amphibian species, reptiles such as snakes and turtles, as well as an assortment of hydrophytic vegetation.

### **LIKELIHOOD OF NEXUS**

With regard to potential wetlands on the subject parcel, it appears that wetlands exist both adjacent to and abutting the roadside drainage features, which drain directly into what are likely to be non-relatively permanent waters (non-RPW) in upper reaches, but what become relatively permanent waters (RPW) at some point below the site. These RPWs flow toward Colyell Creek which flows south approximately 10.5 miles to its outfall in Colyell Bay, the nearest Traditionally Navigable Water (TNW) in the flow line. When considered along with all similarly situated potential wetlands within the subject local watersheds, it is possible that a nexus can be established with the TNW. While the wetlands on the site are anomalous in that they are limited by the site boundary to be primarily discreet flow features, the nexus modifier "similarly situated" implicates all potential wetlands within the local drainage basins feeding the ditches and improved natural creeks, a larger offsite potential wetland footprint that drains through this limited site boundary. There exists a direct and discrete hydrologic connection between the site wetlands, non-RPW ditches, non-RPW laterals transitioning into RPWs, then finally to the TNW. This having been said, it is possible that small, isolated depressional wetlands without any obvious surface connection to the surrounding watershed or its main drainage features, and without any significant potential to provide wildlife habitat or capture sediments could well be isolated to the extent that as to those particular depressional areas, no significant nexus can be reasonably established. Furthermore, there is limited current wetland determination information or wetland ecological study documentation in the local drainage basin to use in a nexus evaluation.

### **FIGURES**

Attached are figures illustrating the relationship of the site to the surrounding landscape in several different contexts. Included are a map of the approximate local watershed (drainage) boundaries, the flow lines from the project site to the TNW Colyell Bay, the location of the parcel in relation

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to the 100-year floodplain with photos taken during the recent flood event, a soils map, a National Wetland Inventory map, and a map showing the 8-digit Hydrologic Unit established by the US Geological Service identifying the overall drainage basin in which the site is located.

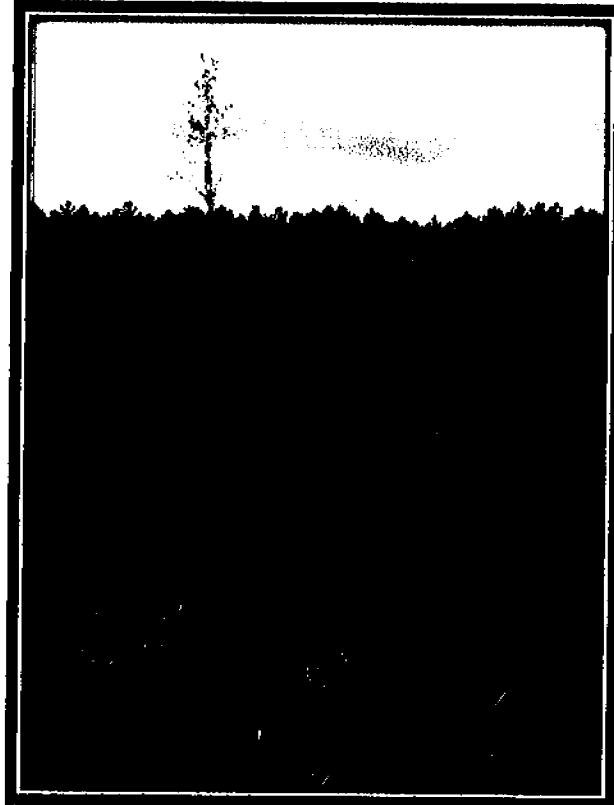
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# PHOTOS

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10 of 32

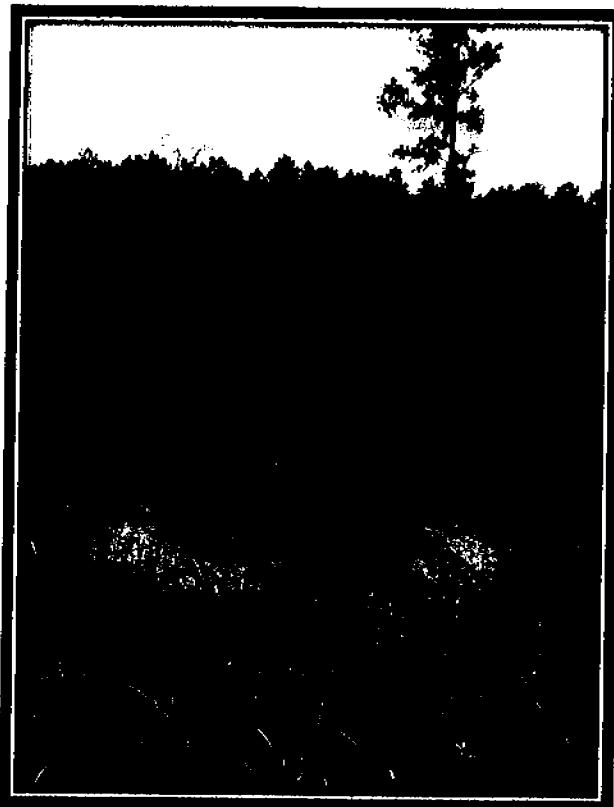


Picture 1 of site vegetation on the Milton Lane site at the time of the 8-31-15 site visit.

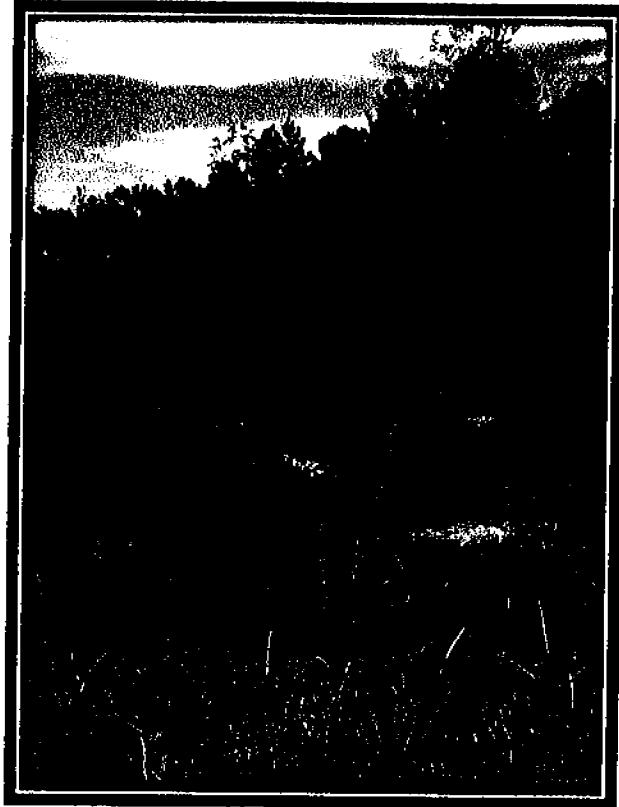


Picture 3 of site vegetation on the Milton Lane site at the time of the 8-31-15 site visit.

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11 of 32

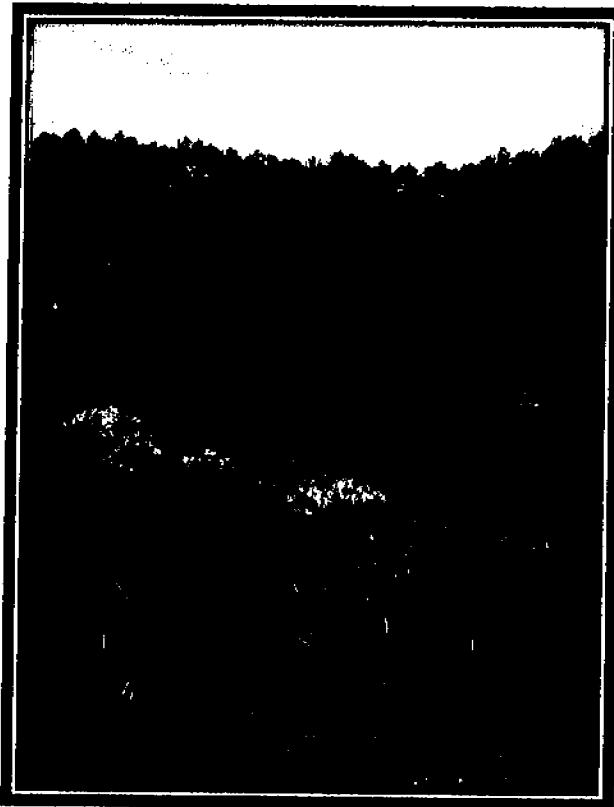


Picture 6 of site vegetation on the Milton Lane site at the time of the 8-31-15 site visit.



Picture 7 of site vegetation on the Milton Lane site at the time of the 8-31-15 site visit.

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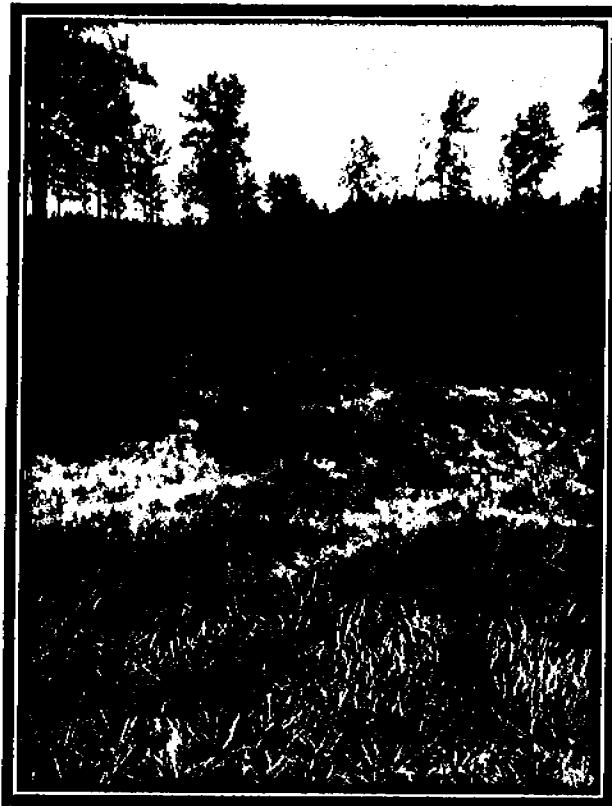


Picture 9 of site vegetation on the Milton Lane site at the time of the 8-31-15 site visit.

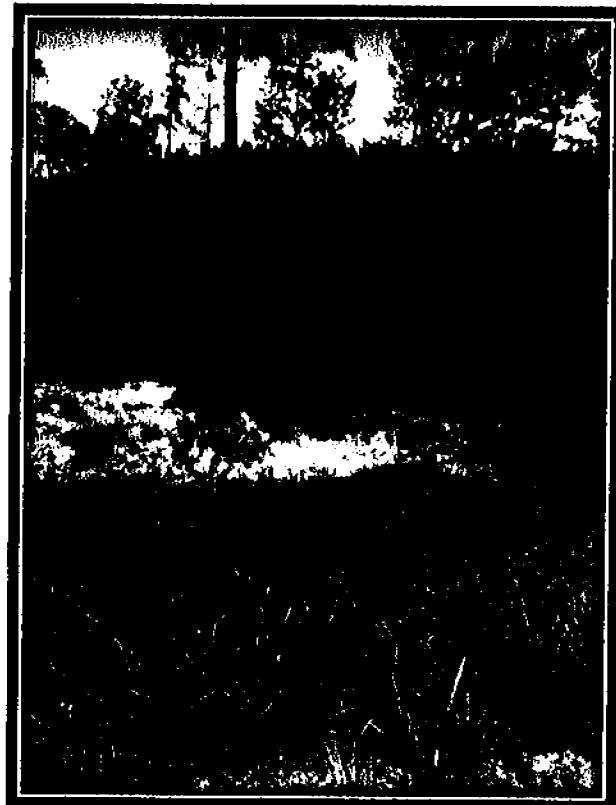


Picture 10 of site vegetation on the Milton Lane site at the time of the 8-31-15 site visit.

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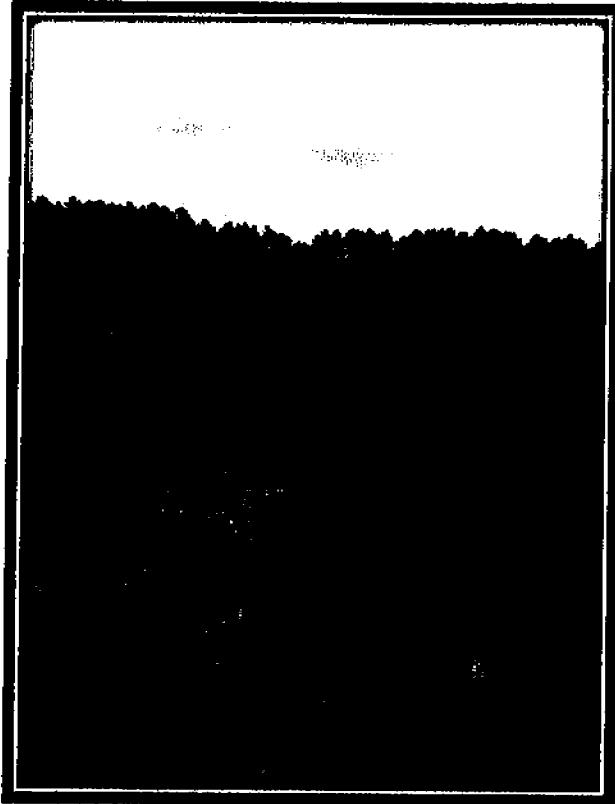


Picture 13 of site vegetation on the Milton Lane site at the time of the 8-31-15 site visit.

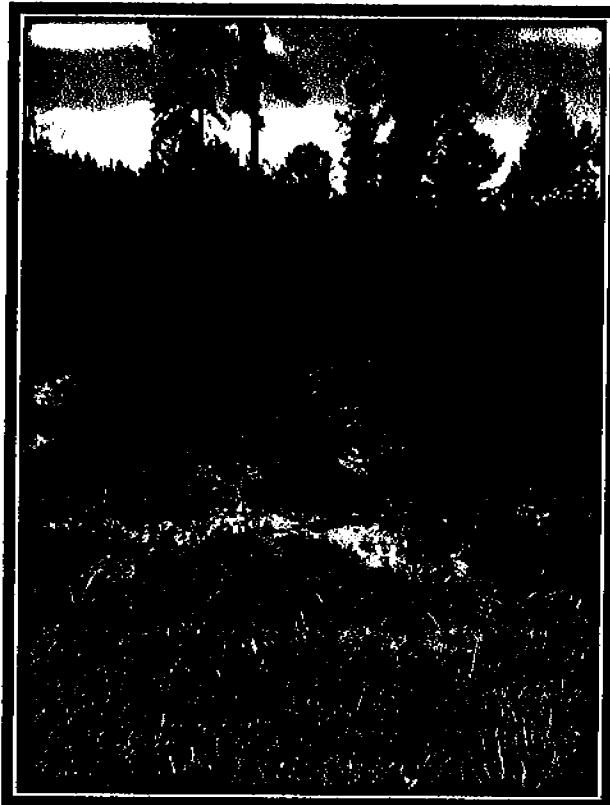


Picture 16 of site vegetation on the Milton Lane site at the time of the 8-31-15 site visit.

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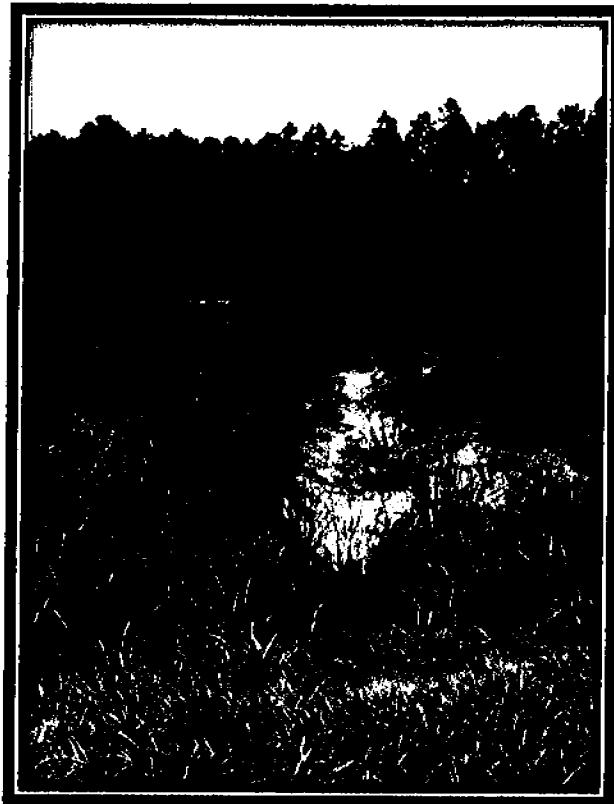


Picture 20 of site vegetation on the Milton Lane site at the time of the 8-31-15 site visit.



Picture 21 of site vegetation on the Milton Lane site at the time of the 8-31-15 site visit.

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15 of 32



Picture 25 of site vegetation on the Milton Lane site at the time of the 8-31-15 site visit.

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# Preliminary Jurisdictional Determination (USACE)

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DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, NEW ORLEANS DISTRICT  
P.O. BOX 60267  
NEW ORLEANS, LOUISIANA 70160-0267

REPLY TO  
ATTENTION OF

Operations Division  
Surveillance and Enforcement Section

OCT 14 2015

Ms. Kristin Broom  
ELOS Environmental, LLC  
43177 E. Pleasant Ridge Rd.  
Hammond, LA 70403

Dear Ms. Broom:

Reference is made to your request, on behalf of Garry Lewis Properties, for a U.S. Army Corps of Engineers' (Corps) jurisdictional determination on property located in Sections 4 and 5, Township 7 South, Range 4 East, Livingston Parish, Louisiana (enclosed map). Specifically, this property is identified as Milton Lane Utilities, a 19-acre tract.

Based on the results of multiple field investigations and the information provided with your request, we have determined that part of the property is wetland and may be subject to Corps' jurisdiction. The approximate limits of the wetland are designated in red on the map. A Department of the Army (DA) permit under Section 404 of the Clean Water Act will be required prior to the deposition or redistribution of dredged or fill material into wetlands that are waters of the United States. Additionally, a DA permit will be required if you propose to deposit dredged or fill material into other waters subject to Corps' jurisdiction. Other waters that may be subject to Corps' jurisdiction are indicated in blue on the map.

You and your client are advised that this preliminary jurisdictional determination is valid for a period of 5 years from the date of this letter unless new information warrants revision prior to the expiration date or the District Commander has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.

Should there be any questions concerning these matters, please contact Mr. Michael Windham at (504) 862-1235 and reference our Account No. MVN-2015-00041-SK. If you have specific questions regarding the permit process or permit applications, please contact our Central Evaluation Section at (504) 862-1581.

Sincerely,

Martin S. Mayer  
Chief, Regulatory Branch

Enclosures

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18 of 32

## 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	New Orleans District	File/ORM #	MVN-2015-00041-SK	PJD Date:	Oct 14, 2015
State <input checked="" type="checkbox"/> LA City/County <input checked="" type="checkbox"/> Satsuma/ Livingston Parish					
Nearest Waterbody: <input checked="" type="checkbox"/> Switchcane Bayou				Name/ Address of Person Requesting PJD	
Location: TRS, Lat.Long or UTM: <input checked="" type="checkbox"/> Sections 4 & 5, Township 7 South, Range 4 East					
Identify (Estimate) Amount of Waters in the Review Area:				Name of Any Water Bodies on the Site Identified as Section 10 Waters: <input checked="" type="checkbox"/> Ms. Kristin Broom ELOS Environmental 43177 E. Pleasant Ridge Rd. Hammond, LA 70403	
Non-Wetland Waters: <input checked="" type="checkbox"/> 17,127 linear ft    width <input type="text" value="2.76"/> acres <input type="text" value="N/A"/> Stream Flow: <input type="checkbox"/> N/A				Tidal: <input type="checkbox" value="none"/> none	Non-Tidal: <input type="checkbox" value="none"/> none
Wetlands: <input checked="" type="checkbox"/> 1.06 acre(s) Cowardin Class: <input type="text" value="N/A"/>				<input type="checkbox"/> Office (Desk) Determination <input checked="" type="checkbox"/> Field Determination: Date of Field Trip: <input type="text" value="Oct 7, 2015"/>	

**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:  ELOS Environmental
- 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:
- 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): 
  - 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.

**WINDHAM.MICHAEL.**

**JOSEPH.1263455440**

Signature and Date of Regulatory Project Manager  
(REQUIRED)

Digital signature by  
WINDHAM.MICHAEL.JOSEPH.1263455440  
DN: e=US, o=U.S. Government, ou=DoD, ou=PKI, ou=USA  
cn=WINDHAM.MICHAEL.JOSEPH.1263455440  
Date: 2015.10.14 10:48:51 -05'00'

**Mr. Garry Lewis (e-mail) 10-13-15**

Signature and Date of Person Requesting Preliminary JD  
(REQUIRED, unless obtaining the signature is impracticable)

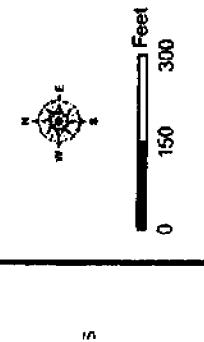
### EXPLANATION OF PRELIMINARY AND APPROVED JURISDICTIONAL DETERMINATIONS:

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.

12/19/2015

U.S. ARMY CORPS OF ENGINEERS  
PRELIMINARY  
JURISDICTIONAL DETERMINATION

Attachment



USACE	Map 1 of 3
FSV / IH	Date: 10/7/15
Botanist: WENDY AM	
Requestor: B2200	
# MVN-2015-00041-5K	
<input checked="" type="checkbox"/> - WETLAND (prior to 404)	
<input type="checkbox"/> - NON-WETLAND	
<input type="checkbox"/> - WATER OF THE US (prior to 404)	

<b>ELOS</b>	Figure 8.1: Proposed Delineation
<b>Milton Lane Utilities</b>	
Map prepared from public and proprietary spatial data. Elos Environmental LLC does not warrant its accuracy or completeness. This map should not be used to establish legal boundaries or specific locations.	
<b>ELOS</b> Environmental 48177 East Pleasant Ridge Road Hammond, Louisiana 70403 P. 985-682-5601; F. 985-682-5604	File: Milton Lane Utilities GIS Maps\Definition\Figure 8.1_Proposed Delineation.mxd

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Calculations	
Wetlands	± 1.06 Acres
Other Waters	± 2.76 Acres
Other Waters Linear ft	± 17,127
Non-Wetlands	± 15.13 Acres
<b>Total</b>	<b>± 19.13 Acres</b>

**U.S. ARMY CORPS OF ENGINEERS  
PRELIMINARY  
JURISDICTIONAL DETERMINATION**

Map Title: *Milton Lane*

Scale: *1:12,500*

Date: *10/7/15*

Prepared by: *Elos Environmental LLC*

Map prepared from public and proprietary spatial data.  
Elos Environmental, LLC does not warrant its accuracy  
or completeness. This map should not be used to  
establish legal boundaries or specific locations.

Requestor: *Brown*

# MNV-2015-00041-5K

- WETLAND (*pred. 40%*)  
 - NON-WETLAND  
 - WATERS OF THE US (*pred. 40%*)

150 300 Feet

N S E W

**FLO** **S** Figure 8.2: Proposed Delineation

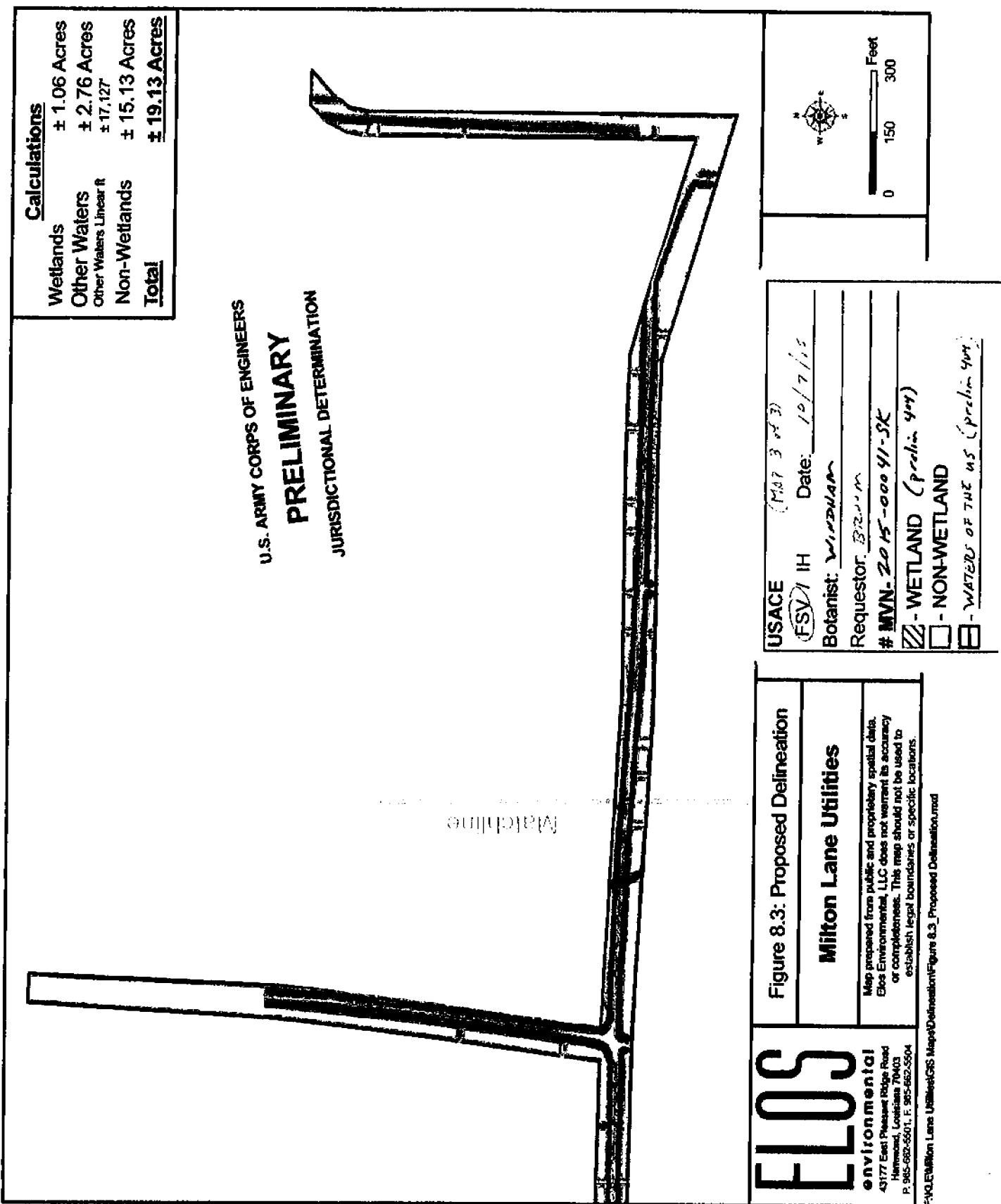
**Milton Lane Utilities**

Environmental

43177 East Pleasant Ridge Road  
Hammond, Louisiana 70403  
P. 504-662-3504

FILE#: Milton Lane Utilities Map/DelineationFigure 8.2\_Proposed Delineation.mxd

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NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL			
<b>Applicant:</b> Garry Lewis Properties	<b>File No.:</b> MVN-2015-00041-SK	<b>Date:</b>	<b>OCT 14 2015</b> See Section below
<b>Attached is:</b>			
<input type="checkbox"/> INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission) <input type="checkbox"/> PROFFERED PERMIT (Standard Permit or Letter of permission) <input type="checkbox"/> PERMIT DENIAL <input type="checkbox"/> APPROVED JURISDICTIONAL DETERMINATION <input checked="" type="checkbox"/> PRELIMINARY JURISDICTIONAL DETERMINATION	<input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> E		
<b>SECTION I -</b> The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <a href="http://usace.army.mil/inet/functions/cw/cecw/o/reg">http://usace.army.mil/inet/functions/cw/cecw/o/reg</a> or Corps regulations at 33 CFR Part 331.			
<b>A: INITIAL PROFFERED PERMIT:</b> You may accept or object to the permit.			
<ul style="list-style-type: none"> <li>• ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.</li> <li>• OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.</li> </ul>			
<b>B: PROFFERED PERMIT:</b> You may accept or appeal the permit			
<ul style="list-style-type: none"> <li>• ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.</li> <li>• APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.</li> </ul>			
<b>C: PERMIT DENIAL:</b> You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.			
<b>D: APPROVED JURISDICTIONAL DETERMINATION:</b> You may accept or appeal the approved JD or provide new information.			
<ul style="list-style-type: none"> <li>• ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.</li> <li>• APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.</li> </ul>			
<b>E: PRELIMINARY JURISDICTIONAL DETERMINATION:</b> You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.			

12  
 23 of 32

**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

Mr. Rob Heffner  
 Chief, Surveillance and Enforcement Section  
 U.S. Army Corps of Engineers, New Orleans District  
 P.O. Box 60267  
 New Orleans, LA 70160-0267  
 504-862-1288

If you only have questions regarding the appeal process you may also contact the Division Engineer through:

Mr. Thomas McCabe  
 Administrative Appeals Review Officer  
 Mississippi Valley Division  
 P.O. Box 80 (1400 Walnut Street)  
 Vicksburg, MS 39181-0080  
 601-634-5820 FAX: 601-634-5816

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

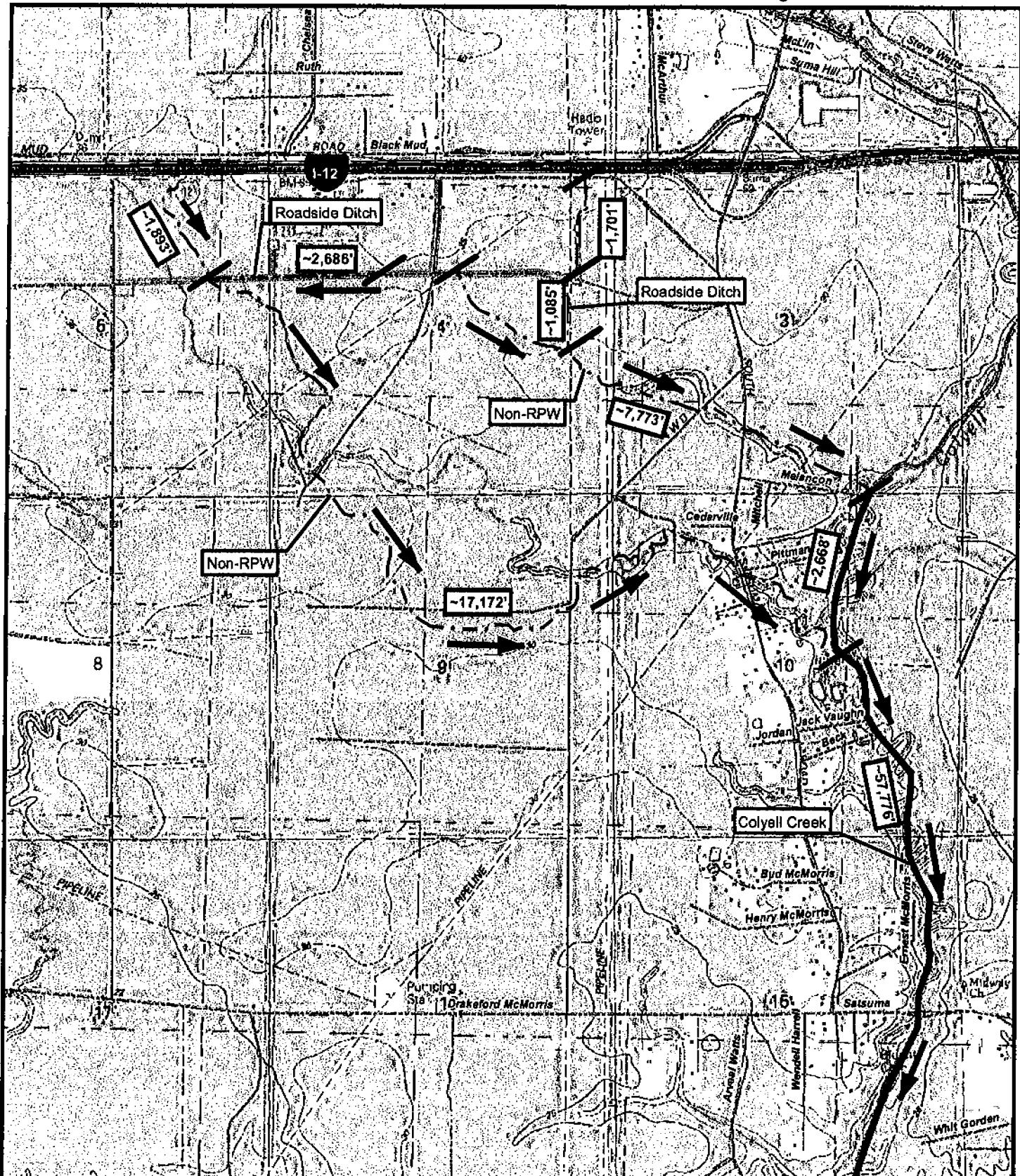
Date: \_\_\_\_\_ Telephone number: \_\_\_\_\_

Signature of appellant or agent.

12  
 24 08 32

# Figures

12  
25 of 32



**ELOS**  
environmental

<http://elosenv.com/>  
43177 East Pleasant Ridge Road  
Hammond, Louisiana 70403  
P. 985-662-5501, F. 985-662-5504

0 1,200 2,400 Feet



Flow Area

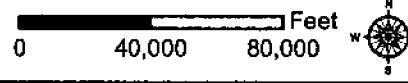
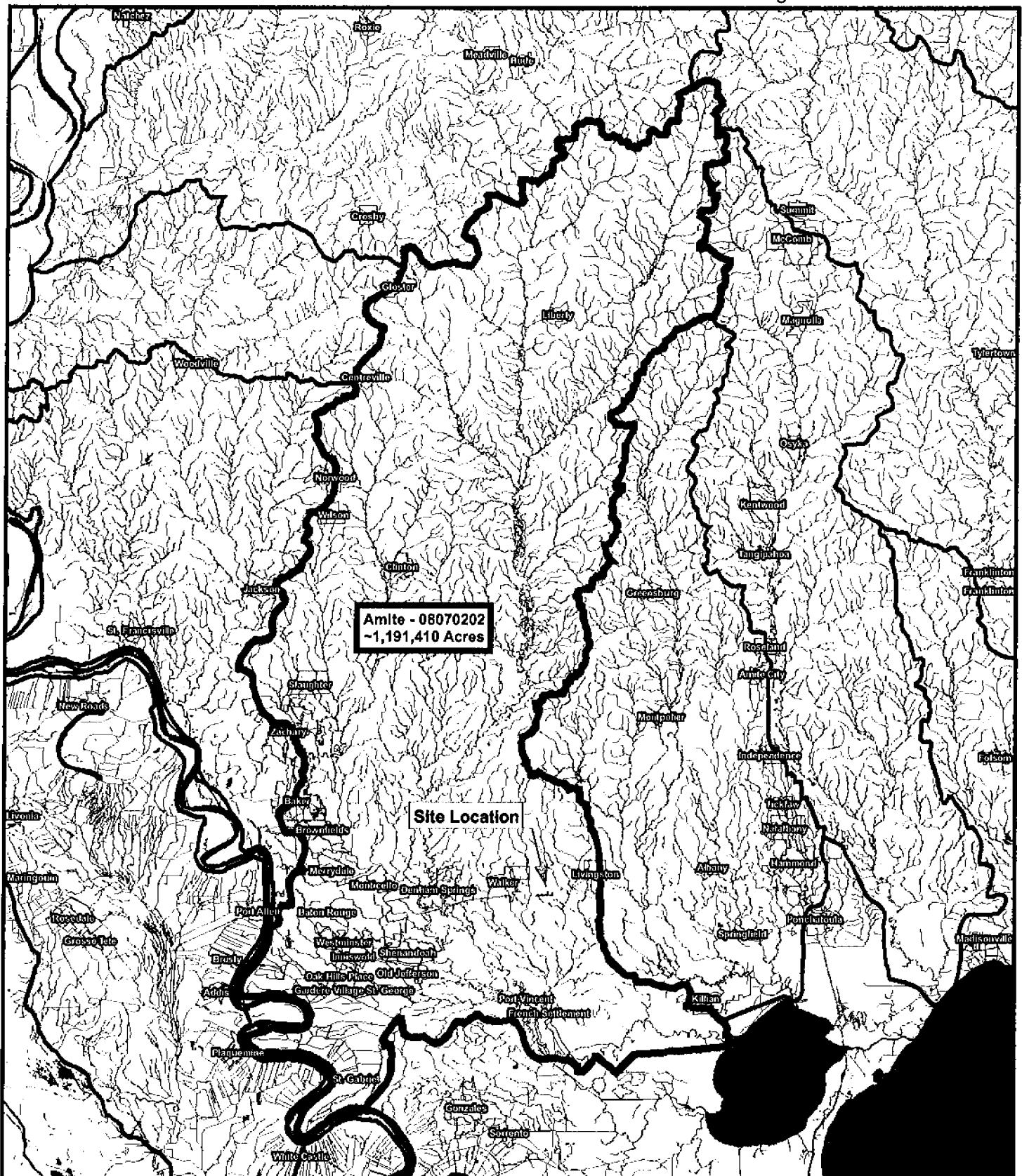
Milton Lane Nexus

Legend:

- [Solid line] JD2015-00041/MVN-2015-02201-CM — Interstate
- [Solid line] Colyell Creek
- [Dashed line] Roads
- [Dashed line] Non-RPW
- [Dashed line] Roadside Ditch
- [Solid line with arrowheads] Reach Segment

Map prepared from public and proprietary spatial data. ELOS Environmental, LLC does not warrant its accuracy or completeness. This map should not be used to establish legal boundaries or specific locations.

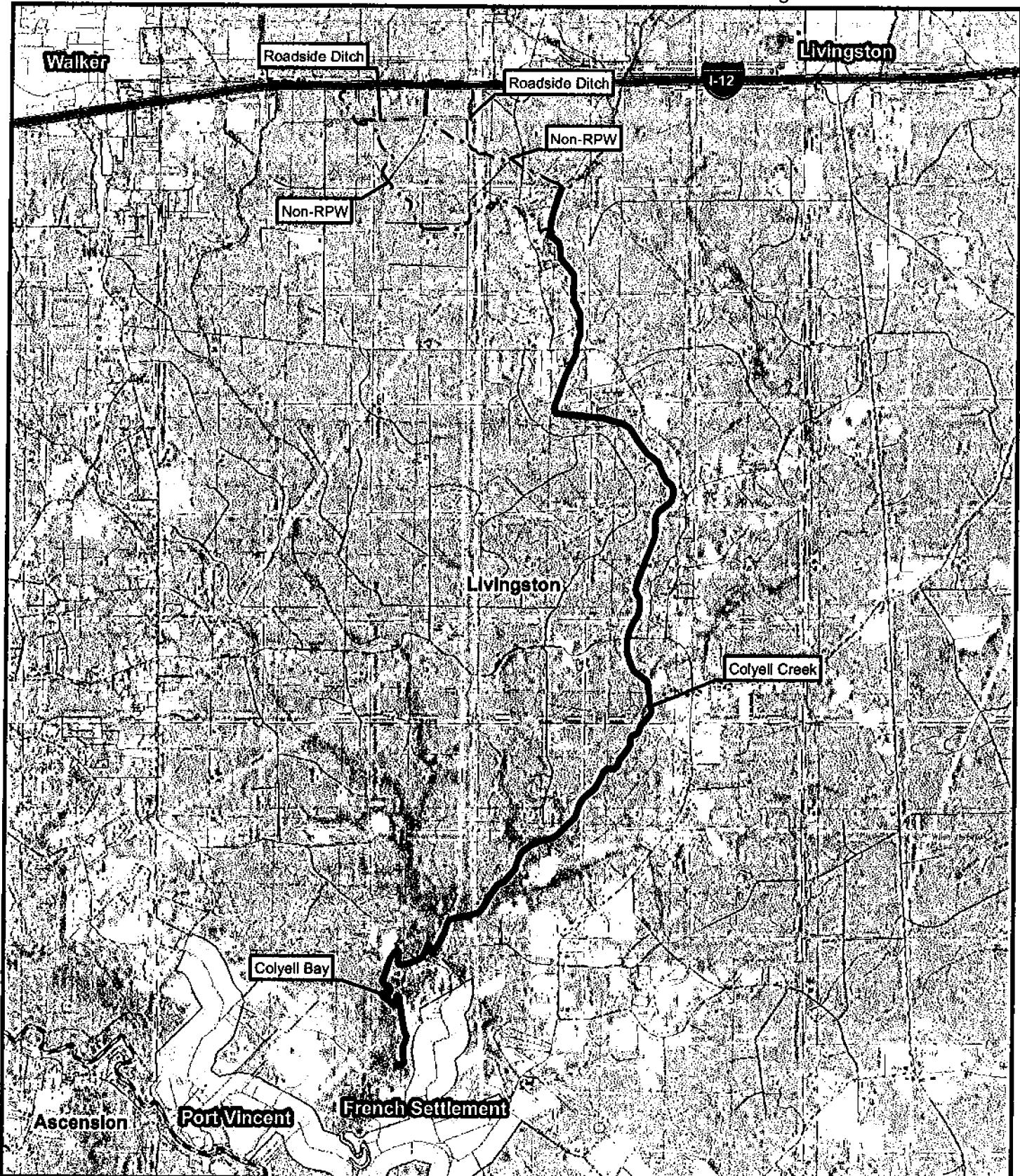
12 26 8P32

**Legend:**

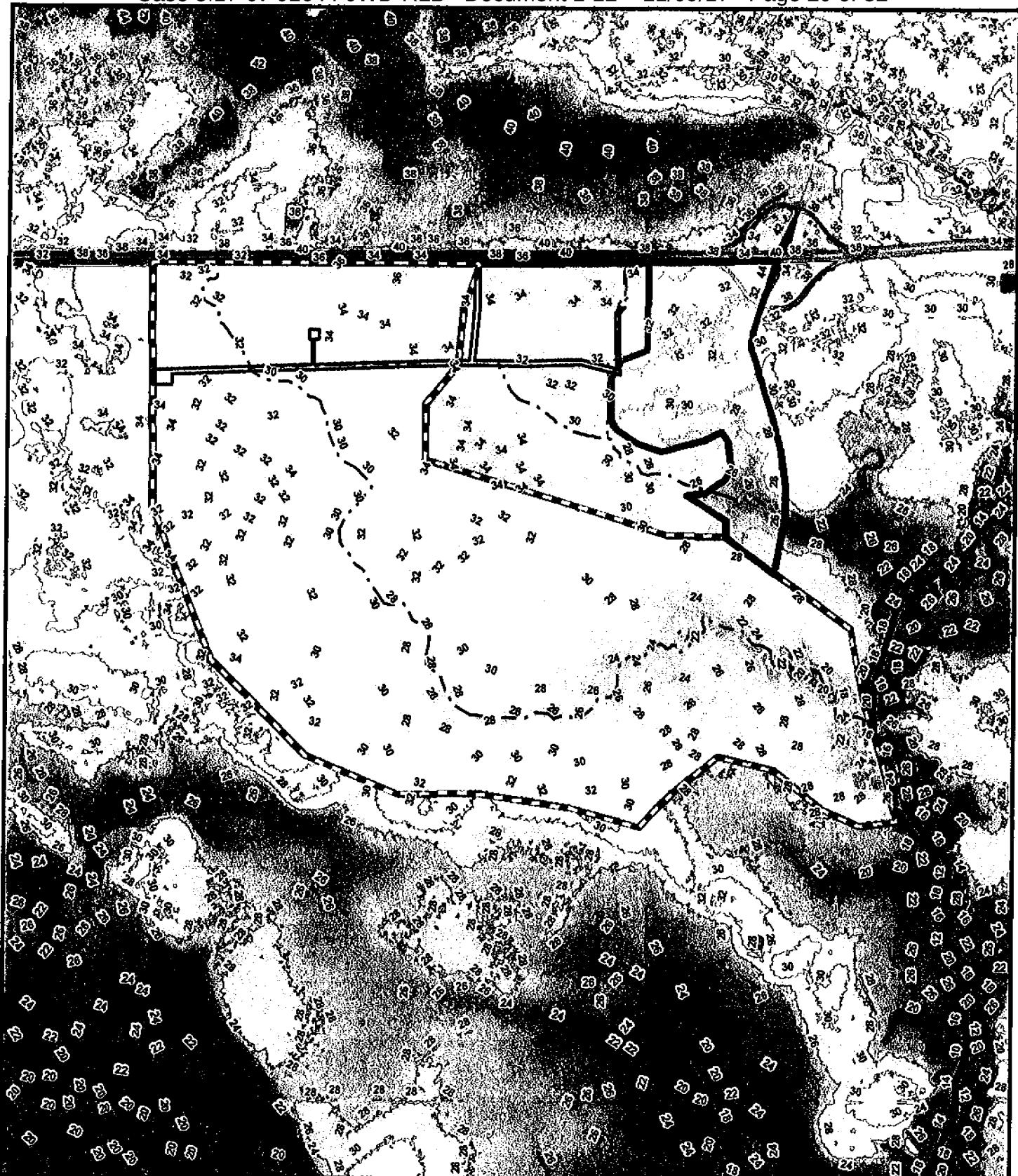
- JD2015-00041/MVN-2015-02201-CM  City/Town
- Hydrologic Unit  Stream/River

**Watershed Map****Milton Lane Nexus**

Map prepared from public and proprietary spatial data. ELOS Environmental, LLC does not warrant its accuracy or completeness. This map should not be used to establish legal boundaries or specific locations.

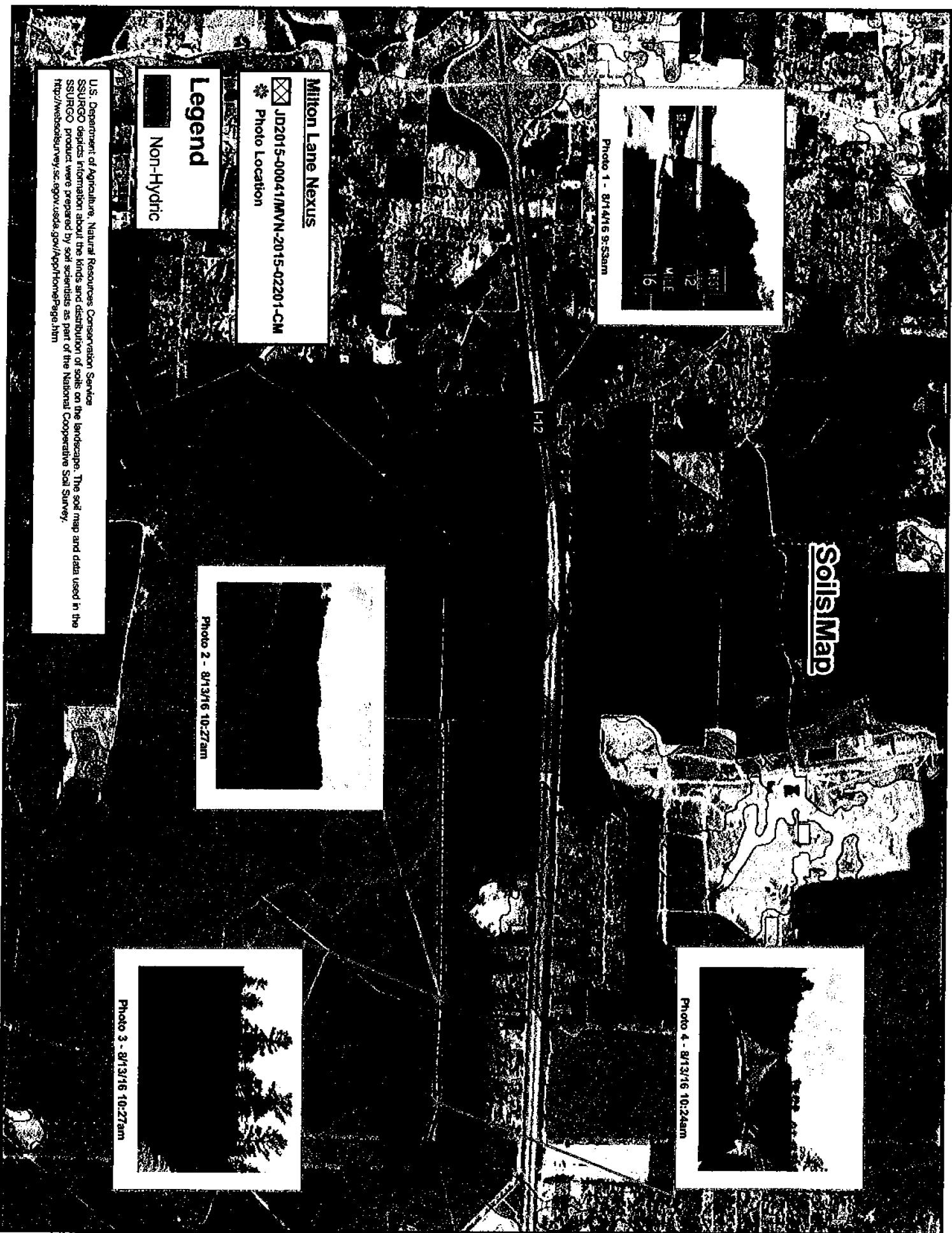


 <b>ELOS</b> <small>environmental</small> <a href="http://elosenv.com/">http://elosenv.com/</a> 43177 East Pleasant Ridge Road Hammond, Louisiana 70403 P. 985-662-5501, F. 985-662-5504	 <b>Tributary Flow</b>	<b>Legend:</b> <ul style="list-style-type: none"> <li>JD2015-00041/MVN-2015-02201-CM</li> <li>City/Town</li> <li>Colyell Creek</li> <li>Non-RPW</li> <li>Roadway</li> <li>Roadside Ditch</li> </ul>
	<b>Milton Lane Nexus</b>	Map prepared from public and proprietary spatial data. ELOS Environmental, LLC does not warrant its accuracy or completeness. This map should not be used to establish legal boundaries or specific locations.



		<b>Legend:</b>	
		JD2015-00041/MVN-2015-02201-CM	Coley Creek
		- - - Non-RPW	Higher
		- - - Roadside Ditch	Lower
		— Contour	
<b>Drainage Area</b>		<b>~171 Acres</b> <b>~276 Acres</b> <b>~1,348 Acres</b>	
<b>Milton Lanes Nexus</b>		Map prepared from public and proprietary spatial data. ELOS Environmental, LLC does not warrant its accuracy or completeness. This map should not be used to establish legal boundaries or specific locations.	

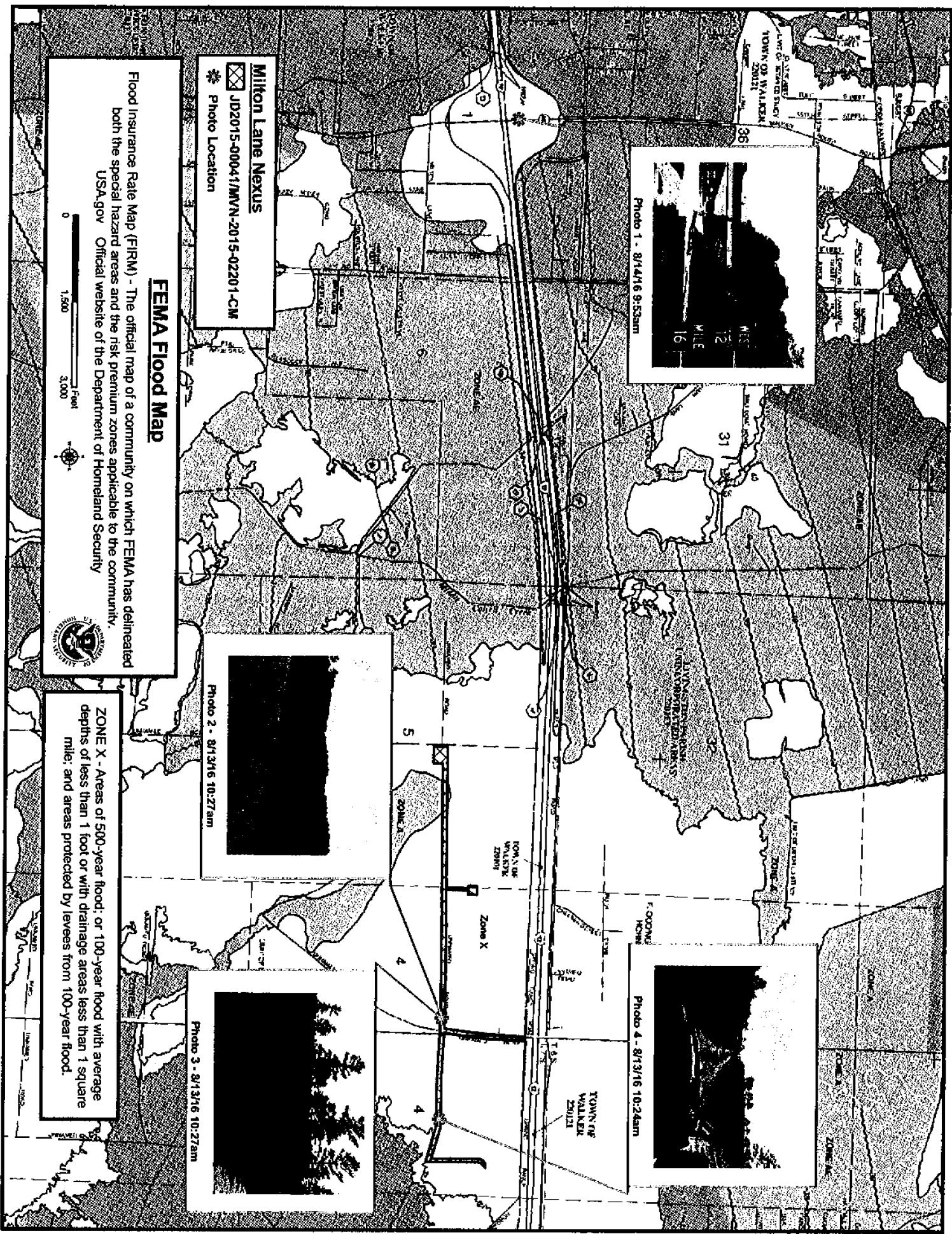
12 29 0P 32



U.S. Department of Agriculture, Natural Resources Conservation Service  
SSURGO depicts information about the kinds and distribution of soils on the landscape. The soil map and data used in the  
SSURGO product were prepared by soil scientists as part of the National Cooperative Soil Survey.  
<http://websoilsurvey.sc.egov.usda.gov/app/HomePage.htm>

12 86 OF 32

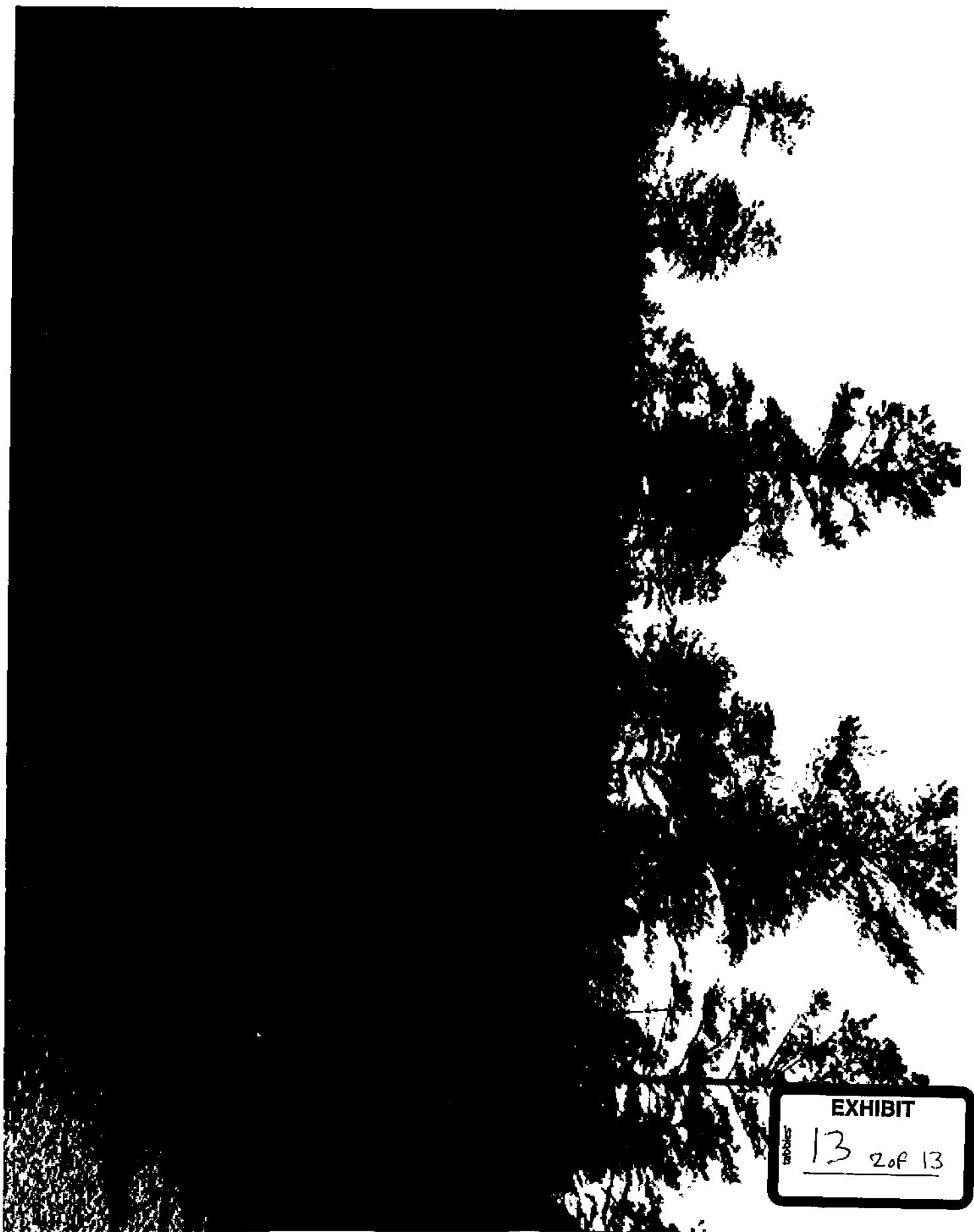




EXHIBIT

13  
13 of 13

Photo 2, Satsuma-8/13/16 10:27 am, during August 2016 major flood    Milton Lane DRY road ditches  
labeled as waters of the U.S.A. and wetlands by Mr. Heffner, and Mr. Windham, Corps of Engineers



**Photo 3, Satsuma-8/13/16 10:27 am, during August 2016 major flood   Milton Lane DRY road ditches labeled as waters of the U.S.A. and wetlands by Mr. Heffner, and Mr. Windham, Corps of Engineers**

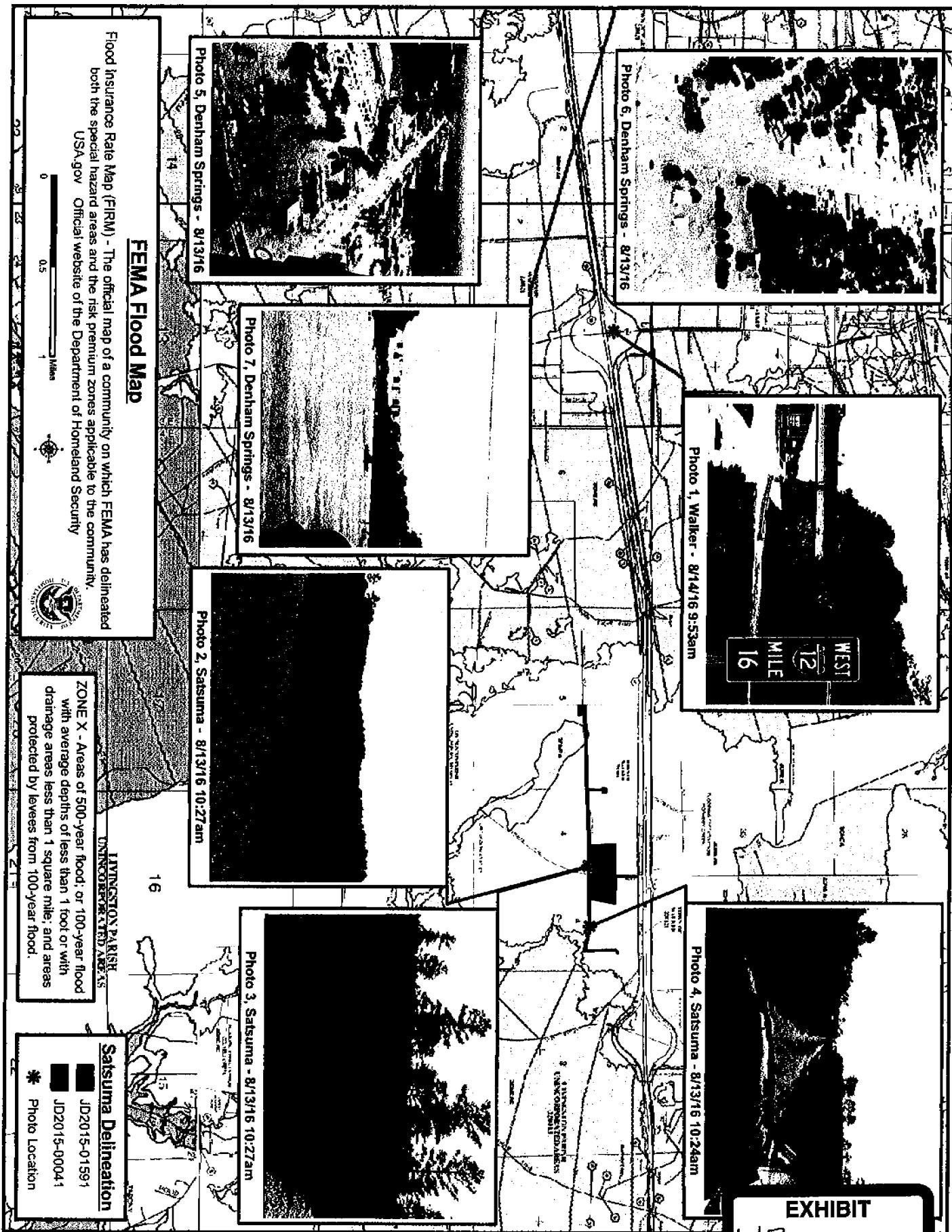
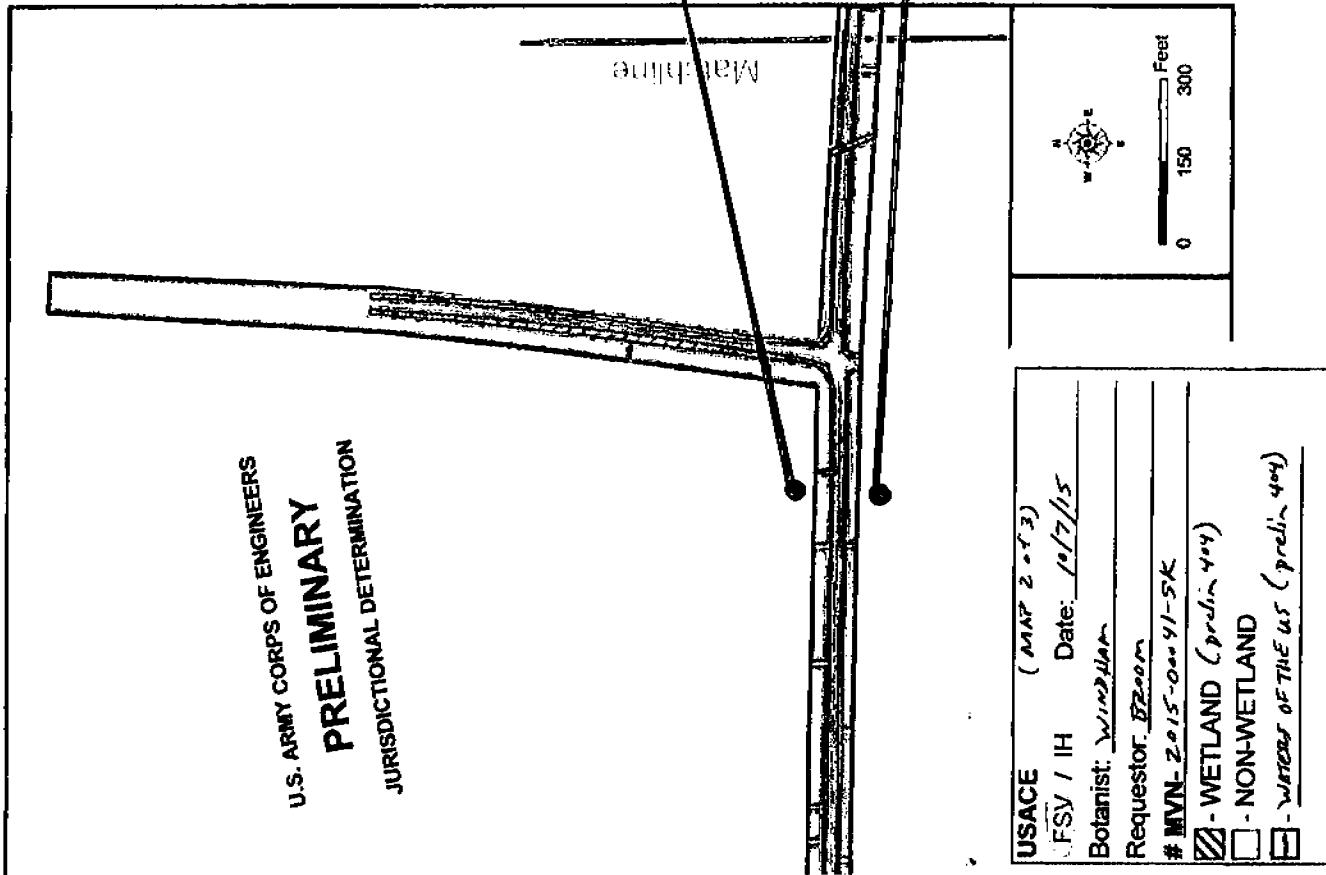


Photo 3, Satsuma-8.13.16 10:27 am Major Flood, August 2016

Photo 2, Satsuma-8.13.16 10:27 am Major Flood, August 2016



<u>Calculations</u>	
Wetlands	± 1.06 Acres
Other Waters	± 2.76 Acres
Other Waters Linear ft	± 17,127
Non-Wetlands	± 15.13 Acres
<b>Total</b>	<b>± 19.13 Acres</b>

DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, NEW ORLEANS DISTRICT  
P.O. BOX 60287  
NEW ORLEANS, LOUISIANA 70160-0287

REPLY TO:  
ATTENTION OF:  
Operations Division  
Surveillance and Enforcement Section

OCT 14 2015

Ms. Kristin Broom  
ELOS Environmental, LLC  
43177 E. Pleasant Ridge Rd.  
Hammond, LA 70403

Dear Ms. Broom:

Reference is made to your request, on behalf of Gary Lewis Properties, for a U.S. Army Corps of Engineers' (Corps) jurisdictional determination on property located in Sections 4 and 5, Township 7 South, Range 4 East, Livingston Parish, Louisiana (enclosed map). Specifically, this property is identified as Milton Lane Utilities, a 19-acre tract.

Based on the results of multiple field investigations and the information provided with your request, we have determined that part of the property is wetland and may be subject to Corps' jurisdiction. The approximate limits of the wetland are designated in red on the map. A Department of the Army (DA) permit under Section 404 of the Clean Water Act will be required prior to the deposition or redistribution of dredged or fill material into wetlands that are waters of the United States. Additionally, a DA permit will be required if you propose to deposit dredged or fill material into other waters subject to Corps' jurisdiction. Other waters that may be subject to Corps' jurisdiction are indicated in blue on the map.

You and your client are advised that this preliminary jurisdictional determination is valid for a period of 5 years from the date of this letter unless new information warrants revision prior to the expiration date or the District Commander has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.

Should there be any questions concerning these matters, please contact Mr. Michael Windham at (504) 862-1235, and reference our Account No. MVN-2015-00041-SK. If you have specific questions regarding the permit process or permit applications, please contact our Central Evaluation Section at (504) 862-1581.

Sincerely,

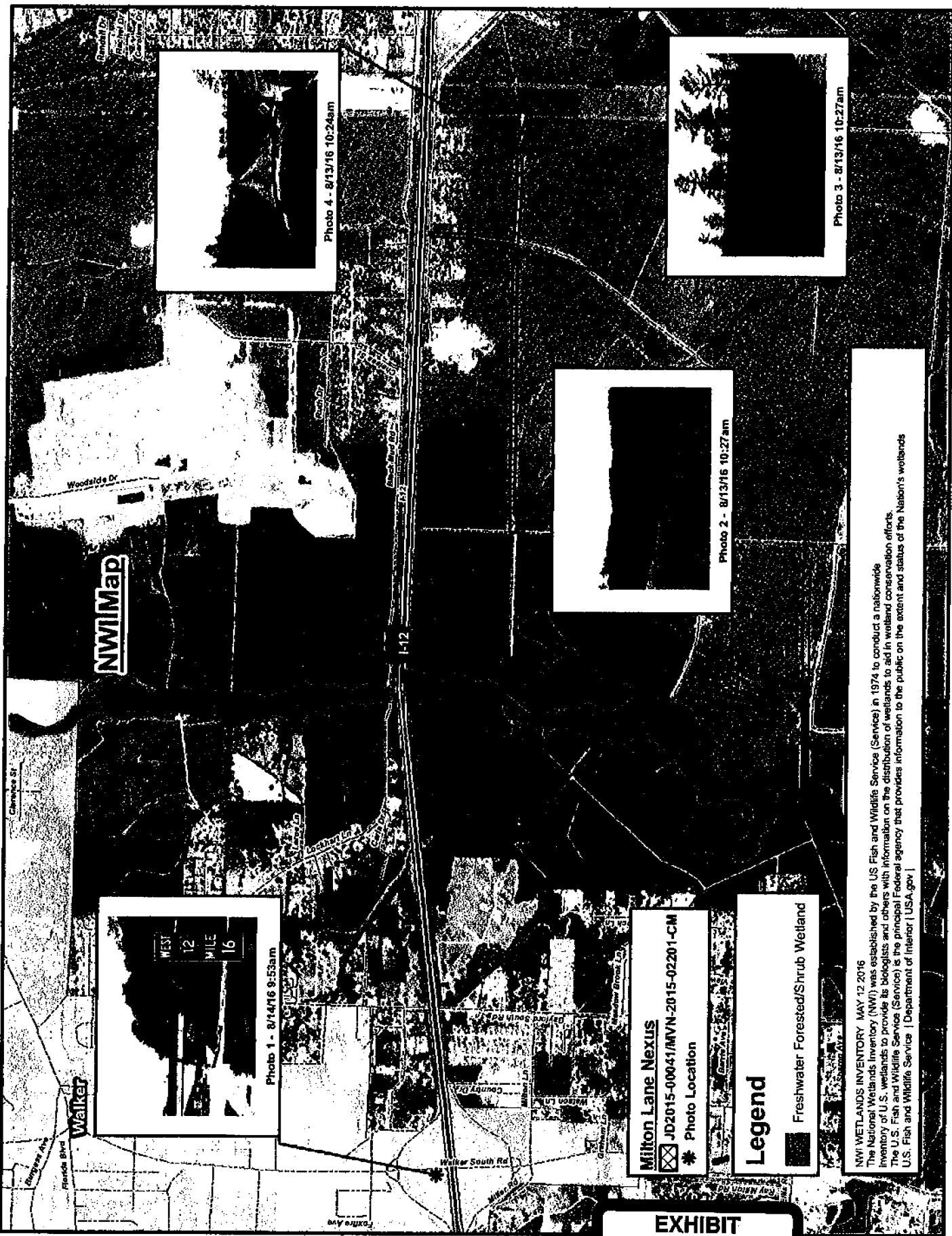
Martin S. Mayer  
Chief, Regulatory Branch

USACE	( MAP 2043)
FSV / IH	Date: 10/17/15
Botanist: <input type="checkbox"/> Windham	
Requestor: <input checked="" type="checkbox"/> Broom	
# MVN- 2015-00041-SK	
<input checked="" type="checkbox"/> - WETLAND (predominant) <input type="checkbox"/> - NON-WETLAND <input type="checkbox"/> - WATERS OF THE US (prelim. req.)	

EXHIBIT

13 4 of 13





EXHIBIT

13  
SoF 13



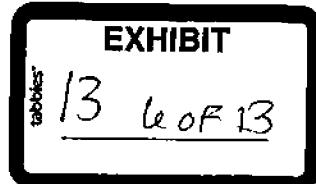
Draft Environmental Assessment  
Temporary Group Site

# Satsuma Group Site

FEMA-4277-DR-LA  
Livingston Parish, Louisiana  
*September 2016*



FEMA



U.S. Department of Homeland Security  
Federal Emergency Management Agency  
Region 6  
800 North Loop 288  
Denton, TX 76209

### **5.1.2 Wetlands**

The Clean Water Act (CWA) and Executive Order 11990 define wetlands as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence if vegetation typically adapted for life in saturated conditions. Wetlands generally include swamps, marshes, bogs and similar areas.”

#### **Alternative 1- No Action Alternative**

Under the No Action alternative, there would be no short- or long-term impacts to wetlands.

#### **Alternative 2 - Develop the Satsuma Group Site with Mobile Home Units (Proposed Action)**

Under the Proposed Action alternative, based on the U.S. Fish and Wildlife Services (USFWS) National Wetlands Inventory map accessed on September 16, 2016 available online at (<https://fws.gov/wetlands/>), no wetlands were identified in the project area. Based on field observations and the National Wetlands Inventory map, the Proposed Action will not affect any wetlands (Figure 10).

### **9. List of Preparers**

#### **EA Preparer:**

Victor M. Bonilla, Environmental Engineer/Industrial Engineer, US Army Corps of Engineers Field Team;

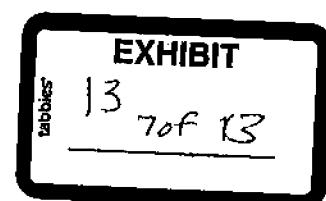
James Green, Environmental Specialist, US Army Corps of Engineers

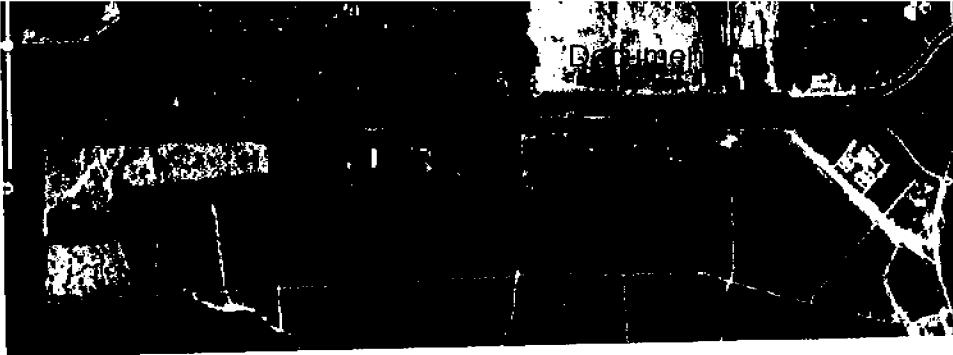
Richard Beatty, Environmental Specialist, FEMA Reservist

#### **Reviewers:**

Kevin Jaynes, Regional Environmental Officer, Region 6 FEMA

Alan Hermely, Environmental Specialist, Region 6 FEMA





## Wetlands

②

- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Other
- Riverine

Map shows wetlands (coastal, marshy, emergent, forested, ponds, lakes, rivers) and their distribution.

## TIMBERLAND LOGGING CONTRACTORS, L.L.C.

T

July 13, 2015

Garry L. Lewis  
17457A Wes McLin Rd.  
Livingston, LA 70754

Mr. Rob Heffner, Chief of Enforcement  
US Army Corps of Engineers  
New Orleans District  
CEMVN-OD-S  
Post Office Box 60267  
New Orleans, LA 70160-0267

### Best Timber Management Practices

Dear Garry & Rob,

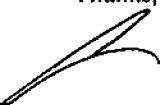
I feel my timber management practices far exceed the larger companies. Being in the timber business 37 years I see how timber companies mismanage other people's land. I take personal pride in caring for the land that I manage for others. I go far and beyond what is "acceptable" and that's how my company has been so successful with repeat business and recommendation.

Rob, after our discussion on June 26, I asked Louisiana State Forestry to evaluate the areas we discussed. They came out the next day, June 27.

They told me they wished everybody would do as well. We rode the whole front block including what Rob had issues with. He inspected everything. I asked him to put his inspection in writing for this tract. (See the BMP dated July 9, 2015). The rating given was "*100% in compliance in all BMP areas*", which you will probably never get this kind of compliance rating from the bigger companies because they have such a vast area of timber to manage verses what my company manages.

Then they scheduled an BMP inspection of the entire tract. Garry, on July 9, we rode every single timber access road on the property. We closely examined all the different tracts on the property. His comments were, this is what we like to see when we come look at a site. He advised me that he can see I take pride in what I do and has no complaints.

Thanks,



Al Suggs Jr.

Enclosure: LA State Forestry BMP Inspection Report

EXHIBIT

13 of 13

**1. General Tract Information** W-90,82,844

Parish: Livingston Lat & Long: N 30.47076 Owner: GARY Lewis Contact # 225-802-9236

Silvicultural Activity:

- Regeneration Cut  
 Thinning  
 Other

Tract Size (Acres):

- 10-40       121-160  
 41-80       161 or more  
 81-120

Ownership Group:

- PNIF       Federal  
 State       Industry

**2. Site Characteristics**

Estimate Slope Present:

- 0% - 5%  
 6% - 20%  
 21% - 40%  
 40% or greater

Predominant Soil Texture:

- Clay       Sandy Loam  
 Clay Loam       Sand  
 Loam       Silty Soils

Erodibility Hazard:

- Low  
 Medium  
 High

Type of Stream Present:

- Perennial Stream  
 Intermittent Stream  
 Ephemeral Stream  
 N/A

Evidence Of Spills Or Fuels      Trash, Oil Cans, Hoses Or

On Site:      Other Containers Left On Site:

- Yes       Yes  
 No       No

Has Tract Been Regenerated

- Artificially?  
 Yes  
 No  
 N/A

**3. Streamside Management Zone:**

- A. SMZ Width Established According To BMP Specifications
- B. Harvesting/ Thinning Within SMZ According BMP Specifications
- C. SMZ Integrity Preserved (No. Chemicals, No Fertilizer, Site Prep Fires, Log Decks Within SMZ)
- D. Stream Course Clear of Logging Debris
- E. SMZ Free Of Roads And Landings
- F. Stream Free Of Sediment Due To Silvicultural Activity
- G. Rutting Through Streams or Drains Avoided
- H. Hot Site Prep Fire Avoided in SMZ
- I. Blocking The Natural Flow Of Water Avoided
- J. Stream Bank Integrity Preserved

N/A	YES	NO	SIG. RISK
	✓		
	✓		
	✓		
	✓		
	✓		
	✓		
	✓		
	✓		
✓			
	✓		
	✓		

Section Total

9

Percent Compliance

100

**Louisiana Department of Ag & Forestry**  
**BMP Monitoring Inspection Form**

**4. Stream Crossings**

- A. Ditches That Dump Into Streams Avoided
- B. Streams Crossing Properly Installed
- C. Number Of Stream Crossing Minimized
- D. Stream Or Drain Crossing At Right Angle Only
- E. Stream Crossing Stabilized During Use

N/A	YES	NO	SIG. RISK
✓			
✓			
	✓		
✓			
✓			

Section Total

1		
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Percent Compliance **100****5. Permanent Roads**

- A. Roads Respect Sensitive Areas
- B. Rutting Is Not Excessive
- C. Roads Located Where Side Drainage Can Be Achieved
- D. Roads Wide Enough To Achieve Surface Drying
- E. Roads Reshaped And /Or Stabilized If Needed
- F. Roads Meet Grade Specifications
- G. Roads Are Well Drained With Appropriate Structures (Bridges, Culverts, Etc.)
- H. Side Ditches Do Not Dump Into Streams
- I. Flat, No Grade Road Avoided If Possible
- J. Streambeds and Steep Slopes Avoided
- K. Potential Problems Soils Avoided

N/A	YES	NO	SIG. RISK
	✓		
	✓		
	✓		
	✓		
	✓		
	✓		
	✓		
	✓		
	✓		
	✓		
	✓		
	✓		

Section Total

11		
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Percent Compliance **100****6. Skid Trails/ Temporary (Secondary) Roads**

- A. Sensitive Areas Respected
- B. Majority Of Skid Trail Grades (Steepness) Below Fifteen (15) Percent
- C. Excessive Tract Rutting Area Does Not Exceed 25%
- D. Water Bars, Turnouts, And Other Water Control Structures Present
- E. Roads And Skid Trails Are Stabilized

N/A	YES	NO	SIG. RISK
	✓		
	✓		
	✓		
	✓		
	✓		

Section Total

5		
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Percent Compliance **100**

## 7. Site Preparation

- A. Sensitive Areas Respected
- B. Contour Followed
- C. SMZ Integrity Preserved (No Chemical, Fertilizer, Hot Burning, Log Decks, Within SMZ)
- D. Soil Disturbance Kept To A Minimum
- E. Excessive Soil Compaction Avoided
- F. Does It Appear That Chemicals Were Used To Label Specifications
- G. Disturbance On Slope Minimized
- H. Water Diverted From Site Prep Area To Vegetated Surface
- I. Extremely Hot Burns Avoided

N/A	YES	NO	SIG. RISK
	✓		
	✓		
	✓		
	✓		
	✓		
✓			
	✓		
	✓		
✓			

Section Total

7

Percent Compliance

100

## 8. Landings

- A. Location Outside Of SMZ
- B. Well-Drained Location
- C. Number And Size Minimized
- D. Sensitive Areas Respected
- E. Restored/Stabilized

N/A	YES	NO	SIG. RISK
	✓		
	✓		
	✓		
	✓		
	✓		

Section Total

5

Percent Compliance

100

## 9. Wetlands (Wetlands BMPs Are Mandatory Practices)

- A. Hydrology Of Site Unaltered
- B. Roads, Drainage Structures Applied Properly
- C. Mandatory BMPs Followed If Indicated

N/A	YES	NO	SIG. RISK
	✓		
	✓		
	✓		

Section Total

3

Percent Compliance

100

**10. Fireline Construction**

- A. Fireline Erosion Controlled
- B. Majority Of Fireline Constructed Around Slopes Or Grade Of Less Than Ten (10) Percent
- C. Water Bars, Turnouts, And Other Water Control Structures Properly Installed
- D. Diversion Ditches Not Constructed At The Head Of A Drain
- E. Firelines Not Constructed Down The Slope Of Natural Gully
- F. SMZs Left Between The Fireline And Streams
- G. Avoid Constructing Firelines Into An SMZ

N/A	YES	NO	SIG. RISK
✓			
✓			
✓			
✓			
✓			
✓			
✓			

Section Total

0

Percent Compliance N/A

Total Percent Compliance: 100

Inspected By:

Jay Meadows

Date: 7-9-15

Comments:

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**From:** Mayer, Martin S MVN  
**To:** Brittingham, Charles (Vitter)  
**Cc:** Heffner, Robert A MVN  
**Subject:** FW: Lewis Property - aerials demonstrating source of difficulty in completing JDs (UNCLASSIFIED)  
**Date:** Saturday, August 01, 2015 8:30:12 AM  
**Attachments:** 2012\_and\_2014\_aerials.pdf

Classification: UNCLASSIFIED

Caveats: NONE

Good morning Charles,

These map illustrate some of growing challenge with GL inconsistencies. First, the coordinate for the LA Ag and Forestry BMP assessment is not even where the requested JDs are located. Granted, you can't tell the scope of a single point, but at least it should be located on a requested JD site. Also, the two squares north of the East-West road are where the wetlands were drained by deep perimeter ditches. Although the ditches may not be located in wetlands, the BMP is clear that the activity cannot reduce "the reach of waters" to comply with the silviculture exemption. I think the LDAF technician needs to explain how he came to his determination unless he did not look at the site. Also note the construction of 2 large east-west and 1 north-south roads in the 2 year interval. This looks more like a runway grid for aircraft than logging roads. They are way oversized for logging roads, so the questions begs what is their ultimate intended use? ↙ ↘

There are many other issues (such as Mr. Milan stating they want to use the land "for some homes" - while arguing for Mr. Lewis' compliance with the silviculture exemption) being raised in an attempt to obfuscate the facts, and his unique and relentless lack of willingness and sincerity to work with us to finalize the matters at hand has created the very paralysis he complains about. It is also inaccurate to state we have received the field data requested. We have identified areas in the field that need to be mapped as wetlands, which his consultants uncharacteristically refuse to do. So we are stuck.

And for the record, neither I nor any of my staff have a personal vendetta with him; I have never met the gentleman. Unsubstantiated allegations such as these are intellectually offensive and demonstrate the use of immature schoolyard rhetoric to avoid working cooperatively with us, as the vast majority of the applicants do. We are dedicated to making fair, sound and defensible delineations, and to hold Mr. Lewis a lesser standard is unacceptable to us and the general public.

I am going to brief Col Hansen on this matter within the next two weeks and suggest potential Courses of Action to resolve this matter, including meeting with Mr. Lewis and his reps. I will keep you posted, but from my view, Mr. Milan's letter evidences the very mendaciousness we been experiencing over the history of our interactions with Mr. Lewis. Regardless, I assure you of our commitment to getting these matters resolved.

Thanks and have a great weekend,

Martin

-----Original Message-----

From: Heffner, Robert A MVN  
Sent: Friday, July 31, 2015 4:33 PM  
To: Mayer, Martin S MVN  
Subject: Lewis Property - aerials demonstrating source of difficulty in completing JDs (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

Martin,

