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Paradise Lost

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The afternoon sun reflects off the tea-colored Intracoastal Waterway. Hundreds of snowy egrets, great blue herons and pink roseate spoonbills stir in moss-draped trees. Two bald eagles land on the highest branches of the tallest trees.

The birds take flight as Harold Schoeffler restarts the motor of his boat. With a soft fluttering of their wings, the birds coast just above the water to the marshy seclusion of distant trees.

Further down the Intracoastal, a clump of banana trees marks the mouth of Bayou Postillion. Low-lying growth on spoil banks leads to taller and older trees. Schoeffler, chair of the Sierra Club's Acadian Group, says the tree line indicates the bayou was as wide as 200 feet before the latest spoil narrowed the waterway.

All along the bayou, trees display bright yellow "No Trespassing" signs that were posted not by landowners but by the state. The waterway leads deeper into the Bayou Postillion oil field, to Bayou Latania and a network of canals meandering toward Old River and back to the southern end of Bayou Postillion.

There, over the hum of production units that line the bayou and pump natural gas, Schoeffler says, "It's like Saudi Arabia. The good news is the state's getting all of the severance taxes."

State officials consider Bayou Postillion, in eastern Iberia Parish, to be the model project for water quality in the basin. Three years ago, the Department of Natural Resources'

Atchafalaya Basin Program [ABP] cleared a sedimented three-mile stretch of the bayou to improve water quality and provide navigability to fishermen and crawfishermen.

But the most vocal critics of the project, Schoeffler included, maintain Bayou Postillion was really dredged to the exact width [60 feet] and depth [12 feet] to facilitate barge traffic, benefiting the landowners along the bayou—the Kyle-Peterman family—and Newman Trowbridge Jr., a Lafayette attorney who also is a Kyle-Peterman family member.

While some state officials call the project a necessary tradeoff in which the positives outweigh the negatives, voters will decide on Nov. 4 the fate of similar basin projects. If the state's model project for water quality is in question, it's significant because 85% of as much as \$10 million a year in the amendment is earmarked for water management, water quality or access projects.

Atchafalaya Basinkeeper, an affiliate of the national Waterkeeper Alliance, which promotes water quality, has filed a \$36 million lawsuit that names ABP's former director, Sandra Thompson-Decoteau, and current director, David Fruge, both of whom signed the U.S. Army Corps of Engineers permit that cleared the way for the project.

The suit also alleges the project is out of compliance with the permit; Atchafalaya Basinkeeper alleges DNR did not meet certain water-quality aspects of the permit. Dan Collins, who was hired by the state to do the project's land work, also maintains the project is about oil and gas and not water quality. He has pressed state officials to investigate.

But the question remains. Is the Bayou Postillion project really about water quality and public access, or oil and gas in the nation's largest swamp?

Spanning three governors

The Bayou Postillion dredging project spans the administrations of three governors. It was initiated under Mike Foster, signed by Kathleen Blanco and appears to be under investigation by Bobby Jindal.

Foster says he doesn't recall the project or that it might have been controversial. "It's not one of the things I made a decision of consciously," he says. "It was not one of those things that I was ever lobbied one way or another for." He suggests calling Jack Caldwell, then-DNR secretary; Caldwell could not be reached for comment by e-mail or telephone.

Blanco did not respond to an interview request made through her assistant. Jindal's chief of staff, Timmy Teepell, speaking through Press Secretary Melissa Sellers, says he routed Collins' findings on Postillion to State Inspector General Stephen Street Jr. The Legislative Auditor's Office confirms it is reviewing the information.

State Rep. Karen St. Germain, a Plaquemine Democrat who is the main sponsor of the constitutional amendment, says the measure aims to improve access and water quality to restore the Atchafalaya Basin. She stands by the Bayou Postillion project.

“This has never been about oil and gas to me, although we will use this money to bring it back to its original form, and that is the nature of the beast,” she says. “This is where we bring it to the table and everybody has a chance to talk.”

In a May 18, 2004 project brief, Thompson-Decoteau describes Bayou Postillion’s importance to DNR Secretary Scott Angelle. It is “probably the most important project we will do in the Atchafalaya Basin representing years of public support, designs by experts, scrutiny by the State Land Office, negotiations with landowners and signatures from Attorney General Charles Foti, Commissioner of Administration Jerry Luke LeBlanc and Gov. Blanco.” Angelle declined to comment because of the ongoing litigation.

Thompson-Decoteau also calls Bayou Postillion a compromise in which the landowner family, Kyle-Peterman, gives up claims to accretion lands. She says it “gives the state a permanent boundary agreement representing permanent state ownership at that line. The state is also allowed to dredge this disappearing bayou to an average width of 60 feet and a depth of 12 feet. The state is also authorized to maintain the channel by inspecting every five years to do maintenance work.”

She adds the project has support from every fishing, crawfishing and hunting group in the basin, including petitions signed by fishermen on the east side of the bayou. To the public, however, DNR presents the project as an opportunity to improve water quality, navigability and access for fishermen and crawfishermen. It is typically referred to as a “water management project” or “water rehabilitation project.”

In a May 27, 2005 news release, Angelle is credited with cutting the ribbon on the project and says it “restores the natural depth and width of the bayou and will allow better access for recreational and commercial fishermen.” He adds sedimentation hindered the waterway, which lies between Bayou Pigeon and Old River.

Just days before the ribbon cutting, however, Blanco and Trowbridge signed Postillion’s dredging and spoil servitude agreement with the Kyle-Peterman Management Corp., which includes a different use for the completed project. “State acknowledges that the navigation channel to be constructed, improved and/or maintained through the Channel will be utilized as an access route by oil and gas operators conducting exploration and development activities on the adjacent lands of private owners.”

The state also agrees “to assist private owners in preventing unauthorized access to private owners’ lands adjacent to the channel by blocking, with earthen barriers, the man-made canals exiting the Bayou to the south . . . and by installing wooden pilings, on nine-foot centers, at the junctures of Bayou with the canal exiting north from the Bayou. . . . With respect to each of the foregoing canals, State shall also erect and maintain metal or

wooden signs, with a minimum size of at least three feet by four feet on each side of such canal, which signs shall be lettered ‘Private Property.’”

As a former public works director in Lafayette, ABP Assistant Director Robert Benoit says he routinely dealt with projects in which landowners stipulated conditions—or they didn’t get the project. Benoit says Bayou Postillion “was a good project for the public. It unequivocally enhanced navigation. Many years ago, the bayou was very wide and the state owned more there than now. As it silts in getting narrower, the state loses ownership [through accretion] and it belongs to riparian landowners [whose land adjoins the water]. The boundary agreement settled who owned the land there.”

Benoit says the arrangement with the Kyle-Peterman family ensured continued public access to a bayou that might otherwise have been lost to accretion. He also contends most bayous dredged by the state in the Atchafalaya Basin would provide enhanced navigability for oil and gas. And while there are state leases in the area, he maintains there has been no oil and gas production on Bayou Postillion in the area covered by the boundary agreement.

Collins disagrees.

“By a series of chance coincidences, we have discovered the first water quality project that was supposed to be for water quality is actually a canal dredged for oil and gas,” he says. “The good news at the end of the bayou dredging is they made an oil and gas discovery there. The bad news is they made a discovery that resulted in six more wells being drilled with a combined total at one point of producing approximately 100 million cubic feet of gas a day and it recently closed at \$9.70 per cubic foot, and that would equate to \$970,000 a day.”

According to Chris Chaffin, an explorationist with Penn Virginia Oil & Gas, “Bayou Postillion is a prolific oil and gas field. The field was discovered in 1956 and has produced in excess of 340 billion cubic feet equivalent [BCFE] to date. New activity on the southern flank of the field has given rise to a large discovery in south Louisiana.”

The Radnor, Pa.-based company—which has oil and gas offices in Houston, Kingsport, Tenn., and Tulsa, Okla.—estimates the field’s reserves at the equivalent of 70 billion cubic feet. Chaffin says the field has been so productive, work is under way on drilling another rig, which a consultant at the site says will be in production later this month.

Tortuga Interests has interest in the Bayou Postillion field, Collins says. Documents indicate Trowbridge is a registered agent in the company. He did not return multiple telephone messages seeking comment.

Initial support

Dean Wilson, director and Atchafalaya Basinkeeper with the national Waterkeeper Alliance, says he initially supported the Bayou Postillion project in principle. That changed when he also came to believe the project was about oil and gas.

“If you look at the documents, the way they presented the project, what they actually did is completely different,” Wilson says. “Sandra [Thompson-Decoteau] always maintained that there was no communications with the oil business.”

Wilson says he was told by DNR the work would involve minor dredging at the bayou’s mouth, and the spoil would be barged out or placed in a single pile at the mouth. He says neither happened. After several visits to the site, Wilson concluded the project was out of compliance with the Corps permit and filed suit through the Tulane Environmental Law Clinic.

His attorney, Jill Witkowski, says Thompson-Decoteau and Fruge were named in the suit because the program could not be sued directly. Witkowski says they want DNR to fix—or add—gaps cut into the spoil banks. “We could see the banks were not built with these 200-foot gaps,” which the permit says should be on both sides of the bayou.

“These are inlets intended to ensure periodic flooding to keep wetlands healthy. The gaps are the issue, and whether they exist or not.” The suit also cites mitigation, which Witkowski says has not occurred according to public records. “That’s basically why we’re bringing this lawsuit. We feel they should comply with these permits to protect the wildlife and habitat in the area.”

Attorney Ryan Seidemann, who is the section chief of the Lands and Natural Resources Section with the state Department of Justice, represents Thompson-Decoteau and Fruge.

“I don’t think we’re ready to say it’s not in compliance,” Seidemann says. “But if it’s determined we’re not, it’s not the aim of the state to evade the terms of the permit, and we’re hoping to just be able to reach an out-of-court agreement on how to come into compliance and save everyone a lot of money and time.”

Thompson-Decoteau’s new husband, New Orleans attorney Russ Herman, who also is representing her despite the state attorney general taking the lead in the case, maintains Bayou Postillion is a successful project that is in compliance with the Corps permit. He points to LSU studies indicating improved water quality.

Herman has received a motion to preserve records on behalf of Thompson-Decoteau and Fruge, but he had to drop Fruge when the attorney general advised that Herman was not representing the state’s interests. Seidemann calls the motion “a frustrating and useless action.” Fruge declined to comment because of the ongoing litigation.

“The lawsuit is a sham,” Herman says, “and I intend to prove it is politically motivated [by environmentalists upset with the project] and ill intentioned. I can tell you I will be as aggressive in defending this case as I have been in my 42-year career.”

DNR and Corps of Engineers officials maintain LSU studies documented Bayou Postillion's water-quality issues—hypoxia [low oxygen], or dead water—warranted dredging to improve water flow. LSU professors William Kelso and Allen Rutherford confirm they conducted the pre- and post-Postillion studies; they also say the studies were done on contract and they had no input on the project.

Ronnie Duke, the Corps of Engineers' Western Division chief, says water quality was the primary purpose submitted for the project and navigation was secondary. He acknowledges that a good portion of the project does comply with the permit, but there are portions that do not.

“We've given them the opportunity to comply with the permit and, if not, we will consider suspending or revoking the permit,” he says. “We want to work with these people to bring this project into compliance. There is no documented proof that the project had a different purpose than what we were informed of. Nothing has changed that.”

As to allegations that Bayou Postillion is really an oil and gas project—based on the spoil disposal servitude agreement that says it is—Corps Project Manager Timmy Lacoste says they don't become involved with state law or property rights. DNR did not provide the dredging and spoil disposal agreement, and Lacoste says the Corps doesn't review them as part of the permit process.

Corps officials also say the permit application lists commercial navigation—which includes oil and gas access—along with water quality and access for fishermen as the waterway's uses.

Collins says it's significant the state withheld documents from the Corps and the public during the permitting process. “It is also my opinion that certain parties chose to intentionally not divulge the true and intended purpose of the dredging project, which was apparently not engineered and/or designed first for water quality and/or recreational and/or commercial fishing navigation, but first for other purposes directly connected to the accessing, conveying and/or owning state lands for private mineral ownership and/or production purposes in addition to controlling access of the public on state waterways.”

Diminishing access

When state officials cut the ribbon on the Bayou Postillion project, Schoeffler says they told the media how fishermen were loading up on fish and crawfish even with it being dredged 10 feet deep. Benoit says the public gained significant access in the Atchafalaya Basin, as well as improved water quality, as a result of the project.

In reality, however, their access had been diminished to 25 feet within the banks of a 150- to 200-foot-wide bayou at its mouth, leaving no right to access better fishing areas along the banks. It also means larger vessels, such as barges, have to seek Kyle-Peterman approval to use the waterway and could be charged for access.

“We raised hell about it the whole time,” Schoeffler says. “In actual right of way, the taxpayers got 25-foot access at the mouth of Postillion. This is fine as long as the vessel isn’t larger than 25 feet wide and doesn’t meet another vessel on the waterway, or else they’re trespassing.”

He maintains the Kyle-Peterman family signed a boundary agreement “that nailed mineral ownership,” reducing state ownership and providing an access channel to five or six natural gas well sites—a sentiment echoed by Collins. “The biggest issue was it was water quality, but it had nothing to do with water quality,” Schoeffler says. “It was pretty obvious with Postillion they were going into the oil and gas field.”

Mike Bienvenue, who is president of the Louisiana Crawfish Producers Association-West, says he doesn’t know any fishermen or crawfishermen who fish in Bayou Postillion.

“Our battle is to access public waters,” he says. “Postillion is a fight over the state water bottom. If you go there, a member of that family will tell you you’re trespassing. It’s all becoming private, and it’s all about the oil and gas. They’re claiming they own these water bottoms. It’s the Louisiana Landowners Association ... they’re the ones that run the state.” Trowbridge also is the attorney for the Louisiana Landowners Association.

Bienvenue, who has fished the Basin since 1973, says the wild crawfishing industry is nearly extinct. LCPA-West contends spoil banks made by the oil and gas industry are acting as levees, blocking high-water flow and degrading water quality, which they say is killing their business. The group filed a lawsuit in 2004 against 40 to 50 oil and gas companies seeking damages. Bienvenue says depositions are being taken in the case.

Schoeffler says the public, including LCPA-West, is denied waterway boundaries in the courts, while private landowners can receive a boundary agreement from the state. Collins also argues landowners are using these agreements to sway more control of water bottoms.

“Riparian landowner law in Louisiana is said to be unique in all of the U.S. in how sedimentation can actually expand their lands,” Schoeffler says. “But accretion represents natural sedimentation, and a sizable Corps flood easement and lock system raises the question that this sedimentation is manmade, which would nullify the state’s contention that the public actually saved or gained land through the project.”

Further complicating an already frustrating situation, Schoeffler says the public is left to sort out access boundaries in waterways based on high and low watermarks that change with the type of waterway. Postillion has been identified as a bayou, lake and channel, so it’s not clear whether the high- or low-water mark applies when navigating the bayou. Schoeffler says these confusing boundaries make it almost impossible not to trespass.

’Level of corruption’

In light of Jindal’s gubernatorial campaign promise of comprehensive ethics reform and transparency, Collins and others have approached state officials on several levels to investigate the Bayou Postillion project.

Collins, Schoeffler and Wilson question a project like Postillion going relatively unscrutinized when they say evidence clearly points to it benefiting private landowners and not taxpayers who footed the bill, which is currently more than \$1 million and counting.



Photo by Terri Fensel

OPPOSITION: Harold Schoeffler, chair of the Sierra Club’s Acadian Group, likens Bayou Postillion to Saudi Arabia.

“Everybody is trying to get a piece of the Basin,” Wilson said before his lawsuit was filed. “The little guys want direct access to the camp sites, the big oil companies want the oil, the landowners there want to block access and cut the trees down. Everybody has their agenda, and it’s very hard to try to preserve the Basin.

“What makes Postillion unique is the level of corruption. How in the world can DNR do something like that? It’s very depressing that the landowners have this much power.”

Benoit and other state officials say the project has been scrutinized for three years without any findings—in addition to being cleared by state officials during the planning stage.

Street confirms he received Collins’ materials from Teepell, but decided not to investigate because of a lack of manpower and engineering expertise. “It’s difficult to commit to such a large project,” he says. While he would not say if the case had any merit, he did say he wasn’t moving forward with it.

Collins also says FBI Agent Greg Harbour from the Lafayette office contacted him about Postillion. Harbour deferred comment to Sheila Thorn, a special agent in New Orleans who says the FBI can't confirm or deny any investigation unless it results in an action. She found no action related to Bayou Postillion in the public record.

The state Legislative Auditor's Office apparently is investigating the project, according to Daryl Purpera, who is the first assistant legislative auditor. Purpera says investigators have met with Angelle, but declined to comment until the department audit is complete early next year.

Going forward

St. Germain, who helped Thompson-Decoteau generate public support for the Bayou Postillion project, says she's not concerned about its impact on the upcoming amendment vote because she knows the public supported the project and fishermen are benefiting from it. St. Germain says those points are important to her.

"I definitely believe it was great for water quality," she says. "It was great for the economic development of that area. Those crawfishermen and fishermen in the area have not stopped talking about Postillion."

To promote public confidence on the constitutional amendment, legislation also was passed that provides an oversight committee to promote more continuity in projects and funding, she says. The Atchafalaya Basin Program has tougher project standards, which St. Germain and Benoit say will promote more transparency with the program.

St. Germain says the amendment defines water management as any project that facilitates improvements to water quality, interior circulation, water access or improvements to general ecosystem function by means of sediment reduction, removal or diversion.

"We cannot do anything with this money unless it passes all the tests," St. Germain says. "I'm concentrating on the future of the Atchafalaya Basin. The ABP needed more accountability, and that's what we're doing."

If approved, the measure would change the constitution and affect 23 parishes, including Iberia, by rerouting a portion of mineral severance taxes back to the parishes where they were generated. The Basin would receive as much as \$10 million a year effective in 2009.

"I have to live with this legacy, and I want it to be a great legacy," St. Germain says.

As Schoeffler docks his boat at Belle River Landing, he worries that the real legacy of the Bayou Postillion project will be what he calls the "old Huey Long days" in Louisiana.

Another fisherman, Gerald Rome, who has fished the Basin for nearly 40 years, walks past on the dock. Asked if he fished Bayou Postillion, Rome shakes his head from left to right. “No,” he says. “Bad water.”

BAYOU POSTILLION TIMELINE

2000

Aug. 8-Sept. 12: Ernie Gammon of Hydro Consultants is contracted for survey work, and Dan Collins & Associates is contracted for land work and identify lands of Kyle-Peterman Management Corp. and the state.

Nov. 21: By letter, Atchafalaya Basin Program Executive Director Sandra Thompson-Decoteau advises Newman Trowbridge Jr., CEO and agent of Kyle-Peterman Management Corp., about proposed dredging work in Bayou Postillion.

2001

March 15: In a letter from Gammon to Thompson-Decoteau, he explains riparian ownership rights and accretion along navigable waterways might not apply to Kyle-Peterman family because of spoil placement in the bayou from the previous dredging.

April 17: E-mails to and from Thompson-Decoteau, Trowbridge and Department of Natural Resources Secretary Jack Caldwell on meeting to discuss creating a “model” water-quality project and plans from previous dredging activities by an oil and gas company.

April 24: Thompson-Decoteau letter offering fee ownership including minerals of remainder of beds and banks of Bayou Postillion in perpetuity if Kyle-Peterman family allows dredging work.

May 1: Collins submits mineral history report showing no current mineral activity in the area.

2002

March 28: ABP agenda for meeting with Charles Landry of Jones Walker called by Thompson-Decoteau to offer letter of fee ownership, including minerals in perpetuity regarding boundary agreement to Trowbridge.

April 1: Attorney Gary Keyser e-mail regarding narrow channel ownership to state and concerns about public perception on access to Bayou Postillion.

2003

June 3: Attorney Rob Scheffy advises Gammon and Thompson-Decoteau on “business risks” of not having all landowners’ signatures on the boundary and dredging and spoil disposal agreements, and the servitude would be invalid without them. He advises this must go through the State Land and Attorney General’s offices. He also cautions Trowbridge is not furnishing a title opinion or title insurance. At this time, Trowbridge also is providing contract legal services to the Attorney General’s office and DNR.

June 26: In a memo to Scheffy, Trowbridge states he’s removing all names of co-owners who did not or would not sign the boundary agreement and the dredging and spoil disposal agreement.

July 8: The Corps of Engineers permit, signed by Thompson-Decoteau, arrives and specifies the project’s is an “enhancement of navigation and increased water circulation.”

Sept. 30: Trowbridge signs the boundary agreement and dredging and spoil disposal agreement.

Nov. 20-21: In a memo to Gov. Mike Foster, Mark C. Drennen, commissioner of the Division of Administration, says the agreements are ready to be signed. By memo, Caldwell also provides agreements to Foster for his signature.

Nov. 24: Lafayette-based Allen & Kirmse start lease activity over state water bottoms at the western end of the proposed dredge project. One of the three leases nominated, State lease 18070, is acquired by Delta Lands Exploration and later assigned to Tortuga Interests. Trowbridge is a registered agent with Tortuga.

Dec. 31: Foster leaves office without signing the agreements.

2004

Jan. 8: By fax, Charlie St. Romain of the State Land Office consults Thompson-Decoteau on his response to Harold Schoeffler’s allegation that Postillion is really an oil and gas project to benefit the Kyle-Peterman landowner group and threatens to sue to stop the project.

May 12: Gov. Kathleen Blanco signs the boundary agreement and the dredging and spoil disposal agreement.

Sept. 8: Century Exploration leases more land in the Bayou Postillion field near where the state is about to start dredging.

Dec. 15: Project begins.

Dec. 31: Century Exploration starts drilling in the field.

2005

May 23: Bayou Postillion dredging project is complete.

June 7-Aug. 8: Sandalwood Exploration starts drilling a well in the field. Century Exploration leases more land and Penn Virginia Oil and Gas begins leasing land.

2006

March 25-Aug. 14: Brigham Oil drills a well in the field, and Century Exploration drills another well. Janus Gulf Exploration leases more land in the field, which is later assigned to Tortuga Interests.

2007

April 5: Blanco announces five more Basin water quality projects, including Bayou Pigeon.

April 10: Louisiana Crawfish Producers Association-West letter to Blanco maintaining Bayou Postillion is about oil and gas access and not water quality.