

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

**LAFAYETTE CITY-PARISH
CONSOLIDATED GOVERNMENT** *

*

VERSUS

*

CIVIL ACTION NO: 22-1127

*

**ST. MARTIN PARISH GOVERNMENT *
AND UNITED STATES ARMY *
CORPS OF ENGINEERS ***

* * * * *

NOTICE OF REMOVAL

Pursuant to 28 U.S.C §§ 1441 and 1446 and 28 U.S.C §§ 1331, Defendant, the UNITED STATES OF AMERICA (the “United States”), on behalf of the United States Army Corps of Engineers (“Army Corps of Engineers”), an agency within the United States Department of Defense, removes this action to the United States District Court for the Western District of Louisiana, Lafayette Division. In support of this Notice of Removal, the United States represents as follows:

FACTUAL AND PROCEDURAL BACKGROUND

1. Lafayette City-Parish Consolidated Government (“Petitioner”) commenced this civil action in the 15th Judicial District Court, Parish of Lafayette, for the State of Louisiana on March 23, 2022. The Petition for Declaratory Judgment (“Petition”) named the United States Army Corps of Engineers as a defendant. The state court action is Case No. C-20221498. *See Exhibit A, Petition.*

2. The Petition sought a state-court declaratory judgment that Petitioner “complied with all lawful regulations, ordinances, rules, procedures and laws” pertaining to construction of a spoil bank project; and that “a permit from the United States Army Corps of Engineers was not required.” *Id.*

3. The Army Corps of Engineers was served with the Petition on April 1, 2022. The undersigned counsel was made aware of the state court action on March 28, 2022. However, the U.S. Attorney's Office has not been served.

GROUND FOR REMOVAL

4. This action is properly removable under 28 U.S.C. § 1441(a), which provides in pertinent part:

[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

5. Pursuant to 28 U.S.C. § 1331, “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

6. This Court has exclusive original jurisdiction of this action which seeks to adjudicate a question concerning federal wetlands policy, and specifically the Army Corps of Engineers' regulatory permitting program in which the United States has been granted authority under 33 C.F.R. §§ 3258 to issue or deny such permits.

7. The United States files this Notice of Removal in this court because the 15th Judicial District Court, Parish of Lafayette, is a state court within this judicial district and division. 28 U.S.C. § 98(c); W.D. LR. 77.3.

ALL OTHER REQUIREMENTS FOR REMOVAL ARE SATISFIED

8. In addition to demonstrating the jurisdictional grounds for removal, the United States has satisfied all other requirements for removal.

9. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings and orders served upon the United States are attached hereto.

10. In accordance with 28 U.S.C. § 1446(d), the United States will promptly provide written notice of the filing of this Notice of Removal to Petitioner and shall file a copy of this Notice along with a Notice of Filing of Removal with the Clerk of the 15th Judicial District Court, Parish of Lafayette, where this action is currently pending.

11. This removal is timely under 28 U.S.C. § 1446(b)(1) because it was filed within thirty (30) days of receipt of the initial pleading by the United States.

12. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of rights to assert any defense or affirmative matter, whether pursuant to Federal Rule of Civil Procedure 8(c) or Federal Rule of Civil Procedure 12(b).

13. The United States reserves the right to amend or supplement this Notice of Removal.

WHEREFORE THE UNITED STATES OF AMERICA removes the civil action, *Lafayette City-Parish Consolidated Government v. St. Martin Parish Government and United States Army Corps of Engineers*, 15th Judicial District Court, Lafayette Parish, Louisiana, Docket No. C-20221498, to the United States District Court for the Western District of Louisiana, Lafayette Division, upon the filing of this Notice of Removal.

Respectfully submitted,

BRANDON B. BROWN
United States Attorney

BY *s/ Jerry Edwards*
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Lafayette Parish
Filed Mar 23, 2022 4:10 PM
Martina Reaux
Deputy Clerk of Court

C-20221498
B

**15TH JUDICIAL DISTRICT COURT FOR THE PARISH OF LAFAYETTE
STATE OF LOUISIANA**

NO. _____ **DIVISION:** _____

LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT

v.

**ST. MARTIN PARISH GOVERNMENT and UNITED STATES ARMY CORPS OF
ENGINEERS**

FILED: _____

DEPUTY CLERK

PETITION FOR DECLARATORY JUDGMENT

NOW INTO COURT, through undersigned counsel, comes LAFAYETTE CITY-PARISH
CONSOLIDATED GOVERNMENT ("Lafayette Parish"), who avers as follows:

1.

Made Defendants herein are:

- a. St. Martin Parish Government, a political subdivision of the State of Louisiana, who can be served through its duly elected official, Chester Cedars, in his official capacity as Parish President of St. Martin Parish Government at 301 W. Port Street St. Martinville, LA 70582 and through Parish Attorney Allan L. Durand at 235 La Rue France, Lafayette, LA 70508.
- b. United States Army Corps of Engineers who may be served at 7400 Leake Avenue, New Orleans, Louisiana 70118.

2.

The Vermilion Bayou is a roughly 70-mile-long bayou that runs, in part, between Lafayette and St. Martin Parish.

3.

In the 1950s, the United States Army Corps of Engineers ("Corps") conducted dredging along the Vermilion Bayou.

4.

Some of the disregarded sediment/dredging material or "spoils" was left on the St. Martin Parish side of the Vermilion Bayou over 100 feet from the bank. The spoil was incorrectly, and unintentionally, left in that location. Over the ensuing years, this caused the formation of a spoil bank that partially impeded the natural flow of water from the Vermilion Bayou into and out of the Cypress Island Swamp.

5.

The unintentional formation of this spoil bank impeded the flow of the Vermilion Bayou into the Cypress Island Swamp. Previously, flood water could easily flow from the Vermilion Bayou into the Cypress Island Swamp, and from the Cypress Island Swamp into the Vermilion Bayou, thereby assisting with flood prevention in both Lafayette and St. Martin Parish.

6.

In the 1990s, a significant flood event in this region prompted a reevaluation of this area by the Corps. In 1995, the Corps issued a "Flood Control Reconnaissance Study." The study found reduction of the height of limited sections of the spoil bank would assist significantly with flood prevention efforts and provide relief to thousands of vulnerable residents during heavy rain and flood events.

7.

For decades, however, government officials largely allowed this proposed project to sit dormant.

8.

Recent flood events, specifically the historic 2016 flood, and a new administration brought renewed attention to flood prevention measures in Lafayette Parish and the whole Acadiana region.

9.

After the historic 2016 flood, the Corps and the University of Louisiana at Lafayette (ULL) conducted a study on effective flood prevention measures. The study concluded the most important measure to reduce flooding in this region was to increase floodwater storage and watershed retention capacity.

10.

In order to protect its residents, and assist flooding prevention efforts in the entire region, Lafayette Parish set out to implement projects consistent with the findings of the study, including the construction of numerous detention ponds.

11.

Lafayette Parish also turned its attention back to the recommendation from the "Flood Control Reconnaissance Study" conducted by the Corps in 1995, which fell perfectly in line with the more recent conclusions of the Corps/ULL study. If the height of a portion of the unintentionally created spoil bank in St. Martin Parish was reduced, free exchange of the

stormwater into and out of the Cypress Island Swamp could be restored and the Cypress Island Swamp could be returned to a natural retention area for floodwaters. This would significantly reduce flooding in Lafayette with no harm to St. Martin Parish. In fact, there would be a direct benefit to St. Martin Parish with a reduction of stormwater volume and with the timing of stormwater recession.

12.

In early 2020, Lafayette Parish began coordinating with St. Martin Parish about implementing this flood prevention measure to benefit both Parishes.

13.

Lafayette Parish had to be the proactive party. It commissioned a model for the spoil bank project and purchased an interest in the land upon which the spoil bank sat.

14.

Lafayette Parish advised St. Martin Parish of the positive developments shown by the model for the proposed work.

15.

St. Martin Parish was not satisfied. The St. Martin Parish President demanded to see "much more data."

16.

Although the project had been proposed in 1995 by the Corps and its value was subsequently confirmed by ULL, the St. Martin Parish President believed more time and studies were needed to determine whether it should be implemented. Apparently, a quarter of a century was not enough time.

17.

Residents of Lafayette Parish, however, could not afford to wait another quarter of a century hoping that the St. Martin Parish President would one day be satisfied.

18.

Lafayette Parish complied with all requirements and obtained all the information needed to apply to the Corps for a permit for the spoil bank project. Accordingly, Lafayette Parish applied for a permit.

19.

St. Martin Parish then filed an objection to the permit, apparently, without ever seeing the models upon which the permit application was based and without providing a copy of its objection or even notifying Lafayette Parish. The St. Martin Parish President proudly shared that he actually vetted the objection himself, despite having no formal background in the area.

20.

Lafayette Parish tried to work with the St. Martin Parish President to appease his concerns. The Parishes had multiple meetings, and Lafayette Parish shared its data. The data showed no harm to St. Martin Parish and benefits to the entire region. But the St. Martin Parish President could not be appeased. He demanded more time and more studies.

21.

Lafayette Parish, however, was not obligated to wait for the St. Martin Parish President's approval. Accordingly, it pressed forward with the spoil bank project. It conducted further analysis and revised the project so that it would achieve similar benefits but would no longer fall within the jurisdiction of the Corps.

22.

The revised proposal did not require a permit from the Corps. It did not disturb any nearby wetlands and did not fall within the jurisdiction of the Corps.

23.

Approximately a year ago, without any warning or notice to Lafayette Parish, and apparently desperate to find a way to prevent this beneficial flood prevention project from proceeding, St. Martin Parish enacted Ordinance Sec.14-71 (No. 21-07-1327-OR). The Ordinance specifically targeted Lafayette Parish. It attempted to prevent Lafayette Parish from removing dirt from its own property without first obtaining the approval of St. Martin Parish. This ordinance was clearly unconstitutional and not enforceable.

24.

In February of 2022, Lafayette Parish finally executed on this spoil bank project, which had been in the works for over twenty-five years, and completed it in less than twenty-four hours.

25.

While this should have been a moment of celebration, as Lafayette Parish had finally completed a project that could provide flood relief to thousands of vulnerable residents and benefit

the entire region, it was instead sullied with a roughly thirty-minute screed from the St. Martin Parish President.

26.

The St. Martin Parish President threatened to sue every person, firm, or entity involved in the spoil bank project, including but not limited to LCG officials. The St. Martin President also demanded investigations from Congress and every agency he could think to name.

27.

Lastly, the St. Martin Parish President insisted that Lafayette Parish violated the Corps regulations by not obtaining a permit, ignoring that a permit was not necessary for the revised proposal that was implemented.

28.

Lafayette Parish has seen the pace at which St. Martin Parish and the St. Martin Parish President operate. It does not want to wait a quarter of a century for it to be made clear that Lafayette Parish has no liability as it complied with all lawful regulations, ordinances, rules, procedures and laws with the spoil bank project.

29.

Accordingly, Lafayette Parish now seeks a declaratory judgment that it complied with all lawful regulations, ordinances, rules, procedures and laws with the spoil bank project, and specifically, requests a judgment that no permit was required by the Corps for the project as the revised proposal that was implemented did not fall within the Corps jurisdiction.

30.

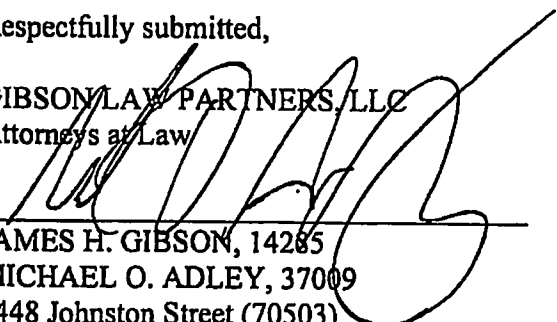
Lafayette Parish firmly contends this spoil bank project did not fall within the jurisdiction of the Corps and thus Lafayette Parish was not required to obtain a permit. St. Martin Parish, however, is threatening liability claiming such a permit was necessary. Accordingly, Lafayette Parish also seeks a declaration that its spoil bank project did not fall within the jurisdiction of the Corps and did not require a permit, and as such is required to name the Corps as a party to this action.

WHEREFORE, premises considered, Plaintiff, LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT, respectfully prays that a Declaratory Judgment be rendered declaring that LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT complied with all lawful regulations, ordinances, rules, procedures and laws with the aforementioned spoil bank

project and that a permit from the United States Army Corps of Engineers was not required. AND
FOR ALL OTHER GENERAL AND EQUITABLE RELIEF.

Respectfully submitted,

GIBSON LAW PARTNERS, LLC
Attorneys at Law



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And

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Telephone: (337) 406-9685

Counsel for LAFAYETTE-CITY PARISH
CONSOLIDATED GOVERNMENT

PLEASE SERVE

St. Martin Parish Government
Through the Parish President of St. Martin Parish Government
301 W. Port Street St. Martinville, LA 70582

and

United States Army Corps of Engineers
7400 Leake Avenue
New Orleans, Louisiana 70118

JS 44 (Rev. 09/19)

CIVIL COVER SHEET

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.)

I. (a) PLAINTIFFS

Lafayette City-Parish Consolidated Government

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Michael O. Adley, 2448 Johnston Street, Lafayette, LA 70505

DEFENDANTS

St. Martin Parish Government and United States Army Corps of Engineers

County of Residence of First Listed Defendant St. Martin
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
Michael O'Shee, 2001 MacArthur Drive, Alexandria, Louisiana 71307;
Jerry Edwards, 300 Fannin Street, Suite 3201, Shreveport, LA 71101

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<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	PERSONAL INJURY <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	PERSONAL INJURY <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 PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <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 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <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)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<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 (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <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 <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<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 checked="" type="checkbox"/> 290 All Other Real Property	<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	Habeas Corpus: <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 Other: <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			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1441

Brief description of cause:
This action which seeks to adjudicate a question concerning federal wetlands policy.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 04/27/2022 SIGNATURE OF ATTORNEY OF RECORD: s/ Jerry Edwards

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____