**IN THE UNITED STATES DISTRICT COURT**

**FOR THE EASTERN DISTRICT OF LOUISIANA**

**NAME OF PLAINTIFF and**

**NAME OF PLAINTIFF**

**Plaintiffs, CIVIL ACTION NO.:**

**v.**

**U.S. ARMY CORPS OF ENGINEERS**

COL. EDWARD R. FLEMING, in his

official capacity as District Engineer of the

United States Army Corps of Engineers,

New Orleans Division

**Defendant,**

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

This action involves the U.S. Army Corps of Engineers’ continuing operation of the freshwater diversion at Caernarvon, LA that redirects Mississippi River water into the wetlands of the Breton Sound. New evidence is emerging that the Corps’ redirection of this freshwater is in fact harmful to the wetlands in ways not envisioned or considered in their Environmental Impact Statement completed in September of 1984. As such, the Corps is in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), for arbitrarily and capriciously choosing not to undertake preparation of a Supplemental Environmental Impact Statement. More specifically, the Corps has failed to follow the procedure set out in 40 CFR § 1502.9(c)(1)(ii), a regulation issued by the Council on Environmental Quality, which demands that agencies like the Corps prepare a Supplemental Environmental Impact Statement when significant new circumstances or information arise. For these reasons, a preliminary injunction of the diversion’s operation should be granted in response to this proper challenge under the National Environmental Protection Act through the Administrative Procedure Act.

**PARTIES AND STANDING**

1. NAME OF PLAINTIFF is a Baton Rouge based organization established to protect and promote the health of the coastal environment for the use and enjoyment of the people of Louisiana. In executing its purpose, NAME OF PLAINTIFF seeks to ensure that all state and federal laws are obeyed in letter and spirit and that the agencies acting as trustees of these resources perform their duties effectively and diligently. NAME OF PLAINTIFF has a particular interest in preserving wetlands that are deteriorating and disappearing because of human activities. The actions of the Corps concerning this freshwater diversion have damaged NAME OF PLAINTIFF and its members’ interests.

2. NAME OF PLAINTIFF is a grassroots association of fishermen, oystermen, researchers, and students that have an interest in preserving their local environment’s quality, commercial viability, and recreational use. The actions of the Corps concerning this freshwater diversion have damaged NAME OF PLAINTIFF and its members’ interests.

3. Defendant U.S. Army Corps of Engineers is an agency of the United States Government and Col. Edward R. Fleming, in his official capacity as the District Engineer for the New Orleans Division, is responsible for seeing that the Corps follows appropriate statutes and regulatory procedures that are triggered by the emergence of significant new evidence.

**JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction).

5. Venue is appropriate in this judicial district and in this Court pursuant to 28 U.S.C. § 1391, in that the violations of the law giving rise to this claim occurred in the Eastern District of Louisiana.

**BACKGROUND**

6. The Corps of Engineers has been operating the freshwater diversion at Caernarvon, LA since 1991. The structure is designed to shunt water from the Mississippi River into the wetlands of the Breton Sound. Ostensibly, the project was intended to stabilize salinity in the area for commercial oyster and fish production and to deposit sediment that would grow the diminishing land area.

7. New evidence concerning the effects of freshwater laden with nutrients and fertilizers from upstream agricultural runoff on wetlands has surfaced. This evidence strongly suggests that nutrient-rich freshwater causes wetland flora to develop increased aboveground biomass and reduced belowground root biomass. Although the nutrients are helping the plants grow, they are inhibiting formation of deep belowground root structures because the plants no longer have to search for those nutrients in the soil. Without these stabilizing root structures, the soil in the area is easily washed away by erosion, storm surges, and saltwater intrusion.

8. The Corps published their Environmental Impact Statement in 1984 as required by the National Environmental Protection Act, 42 U.S.C. § 4332. NEPA itself does not give plaintiffs a mechanism to sue for violations of the act, but such actions are permissible when brought through the Administrative Procedure Act. In this case, the Corps is engaging in activity that is arbitrary and capricious as contemplated by 5 U.S.C. § 706(2)(A) of the APA. There is compelling authority from the Supreme Court of the United States and the United States Court of Appeal for the Fifth Circuit that indicate that the Corps should be forced to study this new threat by preparing an SEIS and that their refusal to do so is not entitled to administrative deference. The relevant authority and supporting scientific evidence will be presented in the memoranda and exhibits that follow.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court grant the following relief:

(1) A declaration that the Corps’ failure to investigate this new unconsidered threat is in violation of NEPA, the Administrative Procedure Act, and CEQ regulations;

(2) Award preliminary injunctive relief until the Corps has studied these threats and procedurally complies with the relevant law;

(3) Retain jurisdiction of this matter to ensure compliance with its decree;

(4) An award of the Plaintiffs’ attorneys’ fees, expert fees, court costs, and other costs; and

(5) Such other and further relief as this Court may deem proper on the premises.

Dated this \_\_\_\_th day of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_.

Respectfully submitted,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_