COMMENTS

Ensuring Consistency: Louisiana Coastal Restoration Through the Lens of the RAM Terminal and the Mid-Barataria Sediment Diversion

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I. INTRODUCTION

As the ground sinks and the shore erodes, the coast of Louisiana loses a football field's worth of land every hour.[1] The state's ambitious

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1. Mark Schleifstein, *Louisiana Is Losing a Football Field of Wetlands an Hour, New U.S. Geological Survey Study Says*, NOLA.COM (June 2, 2011, 1:00 PM), http://www.nola.com/environment/index.ssf/2011/06/louisiana_is_losing_a_football.html.

plan to restore the coastline, the Louisiana Coastal Master Plan, requires, in part, the use of sizable structures called sediment diversions to move sediment from the Mississippi River and other rivers into the wetlands, rebuilding the land.[2] Along a short stretch of river between New Orleans and the Gulf of Mexico also rest several coal terminals, storage facilities for coal and petroleum coke to be shipped along the river. While these constructions facilitate commerce in a valuable resource, they also pollute the waters of the Mississippi with coal dust and heavy metals.[3] These pollutants can adversely affect the growth of marsh plants necessary to the state's coastal restoration via marsh building projects.[4]

Now the state has permitted yet another of these terminals in a region already overcrowded with fossil fuel facilities and point-source pollution—not to mention one of the much-hailed sediment diversions.[5] If the state allows the RAM Terminals project to be built next door to the Mid-Barataria Sediment Diversion (MBSD), it not only risks the new marsh that the diversion would build, but also endangers the entire project of coastal restoration.

A coalition of community groups, environmentalists, and residents whose homes are endangered by the receding coastline of Louisiana challenged the RAM terminal at each step of the state permitting process.[6] Though the project has survived these challenges so far, the facts should embolden its opponents—allowing the building of the RAM terminal near Ironton and the MBSD violates the requirement of consistency present in state and federal coastal protection laws.

This Comment argues that the construction of the RAM terminal and other new facilities of a similar type conflicts legally with the 2012 Louisiana Coastal Master Plan and the consistency provision of the federal Coastal Wetlands Planning, Protection, and Restoration Act (CWPPRA). This Comment also seeks to establish that the permitting of

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2. *See Louisiana's Comprehensive Master Plan for a Sustainable Coast*, COASTAL PROT. & RESTORATION AUTH. OF LA. 104 (2012), http://www.lacpra.org/assets/docs/2012%20Master%20Plan/Final%20Plan/2012%20Coastal%20Master%20Plan.pdf [hereinafter *2012 Coastal Master Plan*].

3. *See* Nancy Nusser, *Suit Filed Against Louisiana Department of Natural Resources*, CLEAN GULF COMMERCE COAL. (Oct. 31, 2013), http://cleangulfcommercecoalition.org/suit-filed-against-louisiana-department-of-natural-resources/; Vicki Wolf, *Gulf Coast Communities Fighting Coal Export Terminals*, CLEAN HOUS. (Sept. 2013), http://www.cleanhouston.org/energy/features/exporting_coal.htm.

4. *See* Petition for Review at 5-6, Sierra Club Delta Chapter v. Sec'y, La. Dep't of Natural Res., No. 60-961 (La. 25th Jud. Dist. Ct. 10/31/13).

5. *See* Mark Schleifstein, *Environmental Groups, Residents Challenge Plaquemines Coal Terminal Permit in State Court*, NOLA.COM (Oct. 31, 2013, 6:40 PM), http://www.nola.com/environment/index.ssf/2013/10/environmental_groups_local_res.html.

6. *See* Petition for Review, *supra* note 4, at 2-3.

the RAM terminal and future projects like it cannot be reconciled with the state's goal of coastal restoration and that the consistency provision of the CWPPRA can provide a tool for citizens who would defend that goal.

First, this Comment establishes the importance of restoring Louisiana's coastal ecosystems and the policies adopted by the state and federal governments to do so. Second, it focuses on the history and controversy of the RAM terminal and the nearby MBSD. Finally, this Comment analyzes the legal handles available for challenges to the RAM terminal and future proposals like it that conflict with the goals of the Louisiana Coastal Master Plan.

II. LOUISIANA COASTAL WETLAND LOSS AND THE FIGHT FOR RESTORATION

A. Coastal Emergency: The Need for Restoration

Louisiana's coastline loses a football field's worth of land every hour.[7] From 1932-2010, the state lost nearly 1900 square miles of land to subsidence and erosion, with much of the damage occurring to Louisiana's coastal wetland ecosystems.[8] By 2050, the state Coastal Protection and Restoration Authority (CPRA) projects that an additional 1750 square miles of land could wash into the ocean or sink beneath its waters,[9] taking with it the natural and cultural heritage of Louisiana—not to mention the first line of defense against Gulf storms for the state's coastal communities.

The story of coastal land loss in Louisiana begins with man's taming of the Mississippi River and ends with rising sea levels caused by climate change. To provide for the profitable use of the Mississippi for navigation, among other things, state, local, and private entities built along it a series of levees that kept it flowing down its current course.[10] This taming of the river pacified its tempestuous habit of overtopping its banks and flooding the delta. While this practice of structural control provided for the security of those whose lives and livelihoods depended on the use of the river, it robbed the coastal wetlands of the cycle of

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7. Schleifstein, *supra* note 1.

8. *Id.*

9. *2012 Coastal Master Plan*, *supra* note 2, at 18.

10. *See* PERCY VIOSCA, JR., FLOOD CONTROL IN THE MISSISSIPPI VALLEY IN ITS RELATION TO LOUISIANA FISHERIES 3-5 (1928); *see also* Percy Viosca, Jr., *Louisiana Wet Lands and the Value of Their Wild Life and Fishery Resources*, 9 ECOLOGY 216, 221-23 (1928); U.S. Army Corps of Eng'rs, *The Cost of Doing Nothing . . .*, WATERMARKS, Summer 1999, at 3, 5, *available at* http://www.lacoast.gov/new/Data/WaterMarks/watermarks_1999-summer.pdf.

renewal facilitated by periodic floods.[11] Like other river deltas and coastal ecosystems, the Louisiana coast continually subsides at a slow rate. But when the river floods the delta, the waters carry new sediment to replace what now resides below the water table.

This tale of disappearing coastline continues with the intrusion of industry into the wetland ecosystems. To facilitate navigation and the exploration of Louisiana's plentiful oil and natural gas reserves, state and local governments and private entities dug and dredged channels connecting the marsh environments and waterways to the Gulf.[12] These new pathways allowed saltwater from the Gulf to intrude into freshwater and brackish marsh, upsetting the balance of these delicate ecosystems and causing the degradation of marsh vegetation.[13] Without roots to hold the sediment, erosion increased. Other evidence suggests that the removal of oil and natural gas from beneath the marshes accelerated the subsidence of the land.[14]

The rising sea levels attributed to global climate change will exacerbate the problems along Louisiana's coast. Rising seas means increased saltwater intrusion and more wetland loss.[15] Tropical storms and hurricanes also destroy coastal wetlands—albeit in sudden, brutal swathes rather than the slow burn of subsidence and erosion. Most recently, Hurricanes Katrina, Rita, Gustav, and Ike destroyed nearly 250 square miles of wetlands between them.[16]

The current projections of land loss paint a bleak picture of a shrinking coastline. But, a reader from outside Louisiana might ask, why should we care about the loss of these marshes? In addition to the more than two million Louisianans that live in and around the areas threatened by coastal land loss (not to mention the unquantifiable cultural heritage endangered along with them),[17] the state's coast plays a vital role in both the regional and national economies.

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11. VIOSCA, *supra* note 10, at 4.

12. *See* U.S. Army Corps of Eng'rs, *supra* note 10, at 5.

13. *Id.* at 7.

14. *Subsidence and Wetland Loss Related to Fluid Energy Production, Gulf Coast Basin*, U.S. GEOLOGICAL SURVEY, http://coastal.er.usgs.gov/gc-subsidence/induced-subsidence.html (last updated May 6, 2013).

15. U.S. Army Corps of Eng'rs, *supra* note 10, at 5.

16. Schleifstein, *supra* note 1.

17. La. Coastal Wetlands Conservation & Restoration Task Force, *The 1997 Evaluation Report to the U.S. Congress on the Effectiveness of Louisiana Coastal Wetland Restoration Projects: Louisiana Coastal Wetlands Function and Values*, LACOAST.GOV (1997), http://lacoast.gov/reports/rtc/1997/4.htm. The United Houma Nation, one of several Native American tribes in the region, settled in south Louisiana in the early 1800s. *See* Kari Lydersen, *Gulf Waters Imperil Tribes' Way of Life in Louisiana Bayous*, WASH. POST (July 20, 2009), http://www.washingtonpost.com/wp-dyn/content/article/2009/07/19/AR2009071901819.html. Individuals of these

Without a doubt, the hydrocarbon production and shipping industries stand as lynchpins of our national economy. The coast of Louisiana contributes to both of those industries in a way few other regions can boast. Louisiana is the nation's largest producer of crude oil and the second largest petrochemical and natural gas producer and contains the second largest amount of petrochemical refining capacity.[18] Waterborne commerce along the corridor from Baton Rouge to New Orleans alone amounts to $35 billion annually,[19] while foreign trade conducted along the Mississippi River generates around $157 billion annually.[20] Coastal wetlands provide unparalleled, nonstructural flood protection to both of those industries. The system of barrier islands, marshes, and swamps that constitutes Louisiana's coastline can shield port facilities, drilling operations, and refineries from Gulf storm systems.

Coastal wetlands also act as a natural sink for floodwaters, with the ability to store more than one million gallons of floodwater per acre of wetlands. Sadly, projections indicate that Louisiana's coastal marshes can now only hold twelve days of floodwaters, reduced from sixty, as a result of land loss.[21] The CPRA estimates annual costs of flooding along the state's coast to increase tenfold, from $2.4 billion to $24 billion, if coastal land loss continues at its current rate.[22]

While the national economy depends on Louisiana's wetlands for flood protection, the local economy depends on them in a much more direct way. Coastal ecosystems provide livelihoods for many Louisianans. Louisiana boasts 13% of the commercial fish landings in the country, and the commercial fishing industry contributes more than $2.85 billion to the Louisiana economy.[23] Coastal wetland ecosystems also provide slightly more intangible benefits to the residents of Louisiana's coast in the form of ecosystem services. Wetlands provide

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tribes often relied on the now-disappearing land of the floodplain for agriculture and on the wetlands for hunting and fishing. *See id.* Cajun populations also live in and around Louisiana's coastal wetlands and rely on the hunting, trapping, and fishing of species that live in those ecosystems. *See Wetland Importance*, GULF RESTORATION NETWORK, https://healthygulf.org/our-work/wetlands/wetland-importance (last visited Mar. 26, 2014).

18. Miss. River Delta Sci. & Eng'g Special Team, *Answering 10 Fundamental Questions About the Mississippi River Delta*, RESTORE THE MS. RIVER DELTA 32 (2012), http://www.mississippiriverdelta.org/files/2012/04/MississippiRiverDeltaReport.pdf (last visited Mar. 25, 2014).

19. *Id.* at 31.

20. *See id.*

21. *Wetland Importance*, *supra* note 17.

22. *2012 Coastal Master Plan*, *supra* note 2, at 16.

23. *See* Miss. River Delta Sci. & Eng'g Special Team, *supra* note 18, at 29, 32.

both water filtration for communities and habitat for a myriad of animal species.[24]

One cannot overstate the importance of Louisiana's coast and its wetland ecosystems, both to the residents of this disappearing landscape and to the regional economy at large. Both the state and federal governments now have extensive, often overlapping programs designed to at least slow coastal land loss in Louisiana, if not reverse its course altogether.

B. State Efforts at Restoration

1. The Coastal Protection and Restoration Authority

Both federal and state authorities recognized long ago the need for coastal restoration in Louisiana. However, their early efforts to combat the growing crisis were, to use the Louisiana legislature's own words, "inadequate, fragmented, uncoordinated, and lacking in focus and strong direction."[25] Louisiana's project of coastal restoration began in earnest with the passage of Act 6 in 1989. The Act created the Wetlands Conservation and Restoration Authority within the Office of the Governor to be headed by the special assistant to the governor for coordination of coastal activities (Executive Assistant).[26] In addition to coordinating nearly all state activities related to coastal restoration, this newly created office would create a wetlands conservation and restoration plan to "serve as the state's overall strategy for conserving and restoring coastal wetlands through the construction and management of coastal wetlands enhancement projects, including privately funded marsh management projects or plans, and addressing those activities requiring a coastal use permit which significantly affect such projects."[27] The legislation also created a dedicated source of funding to implement the plan, with a fund collecting the revenues from mineral royalties and severance taxes used to pay for restoration projects.[28]

After Hurricanes Katrina and Rita in 2005, Louisiana passed Act 8, which consolidated the state's responsibilities of hurricane protection and coastal restoration under one authority—the newly formed CPRA.[29] The legislature mandated that the CPRA, also headed by the Executive

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24. *See Economic Benefits of Wetlands*, EPA (May 2006), http://water.epa.gov/type/wetlands/outreach/upload/EconomicBenefits.pdf.

25. Act No. 6, 1989 La. Acts. 2544, 2548.

26. *See id.* at 2549.

27. *Id.* at 2553-54.

28. *Id.* at 2555-56.

29. *See* Act No. 8, 2005 La. Acts 2466.

Assistant to the Governor for Coastal Activities,[30] represent the state's position in all matters relating to coastal restoration and develop a comprehensive coastal protection master plan.[31]

Such a comprehensive plan must "address integrated coastal protection efforts from both short-term and long-range perspectives and shall incorporate structural, management, and institutional components of both efforts."[32] This comprehensive master plan must then be submitted to both chambers of the Louisiana legislature for approval and, if approved, implemented by the CPRA.[33]

The CPRA promulgated the first coastal master plan in 2007. Under the auspices of implementing the 2007 plan, CPRA built or improved 132 miles of levees, secured $17 billion in funding for coastal protection and restoration projects, and constructed 32 miles of barrier islands and sand berms for coastal protection.[34] This first plan primarily constituted general objectives for coastal restoration in Louisiana and conceptual project ideas for achieving those objectives. Act 8 also required CPRA to update the master plan every five years. Thus, in 2012, the state developed and approved a new plan detailing specific projects and plans for restoring the coast.

2. The 2012 Coastal Master Plan

Incorporating extensive scientific analysis and stakeholder engagement, Louisiana's 2012 Comprehensive Master Plan for a Sustainable Coast (Coastal Master Plan or Master Plan) greatly expands on both the broad objectives and the specific details of the previous coastal restoration plans.[35] The new list of specific projects in the plan includes "every type of large scale risk reduction and land building tool we have available, including sediment diversions, marsh creation, levees, and other flood protection measures."[36] It assumes a $50 billion budget to accomplish the goals set forth in terms of specific restoration projects and new hurricane protection systems.[37]

The CPRA predicts that implementation of the Master Plan will save between $5 to $18 billion in flood damages annually over the next

30. LA. REV. STAT. ANN. § 49:214.5.1 (2012).
31. *Id.* § 49:214.5.3(A)(1).
32. *Id.* § 49:214.5.3(C).
33. *Id.* § 49:214.5.3(E).
34. *See 2007 Coastal Master Plan*, COASTAL PROT. & RESTORATION AUTH., http://www.coastalmasterplan.louisiana.gov/leading-the-way/2007-master-plan/ (last visited Mar. 26, 2014).
35. *See 2012 Coastal Master Plan*, *supra* note 2, at 42.
36. *Id.* at 109.
37. *Id.* at 110.

fifty years.[38] Land loss projections show that, in the worst-case scenario, implementation of the Master Plan will slow land loss to ten square miles annually by year fifty (down from forty square miles under current outlooks).[39] The "moderate" scenario shows an annual net gain of land, under implementation of the Master Plan, starting in 2042.[40]

To accomplish these ambitious goals of land creation and flood protection, the CPRA plans to rely heavily on the construction of what are called sediment diversions. These structures will purportedly replace the spring floods of old and flush areas identified for land creation with sediment from the Mississippi and Atchafalaya Rivers.[41] The opening of the diversions and operation at full capacity will coincide with times of high river flow.[42] The Coastal Master Plan also claims that these diversions will reduce the need for the costly dredging of sediment currently needed to facilitate navigation along the Mississippi River.[43]

As per the requirements in Act 8, the CPRA is currently working on the fiscal year 2015 Annual Plan, *Integrated Ecosystem Restoration and Hurricane Protection in Coastal Louisiana*. This report charts the current progress of implementing the 2012 Master Plan.[44] Meanwhile, CPRA already began the process of developing and writing the 2017 Coastal Master Plan, as per the Act 8 requirement of an updated plan every five years. The 2017 Coastal Master Plan will focus on more refined scientific modeling of future scenarios, both coastwide and with regard to specific restoration projects.[45]

C. Federal Restoration Under the CWPPRA

The federal government began efforts to restore Louisiana's coastal wetlands back in 1990 with the passage of the CWPPRA.[46] The legislation created a task force, headed by the Secretary of the Army, composed of five federal agencies and the state of Louisiana, and mandated that the task force create a plan to identify potential coastal

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38. *Id.* at 140 fig.5.8.
39. *Id.* at 144.
40. *Id.*
41. *See id.* at 148.
42. *Id.*
43. *Id.* at 148-49.
44. *See Integrated Ecosystem Restoration and Hurricane Protection in Coastal Louisiana: Draft Fiscal Year 2015 Annual Plan*, COASTAL PROT. & RESTORATION AUTH. (2014), http://coastal.la.gov/wp-content/uploads/2014/01/AP_web.pdf [hereinafter *FY2015 Annual Plan*].
45. *See* Water Inst. of the Gulf, *2017 Coastal Master Plan: Model Improvement Plan*, COASTAL PROT. & RESTORATION AUTH. (Mar. 2014), http://coastal.la.gov/wp-content/uploads/2013/09/2017-Model-Improvement-Plan-Version-I-Final-09-19-13.pdf.
46. *See* 16 U.S.C. § 3952 (2012).

restoration projects.[47] The purpose of the plan was to "develop a comprehensive approach to restore and prevent the loss of . . . coastal wetlands in Louisiana. Such plan shall coordinate and integrate coastal wetlands restoration projects in a manner that will ensure the long-term conservation of the coastal wetlands of Louisiana."[48]

The restoration plan mandated by the CWPPRA identified areas of Louisiana in need of coastal restoration and potential projects that could accomplish that restoration.[49] It also provides for funding of the projects identified and cost-sharing between the state and federal governments.[50] Under the law, the task force could submit modifications to the restoration plan "as necessary to carry out the purposes of [the CWPPRA]."[51] From 1990-1999, the task force submitted new plans to Congress on an annual basis.[52]

The CWPPRA has authorized 151 individual restoration projects in Louisiana.[53] These projects include sediment diversions, shoreline protection, barrier island restoration, outfall management, dredged material/marsh creation, hydrologic restoration, sediment and nutrient trapping, marsh management, and vegetative planting.[54] Since the beginning of the first CWPPRA process, Congress has allocated anywhere from $30 to $80 million annually for implementation of the projects.[55] Given that the CPRA estimates the total cost of meaningful coastal restoration to be upwards of $50 billion, the CWPPRA process makes a small dent in the overall goal.[56]

The funding and scope limitations on CWPPRA projects require that any large-scale restoration project be accomplished through other channels. To that end, Congress also passed the Water Resources Development Act of 2007, defining the Louisiana Coastal Area initiative, under the direction of the Secretary of the Army, to take on the

47. *Id.* §§ 3951-3952.
48. *Id.* § 3952(b)(2).
49. *See id.* § 3952(a).
50. *Id.* § 3952(e)-(f).
51. *Id.* § 3952(b)(5).
52. *See CWPPRA Program Reports*, LACOAST.GOV, http://lacoast.gov/new/Pubs/Reports/program.aspx (last visited Mar. 25, 2014).
53. *About CWPPRA*, LACOAST.GOV, http://lacoast.gov/new/About/Default.aspx (last visited Mar. 25, 2014).
54. *See id.*
55. *Id.*
56. *2012 Master Plan*, *supra* note 2, at 93.

development and funding of large-scale coastal restoration projects in Louisiana.[57]

Following the Deepwater Horizon oil disaster in the Gulf of Mexico, Congress also passed the RESTORE the Gulf Coast States Act to help fund ecosystem restoration efforts all along the Gulf Coast.[58] The legislation created a Gulf Coast restoration trust fund and allocated 80% of the Clean Water Act fines resulting from the oil disaster to said trust fund.[59] This fund will allocate money proportionally to the states damaged by the disaster.[60] In Louisiana, the administration of this funding will be handled by CPRA.[61]

III. CONFLICTING COASTAL USE: THE RAM TERMINAL MEETS THE MID-BARATARIA DIVERSION

Can one of the largest planned restoration projects, vital to the success of the 2012 Coastal Master Plan, coexist next to a mountain of coal that is depositing pollutants into the waterways while waiting to be shipped downriver? The Louisiana Department of Natural Resources (LDNR) seems to be willing to find out the answer to this question and, by doing so, risk the success of the MBSD, by granting a coastal use permit to RAM Terminals.

Louisiana accounts for approximately 20% of U.S. coal exports, with the New Orleans customs district exporting the second largest amount of coal in the country.[62] What this means for Louisianans is that some of them get to live next to massive mounds of coal waiting to be shipped downriver and out to sea. The shores of the Mississippi as it runs through Plaquemines Parish house two of these coal terminals already: International Marine terminal and United Bulk terminal.[63] While these terminals facilitate beneficial commerce for the state and region, they also cause pollution issues with potentially serious public health and environmental consequences.

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57. *See* Water Resources Development Act of 2007, Pub. L. No. 110-114, §§ 7001-7016, 121 Stat. 1041, 1270-83.

58. *See* Lisa P. Jackson, *Major Step Forward for Gulf Coast Restoration*, WHITE HOUSE BLOG (June 29, 2012, 7:17 PM), http://www.whitehouse.gov/blog/2012/06/29/major-step-forward-gulf-coast-restoration.

59. *See id.*

60. *See* 33 U.S.C.A. § 1321(t)(1)(C)(i) (West Supp. 2013).

61. *Id.* § 1321(t)(1)(F)(ii).

62. Benjamin Alexander-Bloch, *Plaquemines Air Testing Finds Potential Health Concerns Near Coal Terminals*, NOLA.COM (Sept. 18, 2013, 7:07 PM), http://www.nola.com/environment/index.ssf/2014/01/plaquemines_residents_air_test.html.

63. *Id.*

Residents of communities near the two existing terminals in Plaquemines Parish became concerned about the environmental health effects of the largely uncovered piles of coal and petroleum coke at the terminals when they noticed high rates of asthma and respiratory problems among children and the elderly.[64] Workers from a coalition of environmental groups conducted air quality testing near the International Marine terminal, finding particulate matter in the air in excess of what the World Health Organization considers healthy for human exposure, but below the Environmental Protection Agency (EPA)-mandated national air quality standards.[65] Aside from the health consequences, residents of nearby communities like Myrtle Grove and Ironton related stories of needing to wash coal dust off their vehicles and children almost daily.[66]

Now RAM Terminals has proposed the construction of another coal and petroleum coke terminal in Plaquemines Parish, near the existing terminals and adjacent to the small communities of Ironton and Myrtle Grove.[67] Aside from concerns about air pollution, such a terminal creates a potential conflict with the planned MBSD—a centerpiece of the state's coastal restoration plan. RAM Terminals would locate the new terminal on land already set aside for the diversion, with the drainage channel that would carry water and sediment into new wetlands passing through the proposed RAM terminal site.[68]

Louisiana's ongoing coastal crisis hit the Barataria basin harder than almost any other such basin in the state. Between 1932 and 2010, the Barataria basin lost more than 421 square miles of land.[69] To reverse this trend, the CWPPRA task force initially identified a sediment diversion at Myrtle Grove as a possible solution.[70] The task force listed the project in

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64. *Id.*

65. *See id.* The World Health Organization states that particulate matter levels above 20 micrograms per cubic meter (μg/m3) can be harmful to human health, while the EPA mandates an annual standard of 50 μg/m3 and a daily maximum at 150 μg/m3. *Id.* The air near the International Marine terminal contained particulate matter in excess of 30 μg/m3. *Id.*

66. *Id.*; Zoe Sullivan, *Coal Facility, Mississippi River Diversion Project Planned for Same Site*, THE LENS (Sept. 26, 2012, 5:29 PM), http://thelensnola.org/2012/09/26/coal-terminal-vs-river-diversion.

67. Sullivan, *supra* note 66.

68. *See id.*

69. Brady R. Couvillion et al., *Land Area Change in Coastal Louisiana from 1932 to 2010*, U.S. GEOLOGICAL SURVEY 2 tbl.1 (2011), http://pubs.usgs.gov/sim/3164/downloads/SIM3164_Pamphlet.pdf.

70. *Delta Building Diversion at Myrtle Grove (BA-33)*, LA. COASTAL WETLANDS CONSERVATION & RESTORATION TASK FORCE (Oct. 2003), http://lacoast.gov/reports/gpfs/BA-33.pdf.

Project Priority List 10, submitted in 2001.[71] While the CWPPRA funded the $3 million design and engineering phase of the project, it soon became clear that such an effort would go beyond the scope of the legislation, both in terms of funding and mission.[72] Congress reauthorized the project, now the MBSD, in the Water Resources Development Act of 2007 but did not allocate any funding for it.[73] Both the initial and current versions of the Louisiana Coastal Master Plan include the MBSD as a crucial piece of the coastal restoration puzzle.

The control structure of the MBSD would flush the basin with "additional sediment and nutrients to nourish highly degraded existing fresh to brackish wetlands in shallow open water areas."[74] The version of the MBSD contained in the 2012 Coastal Master Plan has two phases—the first being a medium-sized diversion operating at 50,000 cubic feet per second (cfs), with the second an expansion of that to 250,000 cfs.[75] The cost estimate for the first phase of this project is $275 million.[76] As of the state's fiscal year 2015 Annual Plan, an allocation of $40.4 million exists for the engineering and design phase of the project through 2015—though it lacks specifics as to the funding for actually building the diversion.[77] Proponents of the diversion hope it can build more than 13,000 acres of new marsh, as well as prevent the loss of more than 6000 acres of marsh already there.[78]

In conjunction with several nongovernmental organizations, the state conducted a study that identified a location at River Mile Above Head of Passes 60.7 as the most suitable location for the opening of the MBSD.[79] Prior to that determination, RAM Terminals acquired the land where they now intend to build the new coal and petroleum coke terminal—directly upriver from the planned opening for the MBSD.[80] In addition to the coal and petroleum coke itself, the terminal will require the construction of facilities for the loading and unloading of coal, and

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71. *Id.*

72. *Id.*

73. *Project Description: Medium Diversion at Myrtle Grove*, LA. COASTAL AREA, http://www.lca.gov/Projects/2/Default.aspx (last visited Mar. 25, 2014).

74. *Id.*

75. *2012 Coastal Master Plan*, *supra* note 2, at 132.

76. *Id.*

77. *FY2015 Annual Plan*, *supra* note 44, at 40, 57.

78. *Project Description: Medium Diversion at Myrtle Grove*, *supra* note 73.

79. Memorandum of Agreement, State of La. and RAM Terminals, LLC, Regarding Operation of the Mid Barataria Sediment Diversion and RAM Terminal Project 1-2 (July 31, 2013), *available at* https://healthygulf.org/images/PDFs/MOA%20-%20LA%20and%20Ram%20Terminals%20LLC.pdf.

80. *See id.* at 2.

terminal operations could entail four or five massive barges anchored at the terminal at any given time.[81] The provisions of the Louisiana Coastal Zone Management Program required that RAM Terminals obtain a coastal use permit from the LDNR before construction and operation of the terminal could begin.[82] During the required comment period on the coastal use permit application, both the EPA and the National Oceanic and Atmospheric Administration offered up concerns about the terminal's potential interference with sediment flow into the diversion.[83] The CPRA voiced similar concerns, stating, "[T]here is a possibility that the projects cannot exist together."[84]

Responding to the concerns raised about the RAM terminal's proximity to the planned sediment diversion, the state commissioned a technical study to evaluate the impact of the terminal on the efficacy of the MBSD.[85] The study found that the presence of the RAM terminal could reduce the amount of sediment in the water passing through the diversion by 17% and reduce the amount of sediment deposited by the diversion by 500,000 tons over ten years.[86] It also suggested that the large vessels traveling to and from the terminal could present a safety hazard to the diversion structure and that "debris and dust generated during the loading process would be captured in the outfall channel and transported into the marsh areas potentially causing environmental issues."[87] The quantification of these hazards was outside the scope of the technical model.[88]

In an attempt to address some concerns about the conflict and still allow the LDNR to issue the permit, CPRA executed a Memorandum of Agreement (MOA) with RAM Terminals that placed certain conditions on their operations pursuant to protecting the MBSD. During "peak operating periods," RAM Terminals must cease operations at the terminal for the extent of the time designated.[89] The MOA defined peak operating periods to be designated by CPRA, during which they expect maximum sediment capture by the MBSD (in this case, only when the Mississippi River meets or exceeds a volume of 600,000 cfs).[90] Under the MOA,

81. Sullivan, *supra* note 66.
82. *See* LA. REV. STAT. ANN. § 49:214.30(A)(1) (2012).
83. *See* Petition for Review, *supra* note 4, at 6.
84. *Id.* at 6.
85. *See* Memorandum from Ehad Meselhe et al. on RAM Terminal CFD Modeling (Oct. 23, 2012), https://healthygulf.org/images/PDFs/Ram%20Terminal%20Technical%20Model.pdf.
86. *Id.* at 4.
87. *Id.* at 5.
88. *Id.*
89. Memorandum of Agreement, *supra* note 79, at 2-3.
90. *Id.*

these peak operating periods will last no longer than fifteen calendar days, and CPRA will not declare more than five of them per calendar year.[91] Noncompliance will result in a fine based upon a daily estimate of the amount of cubic feet of sediment prevented from entering the diversion.[92]

After CPRA executed the MOA, the state granted the coastal use permit to RAM Terminals. Following this, the Christian Ministers Missionary Baptist Association of Plaquemines, Inc., and several individuals and environmental groups filed a petition with the state to reconsider the permit issuance to RAM Terminals, based on the LDNR's failure to adequately analyze alternative sites and their noncompliance with state regulations regarding the issuance of coastal use permits.[93] A coalition of Ironton residents and environmental nonprofits in the region filed suit against the LDNR in Plaquemines Parish district court, alleging that the issuance of the coastal use permit was arbitrary and capricious and asking that the court vacate the permit.[94]

In order to begin construction on the terminal, RAM Terminals must also acquire a Clean Water Act section 404 permit from the United States Army Corps of Engineers (Army Corps or Corps).[95] Between this and the court challenge to the original LDNR coastal use permit, the RAM terminal has a long way to go before becoming a reality. State and federal coastal restoration laws require that the coastal use and section 404 permits issued under those statutes be "consistent" with coastal restoration efforts, and both seem, on their faces, to lack that consistency—a fact that opens several avenues for legal challenges to the construction of the terminal.

IV. ANALYSIS

The LDNR's issuance of a coastal use permit and the Army Corps' likely issuance of a section 404 permit to RAM Terminals for the construction of their new facility both fly in the face of federal law regarding the protection of coastal restoration efforts. Both state and

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91. *Id.* at 2.

92. *Id.* at 4.

93. Petition for Reconsideration of RAM Terminals, LLC's Coastal Use Permit from Christian Ministers Missionary Baptist Ass'n of Plaquemines, Inc., et al. to Stephen Chustz, Secretary, La. Dep't of Natural Res., at 1-2 (Sept. 14, 2013) [hereinafter Petition for Reconsideration of RAM Terminal].

94. *See* Petition for Review, *supra* note 4, at 1-3.

95. Kristan Uhlenbrock, *Louisiana Permits Coal Terminal Adjacent to $300M Wetlands Restoration Project*, THINKPROGRESS (Nov. 7, 2013, 4:12 PM), http://thinkprogress.org/climate/2013/11/07/2901481/louisiana-coal-terminal-restoration/; *see also* 33 U.S.C. § 1344(a) (2012).

federal laws require that other actions taken by applicable authorities be "consistent" with coastal restoration plans—a high burden to meet for a project that seems to imperil the success of one of Louisiana's largest restoration projects. The current court challenge to the coastal use permit claims that the LDNR "failed to ensure consistency with the state's master plan for integrated coastal protection."[96] This Comment addresses that state consistency issue and suggests the federal consistency provision of the CWPPRA as another tool for challenging the RAM terminal.

A. Consistency with the State's Master Plan

Under Louisiana law, the RAM terminal and any future project in a similar vein cannot stand as consistent with the state's Master Plan for coastal restoration. In order to assure successful implementation of the Coastal Master Plan, Louisiana law creates a statutory duty not just to consider the plan when permitting commercial activities along the coast, but also to ensure activities permitted in the coastal zone are consistent with the plan. The Louisiana Coastal Zone Management Program provides for the granting of coastal use permits by the LDNR for uses of "state and local concern" within the coastal zone.[97] It also requires that "[p]rior to issuance of a coastal use permit, the secretary shall ensure that the activity for which application is being made is consistent with the state's master plan for integrated coastal protection. No activity which is not consistent with the plan shall be granted a coastal use permit."[98]

Added to the Coastal Zone Management Program long after the creation of the coastal use permit,[99] this requirement of consistency modified the procedure to ensure that only coastal uses consistent with the Master Plan will be permitted. The Louisiana Administrative Code offers procedural guidance and requirements for the LDNR to make a consistency determination. These provisions require that the secretary reject the permit as inconsistent "unless the permit includes condition(s) which . . . ensure the mitigation of wetland ecological values which would be lost due to the use."[100] Though the MOA between RAM Terminals and CPRA offers a semblance of mitigation efforts, either would be hard-pressed to show that such a measure offsets the potential threat offered to wetland ecological values by the project.

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96. Petition for Review, *supra* note 4, at 9.

97. LA. REV. STAT. ANN. § 49:214.30(A)(1), (C)(1) (2012).

98. *Id.* § 49:214.30(A)(2).

99. The Louisiana legislature added the consistency provision to the already existing coastal-use-permit statute in 2010. *See* Act. No. 834, 2010 La. Acts 2819.

100. LA. ADMIN. CODE tit. 43, § 723(C)(8)(a) (2013).

Permitting the RAM terminal at its current proposed location threatens the viability of the MBSD—the centerpiece of the Master Plan. As the technical model showed, the terminal and its associated structures will decrease the amount of sediment available for the diversion by up to 17%.[101] This alone could compromise the integrity of the project, but more hydrological studies are needed to determine just how bad it could be (were the RAM terminal constructed). The terminal would result in up to 500,000 tons of sediment not flowing through the diversion and not becoming the new land that the coast desperately needs.[102]

In addition to the prevention of sediment entering the diversion, the technical model commissioned by the state suggested that the coal dust and associated contaminants could find their way into the diversion and threaten the healthy growth of marsh vegetation. In December 2013, two separate instances of coal dust and petroleum coke release into the river were reported at the United Bulk terminal already in Plaquemines Parish.[103] The position stated in the petition for reconsideration of the coastal use permit suggests that the contamination of water entering the MBSD with material from the terminal is inevitable.[104] Coal dust and petroleum coke contain heavy metals, polyaromatic hydrocarbons (PAHs), and sulfur compounds that can have adverse effects on the growth of marsh plants.[105] In addition to the adverse effects caused by this pollution's presence in the water and sediment, coal dust in the air can coat plant leaves and prevent photosynthesis, also inhibiting growth.[106] It takes a feat of legal gymnastics to construe such a potential threat as consistent under section 49:214.30.

But declare consistency the secretary has. The LDNR granted the coastal use permit to RAM Terminals, contingent on compliance with the MOA that requires the facility to mitigate potential effects on the amount

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101. *See* Memorandum from Meselhe et al., *supra* note 85, at 4.

102. *See id.*

103. *See NRC Reports for December 2013—MS River Corridor*, LA. ENVTL. ACTION NETWORK (Jan. 2, 2014), http://leanweb.org/our-work/water/mississippi-river/nrc-reports-for-december-2013-ms-river-corridor.

104. Petition for Reconsideration of RAM Terminals, LLC Coastal Use Permit, *supra* note 93, at 5-6.

105. *See* Sullivan, *supra* note 66; *see also* Marguerite S. Koch et al., *Mechanism for the Hydrogen Sulfide-Induced Growth Limitation in Wetland Macrophytes*, 35 LIMNOLOGY & OCEANOGRAPHY 399, 407 (1990) (concluding that the presence of sulfide inhibits metabolic function in several species of wetland plants); Alison W. Watts et al., *Soil and Atmospheric Inputs to PAH Concentrations in Salt Marsh Plants*, 189 WATER, AIR & SOIL POLLUTION 253, 258-59 (2008) (noting that two species of salt marsh plants grew more slowly in soil contaminated with PAHs).

106. *See* G. Naidoo & Y. Naidoo, *Coal Dust Pollution Effects on Wetland Tree Species in Richards Bay, South Africa*, 13 WETLANDS ECOLOGY & MGMT. 509 (2005).

of sediment flowing into the MBSD. The problem with this MOA is that it only addresses the possible interference the terminal might cause with sediment flow into the diversion—and even the terms agreed to by RAM Terminals are inadequate to address the scope of that problem. It makes no mention of the possible (probable) leakages of coal dust and waste into the river that, according to the technical model commissioned by the state, will flow into the diversion along with sediment.[107]

Prior to the MOA, the CPRA stated that "there is a possibility that the projects cannot exist together,"[108] while the state's own technical model showed a likelihood of both reduced sediment flow and contamination in the MBSD resulting from the construction of the RAM facility. Empirical evidence shows that the projects cannot, in fact, exist together without significant risk of failure to the MBSD. Yet, the state granted a coastal use permit anyway. No definition of "consistent" should apply to an existential threat to a coastal restoration project.

B. The Consistency Provision of the CWPPRA

The CWPPRA tasked the Corps with administration of the coastal restoration plan to be created by the law's task force—explicitly giving the Corps a new mandate of coastal restoration with regard to its duties in coastal Louisiana.[109] Much maligned by environmental activists for its role in causing Louisiana's land loss crisis, the Army Corps now finds itself saddled with a mandate to restore the state's coastline.

Part of the mandate issued by the CWPPRA to the Army Corps contains a "consistency" provision not unlike that of the Louisiana Coastal Zone Management Program. Section 3952(d)(1) of the CWPPRA provides, "In implementing, maintaining, modifying, or rehabilitating navigation, flood control or irrigation projects, other than emergency actions, under other authorities, the Secretary, in consultation with the Director and the Administrator, shall ensure that such actions are consistent with the purposes of the restoration plan submitted pursuant to this section."[110]

The purpose of this provision seems to be to subordinate the traditional functions of the Army Corps when they might conflict with the restoration plan. By providing that the secretary "shall ensure," it seems also to require that whatever permits the Army Corps might issue

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107. *See* Memorandum of Agreement, *supra* note 79; *see also* Memorandum from Meselhe et al., *supra* note 85, at 4.

108. Petition for Review, *supra* note 4, at 6.

109. *See* 16 U.S.C. § 3956 (2012).

110. *Id.* § 3952(d)(1).

under "other authorities" (presumably including the Clean Water Act) must also be consistent with the purposes of the coastal restoration plan developed by the task force—similar to the consistency requirement in the state's issuance of coastal use permits.

To determine whether a project like the RAM terminal can be consistent with the restoration plan under the CWPPRA, one must first puzzle out what exactly constitutes said plan. Immediately after the passage of the CWPPRA, the phrase "plan submitted pursuant to this section" had a clear and defined meaning—the restoration plan that the law required the task force to submit to Congress. As noted above, the task force submitted a new plan annually until 1999. These plans also resulted in the formation of an annual Project Priority List, a process now in its twenty-second iteration. The process of the CWPPRA initially required coordination with the state's restoration task force and the integration of Louisiana's existing coastal restoration plans.[111]

The structure and history of the CWPPRA also places a heavy reliance in what the state considers to be "the plan." The cost-sharing provision incorporates by reference any restoration plan the state might promulgate under the law.[112] This reliance on the formulation and execution of a plan by the state of Louisiana continued through the Water Resources Development Act of 2007 and the 2012 RESTORE Act's recognition of CPRA as the administrator of funds related to coastal restoration. As both the state and federal governments share the same end goal of reversing the course of coastal land loss in Louisiana (as noted by each purpose of the relevant laws discussed here), the process works best when the two plans are really the same.

The MBSD began life as a CWPPRA project, in Project Priority List 10, back in 2001. Though deauthorized by the Army Corps once it grew beyond the scope of the CWPPRA, Congress reauthorized it in 2007 as part of the Louisiana Coastal Area initiative—another project under the direction of the Army Corps. The state's Coastal Master Plan includes the diversion and believes it will rebuild a massive area of coastal wetlands. The success of the MBSD could be considered a yardstick for the success of the coastal restoration effort itself. Any way you cut it, the argument appears strong that the MBSD is part of the plan as intended by the provisions of the CWPPRA—including the consistency provision.

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111. *Id.* § 3952(b)(3).
112. *Id.* § 3952(f)(2).

Next, one must decide what is or is not consistent. The law gives a tremendous lack of guidance when it comes to the definition of "consistent." Very little legal writing on the CWPPRA exists, and even fewer court decisions have occurred that might provide guidance on the interpretation of this consistency provision. This lack of guidance could be attributed to the lack of any real need to fight that battle until very recently. The original scope of the CWPPRA provided for the planning and funding of smaller restoration projects—as evidenced by the deauthorization of the MBSD from the CWPPRA process. Now, with the passage of the RESTORE Act channeling money into the massive projects envisioned by the state's Coastal Master Plan, the need for a legal standard for prioritizing the success of those projects over other coastal uses becomes more imminent.

For the purposes of applying the statute to the situation at hand, a successful argument could be made that issuing a permit that would allow the construction of the RAM terminal is not consistent with the stated purpose of the plan under the CWPPRA: "to develop a comprehensive approach to restore and prevent the loss of . . . coastal wetlands in Louisiana."[113] The arguments against a consistency determination here remain much the same as they are under Louisiana state law. The construction of the RAM terminal will reduce the amount of sediment available for the MBSD and thus reduce the amount of land built by said diversion. Coal dust and petroleum coke wastes will end up in the air and water around the diversion, potentially harming the growth of the marsh plants necessary to prevent the erosion of the land built by the MBSD. Under the mandate of the CWPPRA—that "[i]n implementing, maintaining, modifying, or rehabilitating navigation, flood control or irrigation projects, other than emergency actions, under other authorities, the Secretary . . . shall ensure that such actions are consistent with the purposes of the restoration plan submitted pursuant to this section"[114]—the Army Corps should not permit a facility that seems to fly in the very face of the purpose of the restoration plan.

If the Army Corps grants RAM Terminals the permit and a party challenges such an issuance under the consistency provision of the CWPPRA with success, then the calculus of wetland restoration changes. The success of a challenge under the consistency provision could provide precedent for challenges to future permits issued by the Corps that might harm coastal restoration efforts. Considering the wealth of new permits

113. *Id.* § 3952(b)(2).
114. *Id.* § 3952(d)(1).

issued by the Army Corps in Louisiana for a myriad of coastal activities and permits that the Army Corps periodically renews, this could provide a valuable tool in litigation to protect the coast and restoration efforts.

C. Policy and Precedent—Setting Up Coastal Restoration for Failure or Ensuring Its Success?

The state's permitting of the RAM terminal, if it withstands current and future legal challenges, leaves the MBSD in a strange position. In the draft version of its fiscal year 2015 report on the progress of implementing the Coastal Master Plan, the CPRA lists the MBSD as funded through the project engineering stage but not beyond 2015 (when construction should begin). However, their actions with regard to the MOA with RAM Terminals and failure to object to the issuance of the coastal use permit reveal a lack of concern for the success of the multimillion dollar sediment diversion.

The threat presented to the health of the proposed MBSD by the building of one specific coal terminal facility next door represents very much a crisis of the now. While the litigation process is not known for its swift resolution, particularly in environmental cases such as this, the project of coastal restoration in Louisiana will temporally outlast any single controversy. What the state's position regarding the RAM terminal reflects, however, is a greater threat to the effort as a whole. As one of the planned diversions with the largest potential for marsh building, the MBSD is a centerpiece of the Coastal Master Plan, and risking the health of the diversion just to build a single coal export facility exposes misplaced priorities by the LDNR and CPRA. As Scott Eustis, wetlands specialist for the nongovernmental organization Gulf Restoration Network, put it: "Louisiana's best scientists have demonstrated that the RAM terminal would take much needed sand from the river. Ignoring their findings is a black mark on our entire coastal restoration effort."[115]

The Army Corps must also make an important policy choice regarding the RAM terminal. While some groups might lambast the Corps for their recklessness and complicity in destroying Louisiana's wetlands to begin with,[116] the truth is that coastal protection and ecosystem restoration is now part of their mandate. As they have yet to issue the 404 dredged-and-fill-material permit necessary for RAM

115. Nusser, *supra* note 3.

116. *See, e.g.*, Mark Beorkrem & Cynthia Sarthou, *Destruction by Design: The U.S. Army Corps of Engineers' Continuing Assault on America's Environment*, GULF RESTORATION NETWORK (Dec. 14, 1999), https://healthygulf.org/files_reports/wetlands/destruction_by_design.pdf.

Terminals to begin construction, an opportunity still exists for them to protect the MBSD and the integrity of the Coastal Master Plan. A cynic might look at the Army Corps' record regarding Louisiana's wetlands and find a cause for skepticism.

When asked about the project, the chief of the regulatory branch of the Army Corps' New Orleans District said: "The project involves impacting 9.7 acres of wetlands. . . . So [we'll] have to do an environmental evaluation on what the impact would be if they build this."[117] He made no mention of the potential wetlands built by the diversion—only the small amount of wetlands within the footprint of the facility. Such a statement does not fill one with hope that the Army Corps considers consistency with the purposes of developing and implementing a comprehensive plan for coastal restoration when issuing permits, no matter what mandate Congress imposed on them several times over.

Both the state of Louisiana and the Army Corps have a policy choice to make: does the level to which the RAM terminal endangers the success of the MBSD still count as consistent with the state and federal coastal restoration plans? A decision one way and we could have open season on all marsh building projects, sediment diversions, barrier island constructions for coal terminals and the like; a decision the other way could protect the coastal restoration effort, but at the risk of some economic activity and jobs. Though it is a more tenuous connection than directly impacting a specific sediment diversion, both the state and the Army Corps should consider the extent to which any fossil fuel-related activity is consistent with these plans. With rising sea levels set to make coastal restoration in Louisiana all the more difficult, it becomes difficult to call contributions to the activity largely responsible for such a rise also consistent with the plans. Though not necessarily a legal mandate, these are policy questions that both agencies must face as we move toward the implementation of the 2012 Louisiana Coastal Master Plan.

V. CONCLUSION

The conflict between the proposed RAM terminal and the planned MBSD reflects a narrow set of environmental laws and consistency provisions, yet its resolution could yield broad results affecting the entire project of coastal restoration in Louisiana. As the state and federal governments attempt to stem the tide of coastal land loss, with an eye toward eventually reversing its course ever so slightly, they must resolve

117. Sullivan, *supra* note 66.

legal and policy issues regarding situations like that of the terminal and the MBSD.

Both Louisiana and federal law contain consistency provisions that apply to the granting of certain permits. Louisiana requires that "[p]rior to issuance of a coastal use permit, the secretary shall ensure that the activity for which application is being made is consistent with the state's master plan for integrated coastal protection. No activity which is not consistent with the plan shall be granted a coastal use permit."[118] The federal CWPPRA legislation requires, "In implementing, maintaining, modifying, or rehabilitating navigation, flood control or irrigation projects, other than emergency actions, under other authorities, the Secretary, in consultation with the Director and the Administrator, shall ensure that such actions are consistent with the purposes of the restoration plan submitted pursuant to this section."[119]

The siting of the proposed RAM terminal next to the MBSD could both reduce the amount of crucial sediment flowing into the diversion and contaminate the diversion with coal and petroleum coke wastes. For these reasons and their associated effects, permitting such a construction seems to violate the state and federal consistency provisions. A group of plaintiffs already filed a challenge to the issuance of the coastal use permit in state district court.

The Army Corps has yet to grant the section 404 permit necessary for the RAM terminal to move forward. In the opinion of this author, granting such a permit cannot be considered consistent with the CWPPRA. However, the lack of any action, particularly a consistency analysis, from the Army Corps makes it difficult to criticize them. If they move forward and grant RAM Terminals the permit, the potential exists to challenge the Army Corps' consistency analysis or lack thereof. Right now, consistency exists merely as an afterthought, raised only through litigation. The goal of any potential litigation concerning the RAM terminal and the CWPPRA should be to place consistency with the restoration plan at the fore of decision making regarding Louisiana's coast. Such efforts should focus on how to make the consistency requirement real, rather than just another box for the Corps to check. If they issue the permit with a consistency analysis present (however unlikely), then the rigor of that analysis should be thoroughly inspected and challenged if found inadequate.

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118. LA. REV. STAT. ANN. § 49:214.30(A)(2) (2012).
119. 16 U.S.C. § 3952(d)(1).

If the Army Corps denies the section 404 permit for the RAM terminal, they likely will not do so as a result of the consistency provision of the CWPPRA, and the rigorous analysis needed will still stand out as a glaring omission from the decision-making process. Though it may prove counterproductive in the short term, such a determination might still be challenged for lack of a consistency analysis. While the short-term goal of local residents and coastal restoration advocates regarding the RAM terminal should remain protecting the MBSD, the long-term goal should be to mandate a consistency analysis for the issuance of any permits by the Army Corps that could affect the implementation of the state's Coastal Master Plan. In the unlikely event that the Army Corps both denies RAM Terminals the permit and does so on the basis of a rigorous consistency analysis, then such an analysis offers the first benchmark for future permit decisions regarding the CWPPRA provision and Louisiana's Coastal Master Plan.

In the event that this matter goes to litigation as a result of either the Army Corps' granting the section 404 permit for the RAM terminal or a denial of the permit lacking a consistency determination, the possibility exists to both inject the consistency determination into the federal decision-making process and set a precedent for future litigation to protect the project of coastal restoration in Louisiana using the consistency provision of the CWPPRA—giving environmentalists and community organizations yet another tool to do so.