La. hops line for sediment diversion permit

Process to clear federal hurdles expected to take 2.5 years

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The Lens

When the news broke that Louisiana would have to wait at least 2½ years to get federal permits for a critical sediment diversion, many people in the coastal restoration community were shocked. But not for the reason you might think:

Many people in government thought it would take twice that long, even after the federal government said it would fast-track the application.

That's because Louisiana must prove the proposed Mid-Barataria diversion, which will pour water and sediment from the Mississippi River into adjacent wetlands about 35 miles south of New Orleans, will not violate environmental and cultural protections enshrined in 82 federal laws and executive orders.

The list covers everything from fish and wildlife to Native American burial grounds and sacred sites.

"People always wonder why the permitting process takes so long, until they see the list of laws we have to clear," said Brad Barth, operations assistant administrator for the state's Coastal Protection and Restoration Authority.

The fast track doesn't cut out any steps in the permitting process. Barth likened it to "a pass at Disney World. It moves us to the front of the line ahead of hundreds of others. That's where we want to be.

The federal permitting process is widely disparaged, seen by many as a frustrating and needlessly delay their plans. But these requirements were not dreamed up by faceless bureaucrats. They were created by federal lawmakers to respond to requests by the voters. "All the laws being consulted make up the bedrock protections that have provided this country with the cleanest and healthiest environment in the industrialized world—even as the economy has continued to grow," said Steve Cochran, director of the Restore the Mississippi River Coalition, a major supporter of the diversion.

"They actually help prevent us from making mistakes we'll have to correct at much greater expense at later dates," he said.

The heart of the permitting process is an environmental-impact statement required by the National Environmental Policy Act for any action "significantly affecting the quality of the human environment."

This document must be compiled by an independent contractor in this case, Gulf Engineers and Consultants of Baton Rouge, for the applicant.

That firm will work closely with the U.S. Army Corps of Engineers, the permitting agency. It has regulatory authority over wetlands and the Mississippi River, both of which will be affected.

The time required to approve a permit typically grows with the size of the project. As more landscape and habitats are affected, more laws must be considered and more agencies consulted.

And the Mid-Barataria project is huge, potentially influencing thousands of square miles of wetlands and numerous communities between New Orleans and the Gulf of Mexico. It will pour fresh, cold river water and sediment into a brackish, warm-water estuary that is home to a long list of fish, birds, and mammals, as well as human residents.

The federal and state agencies charged with enforcing all these laws and executive orders must be satisfied the diversion will not harm the environment, animals or residents.

For example, the U.S. Fish and Wildlife Service will examine how the diversion will affect ducks, geese and doves covered under the Migratory Bird Treaty Act; plovers, manatees, turtles and sturgeons under the Endangered Species Act; bald eagles under the Bald and Golden Eagle Protection Act; and wetlands under the North American Wetlands Conservation Act.

Other laws protect humans from the impacts of new projects. The Environmental Protection Agency will be involved under the Clean Water Act and the Toxic Substances Control Act, among others.

Meanwhile, the Corps must assess impacts to levees, flood walls and navigation under the Rivers and Harbors Act. Will diverting water into the wetlands weaken levees protecting communities? Will drawing water from the river prevent ships from using it?

All these questions must be addressed in the environmental-impact statement.

How the diversion will affect the ecosystem and nearby communities will depend largely on how much water is allowed to flow through its gates, for how long and at what time of year. The state will provide options on how it could operate the diversion so that federal agencies can assess how people, animals and the environment would be affected.

Once the environmental impact statement is complete, it will be open to public comment for at least 45 days. The Corps then must answer each question raised by the public before making a final decision on the diversion.

Because the permitting process must weigh any possible environmental harm against the overall benefit of the project, no one expects the Corps to reject the permit. Instead, the state will work to satisfy any concerns raised by federal regulators.

They could be numerous. This would be the first controlled sediment diversion ever built in the U.S., if not the world, so there is no history of impacts for the agencies to refer to.

That's one reason this will take so long—time the state can ill afford. Every year, Louisiana loses about 16 square miles of its coastal landscape to open water. Scientists expect that to accelerate along with human-caused rise in the sea level.

Even so, environmental advocates caution against eliminating any steps in the review process.

"We should do everything we can to speed the process," Cochran said, "but we shouldn't do away with any steps, as some would suggest. Every step in this process is important. It keeps our environment and the people who live here safe."