



PERMITTING COUNCIL

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Executive Director Determination re Extending FAST-41 Final Completion Date by More Than 30 Days

October 19, 2021

Mid-Breton Sediment Diversion Project; Permitting Timetable Extension

I. Summary

On September 29, 2021, the U.S. Army Corps of Engineers New Orleans District (Corps), the lead agency for the preparation of an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA) to support regulatory permitting decisions for the Louisiana Coastal Protection and Restoration Authority's (project sponsor/permit applicant) Mid-Breton Sediment Diversion project—a “covered project” under Title 41 of the Fixing America's Surface Transportation Act (FAST-41), 42 U.S.C. §§ 4370m *et seq.*—submitted a request to the Federal Permitting Improvement Steering Council (Permitting Council) Executive Director to extend all extant completion dates on the project's permitting timetable by more than 30 days to accommodate continued hydraulic and hydrological modeling necessary to assess the impacts of the project on waterways and the environment. For the reasons stated below, the extension request is **GRANTED**, and the permitting timetable is revised as proposed by the Corps.

II. Legal Standard

Pursuant to 42 U.S.C. § 4370m-2(c)(2)(D)(i)(III), a lead agency may extend a final completion date under a FAST-41 permitting timetable to a date more than 30 days after the final completion date originally established in the permitting timetable only after requesting and obtaining Executive Director approval. After receiving an extension request from the lead agency, the Executive Director must consult with the project sponsor and make a determination on the record that approves or denies the request based on consideration of relevant factors, including:

- (i) the size and complexity of the covered project;
- (ii) the resources available to each participating agency;
- (iii) the regional or national economic significance of the project;
- (iv) the sensitivity of the natural or historic resources that may be affected by the project;
- (v) the financing plan for the project; and
- (vi) the extent to which similar projects in geographic proximity to the project were recently subject to environmental review or similar procedures under State law.



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Id. Executive Director determinations made pursuant to 42 U.S.C. § 4370m-2(c)(2)(D)(i)(III) are not subject to judicial review. 42 U.S.C. § 4370m-2(c)(2)(D)(iv)(I).

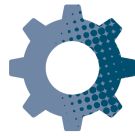
III. Determination

The Mid-Breton Sediment Diversion project is a large and complex ecosystem restoration project. A joint permit application submitted by the project sponsor/permit applicant to the Corps for authorization under section 404 of the Clean Water Act (CWA) (33 U.S.C. § 1344), section 10 of the Rivers and Harbors Act (RHA) of 1899 (33 U.S.C. § 403), and section 14 of the RHA of 1899 (33 U.S.C. § 408) is currently under review by the Corps. The Corps is also the lead agency for the development of an EIS under NEPA.

The project sponsor/permit applicant's proposed project is intended to reduce land loss and restore and sustain wetlands in threatened coastal areas of southern Louisiana. The project would redirect and redeposit up to 75,000 cubic feet per second of sediment, freshwater, and nutrients from the Mississippi River into threatened areas within the Breton Sound Basin. The ecosystem in which the sediment, freshwater, and nutrients will be deposited is hydraulically and hydrologically complex, and will have potentially various and diverse reactions to project operation. "Delft" 3D software is being utilized to model and assess the potential physical and ecological impacts of redirecting such volumes of freshwater and sediment into the Breton Sound Basin environment. More time is needed than originally estimated for the project sponsor/permit applicant to complete the modeling and provide necessary water quality and water level technical reports to the Corps and cooperating agencies to inform the area of analysis, impact analyses, and cumulative impact analysis for the project's draft environmental impact statement (DEIS) and other related compliance/analysis documents.

The Corps has consulted with the project sponsor/permit applicant and cooperating agencies and estimates that it will take about 9 additional months to complete the DEIS, which in turn will require approximately 9.5-month extensions to the final EIS and record of decision completion dates. The Corps also has explained that the same information that is being developed for the DEIS is also necessary to: (i) issue permit decisions under section 10 of the RHA of 1899 and section 404 of the CWA; (ii) issue a permission decision under section 14 of the RHA of 1899; and (iii) comply with Fish and Wildlife Coordination Act, Endangered Species Act, and Essential Fish Habitat obligations. The Corps has requested extensions of the completion dates for these actions as well.

The size and complexity of the project warrant Executive Director approval of the Corps' request to extend the completion dates identified above to conclude the Delft 3D modeling, which the Corps represents is crucial to the assessment of the benefits and impacts of this project. The Office of the Executive Director has consulted the project sponsor/permit applicant on the Corps' extension request, and the project sponsor/permit applicant does not object to the extension request.



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The Corps' extension request therefore is **GRANTED**, and the permitting timetable for the for the Mid-Breton Sediment Diversion project has been revised accordingly.

Christine Harada
Executive Director
Federal Permitting Improvement
Steering Council