

APPENDIX
CIVIL ACTION No. 78428 A
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

AVOYELLES SPORTSMAN'S LEAGUE, et al., Plaintiffs,
v.
CLIFFORD L. ALEXANDER, et al., Defendants.

FINAL WETLAND DETERMINATION

Federal Defendants submit herewith for filing pursuant to the Court's order of January 17, 1979, a final determination of those areas on the Lake Long tract considered by the United States to be waters of the United States subject to the Clean Water Act, and with regard to which enforcement action may be appropriate if discharges of pollutants are made or threatened to be made therein without necessary permits.

Respectfully submitted,

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Determination of the Portions of the Lake Long Tract Which Are Within the Jurisdiction of the Clean Water Act

Pursuant to the Court's order of January 17, 1979, a determination has been made of the portions of the Lake Long tract falling within the jurisdiction of the Clean Water Act. This document, together with the attached map (Exhibit 1) and the materials identified in the attached index, constitutes this determination. The Clean Water Act regulates discharges of pollutants into areas defined as waters of the United States by Section 502(7) of the Act. Regulations promulgated to implement Section 404 of the Act include within the definition of waters of the United States areas known as "wetlands." Wetlands are defined in 33 CFR Part 323.2(c) to be:

those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Based on the evaluation of the tract documented by the reports and data listed in the index and application of the definition and regulation under the Clean Water Act, the areas of the subject tract determined to be waters of the United States are shown in green on the attached map entitled "Government Determination of Wetlands in the Lake Long Tract." The area determined herein to be waters of the United States approximates the area of annual flooding on this tract.

The following is a discussion of the methodology used in applying the regulatory definition of "wetlands" to the facts of this case. In applying the definition of wetlands, vegetation, inundation by water, and saturated soils are all relevant factors. While vegetation is perhaps the most important factor in applying the definition, it cannot be viewed in isolation. The preamble to the regulations (Fed. Register, Vol. 42, No. 138 Tuesday, July 19, 1977) explains that the reference to "vegetation typically adapted for life in saturated soil conditions" replaces an earlier version which had created a technical loophole by describing the vegetation as that which requires saturated soil conditions for growth and reproduction, thereby excluding many forms of plants that are prevalent in an inundated or saturated area but that do not require saturated soil from a biological standpoint for their growth and reproduction. Thus, the 1977 definition highlights the fact that wetland vegetation is not limited to species which require saturated soil (obligate hydrophytes) but also includes species which have adapted to life in saturated soil but may grow elsewhere (facultative hydrophytes). Because some of these latter species may sometimes grow in soils that are only rarely saturated, the significance of their presence should be established. This can be done by determining, from inundation or soil data, whether the moisture regime in which they are found is sufficient to require adaptation. Sometimes obligate hydrophytes are found in association with facultative hydrophytes; sometimes the majority of plants present are facultative hydrophytes. Therefore, our methodology to determine wetlands under the regulation considers all of the elements identified in the regulatory definition to ensure, first, that all appropriate areas are included, and second, that no inappropriate areas are included.

We disagreed with the methodologies suggested by the Vicksburg District of the Corps of Engineers, the National Forest Products Association, and the non-Federal defendants established by the regulation. They concentrated on unambiguous species (obligate hydrophytes) and did not properly use soil and hydrology and other scientific data to verify the significance of the other species on the tract. The Environmental Defense Fund ("EDF")

Other major points considered

