

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Sabine River Authority of Texas and Sabine River Authority, State of Louisiana)))	Project No. 2305-036
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**COMMENTS OF THE SABINE RIVER AUTHORITY OF TEXAS
AND SABINE RIVER AUTHORITY, STATE OF LOUISIANA
ON THE FINAL ENVIRONMENTAL IMPACT STATEMENT**

In response to the Notice of Availability of the Final Environmental Impact Statement (FEIS)¹ for the Toledo Bend Project, FERC Project No. 2305 (Project), issued December 20, 2013 by the Federal Energy Regulatory Commission (FERC or Commission), the Sabine River Authority of Texas (SRA-TX) and Sabine River Authority, State of Louisiana (SRA-LA) (collectively, the SRAs), co-licensees for the Project, hereby submit their comments on the FEIS. The FEIS reflects Commission Staff's careful consideration of comments on the Draft Environmental Impact Statement (DEIS),² and provides a thorough review and analysis of the SRAs' proposal for relicensing the Project. The SRAs' limited comments herein provide additional information on just two substantive aspects of the FEIS—reservoir levels for hydroelectric power production (Draft Article 408) and recreation (Draft Article 412)—and one technical aspect of the FEIS (relating to uniformity of deadlines for license implementation). The SRAs believe that adoption of these comments will enable the

¹ The FEIS was issued one day prior to the notice. Final Environmental Impact Statement for Hydropower License of the Toledo Bend Hydroelectric Project. Project No. 2305-036 (issued Dec. 19, 2013).

² Draft Environmental Impact Statement re the Toledo Bend Hydroelectric Project, Project No. 2305-036 (issued June 14, 2013).

Commission to issue a licensing order that is consistent with the complete proposal advanced by the SRAs to relicense the Project.

I. COMMENTS ON THE FEIS

A. Overview

The SRAs commend Commission Staff's analysis and recommendations in the FEIS, which the SRAs believe is largely supported by the extensive technical record developed in this relicensing proceeding and fulfill the Commission's obligations under the National Environmental Policy Act. As the SRAs detailed in their comments on the DEIS,³ the SRAs were concerned that several of the recommendations in the Staff alternative would expand or materially modify the carefully analyzed and negotiated terms of the comprehensive Offer of Settlement for the Toledo Bend Project (Offer of Settlement) entered into by the SRAs and numerous stakeholders collaboratively participating in the Project relicensing.⁴ In addition, the SRAs expressed concern that some of Staff's recommendations in the DEIS, if adopted by the Commission in the licensing order, would substantially change the Shoreline Management Plan (SMP) and Recreation Management Plan (RMP) filed by the SRAs following extensive consultation with resource agencies and stakeholders.

The SRAs appreciate Commission Staff's review and consideration of those comments when preparing the FEIS. The SRAs continue to believe, however, that the relicensing measures set forth in the Offer of Settlement, together with the SRAs' previously filed RMP, SMP, and Historic Properties Management Plan, constitute the full

³ Comments of the Sabine River Authority of Texas and Sabine River Authority, State of Louisiana on the Draft Environmental Impact Statement, Project No. 2305-036 (filed Aug. 5, 2013) (DEIS Comments).

⁴ Offer of Settlement for Relicensing of the Toledo Bend Project, Project No. 2305-036 (filed Aug. 1, 2012).

and complete suite of protection, mitigation, and enhancement measures that should be included in the new license for the Project. If the Commission decides to include in the new license any additional recommendations of Commission Staff as set forth in the FEIS, those recommendations should be guided by the SRAs' targeted comments herein with regard to Draft Articles 408 and 412.

B. Comments on Draft Article 408

In the DEIS, Commission Staff proposed an entirely new license article—absent from the Offer of Settlement—which, if adopted, would have required the SRAs to “operate the project reservoir within a normal operating range of elevation 168 to 172 feet msl.”⁵ As the SRAs detailed in their comments on the DEIS, the SRAs were concerned that Draft Article 408, without clarification, could impose significant and far-reaching operational changes by undermining the very purpose for which the States of Louisiana and Texas jointly funded and built the Project: water supply.

While the SRAs continue to believe that a license article such as Draft Article 408 governing reservoir levels is neither necessary nor appropriate, the SRAs appreciate Commission Staff's recognition, through its revision to Draft Article 408 and throughout the text of the FEIS, of the primary purpose of the Project as a water supply facility. Draft Article 408 in the FEIS—which clarifies the establishment of a reservoir operations elevation range of 168 to 172 feet msl applies *for hydroelectric power production only*—addresses the SRAs' greatest concern about Draft Article 408 as set forth in the DEIS. The express recognition of specific instances in which the SRAs are authorized to operate the Project reservoir for hydroelectric power production purposes outside the normal

⁵ DEIS at A-10.

operating range also addresses some of the SRAs' concerns with the draft article as originally proposed.

While the SRAs agree with Commission Staff's important changes to Draft Article 408 and the text of the FEIS, the SRAs believe that if the Commission decides to include a condition in the new license establishing a normal operating range for hydropower production purposes, such a condition needs additional revision to accurately capture the SRAs' rights and responsibilities under the current power sales agreement (PSA) and Louisiana statute.⁶ Specifically, the SRAs believe that two additional exceptions enabling them to operate the Project reservoir outside of the normal operating range must be reflected in any license article establishing a normal operating range for hydroelectric power production purposes: (1) when hydroelectric power production below 168 feet msl is necessary to avoid an insufficient supply of firm or non-interruptible power to the licensees' wholesale customers; and (2) until termination of the existing PSA, in the event the licensees fail to make all credits or reimbursements owed to Cleco Power LLC, Entergy Gulf States, Inc., Entergy Louisiana, LLC, and Entergy Texas, Inc. (collectively, Companies), as required by the currently operative PSA.

In the FEIS, Commission Staff acknowledged these two additional instances in which the SRAs may generate outside the normal operating range in accordance with the current PSA.⁷ Commission Staff determined that they could not include these exceptions in Draft Article 408, however, because they were not clear "how often these provisions

⁶ The Commission has approved the term of the PSA, which extends beyond the current license term until April 30, 2018, under section 22 of the FPA. *Sabine River Authority of Texas and Sabine River Authority, State of Louisiana*, 31 F.P.C. 885 (1964). The amended PSA was filed with and accepted by the Commission in 2013. Amended and Restated Toledo Bend Power Sales Agreement, Docket No. ER14-160-000 (filed Oct. 22, 2013); *Entergy Services, Inc.*, Letter Order, Docket No. ER14-160-000 (Dec. 11, 2013).

⁷ FEIS at 193.

would be implemented, the effects on lake levels, or the cost to the [SRAs] of not implementing these provisions.”⁸ Staff therefore stated that, “[w]ithout additional information, we are unable to recommend inclusion of these provisions as long-term license conditions.”⁹ The SRAs provide this additional information to enable the Commission to include these exceptions in Draft Article 408, should it decide to include this article in the new license.

First, section 5.05 of the PSA enables the SRAs to generate power outside of the 168 to 172 feet msl operating range in the event “an insufficient supply of electric power to the Companies’ firm or non-interruptible power users will result.”¹⁰ This exception also is recognized—and required—by Louisiana statute.¹¹ The purpose of this provision is to help ensure reliability of the electric grid, to enable the Companies to avoid load-shedding and provide voltage support and power in emergency situations. It is imperative that the SRAs retain the ability, throughout the license term, to provide power in emergency situations, to preserve grid integrity.

This ability, while critical, is invoked very rarely. As set forth in Attachment A, the SRAs have provided this emergency call on power just seven times in the past eight years, and only three of these eight instances required the SRAs to generate power when reservoir levels were below 168 feet msl. These three instances occurred in October, January, and February, well outside the peak recreation and boating season. The run time

⁸ *Id.*

⁹ *Id.*

¹⁰ PSA § 5.05(2). This exception also is set forth in the definition of “Project” in section 1.01 of the PSA.

¹¹ La. Rev. Stat. § 38:2325(11)(b)(ii) (providing for the generation or production of hydropower of the Project when reservoir levels are below 168 feet msl when “[f]ailure to do so will result in an insufficient supply of electric power in relation to the demand for such power by its firm or non-interruptible power users.”).

of all three of these instances, combined, was less than 13 hours, and the effect on reservoir levels was negligible: reservoir levels decreased less than 0.3 inches in the first instance; approximately 0.1 inches in the second instance; and less than 0.8 inches in the third instance—variations that could just as likely be attributed to wind or fetch. Inclusion of this exception in any license article establishing reservoir levels for hydropower operations is not only critical for emergency responsiveness and consistent with the PSA and Louisiana statute, but comes at no cost, and with negligible effect on reservoir levels.

Second, section 5.05 of the PSA enables the SRAs to generate power outside the 168 to 172 feet msl operating range in the event that the SRAs “fail to make all credits owed to the Companies or fail to make full reimbursement to the Companies” as required under the PSA.¹² This “make whole” provision, which allows the SRAs to credit the Companies in the event reservoir levels prohibit the SRAs from generating the estimated annual amount of power established by the PSA for the peaking period,¹³ has never been invoked by the SRAs. Nonetheless, the SRAs need to retain the flexibility to utilize the make whole provision in the unlikely event they need to invoke it, as a contractual obligation under the PSA, until the expiration of the PSA. Inclusion in the license of this narrow exception for limited duration—for only the limited amount of time the current PSA remains in effect—will have no environmental effects, including on reservoir levels, and no associated cost.

Accordingly, the SRAs request that the Commission, if it includes Article 408 in the new license, revise it as follows:

¹² PSA § 5.05(5); *see also id.* § 1.01.

¹³ *Id.* § 3.07.

Article 408. *Reservoir Operations for Hydroelectric Power Production.* The licensees shall operate the project reservoir for hydroelectric power production within a normal operating range of elevation 168 to 172 feet above mean sea level (msl). The licensees are authorized to operate the project reservoir for hydroelectric power production outside this normal operating range:

(1) due to storm or high water events;

(2) when hydroelectric power production below 168 feet msl is necessary to avoid an insufficient supply of firm or non-interruptible power to the licensees' wholesale customers;

(3) due to reservoir drawdown necessary for inspection of public works or maintenance as required by the Commission;

(34) for releases to meet continuous release requirements under Article 404;
 or

(45) for releases to satisfy the licensees' water supply or other downstream obligations; or

(6) until termination of the existing Power Sales Agreement, in the event the licensees fail to make all credits or reimbursements owed to Cleco Power LLC, Entergy Gulf States, Inc., Entergy Louisiana, LLC, and Energy Texas, Inc., as required by Sections 3.02A and 3.07 of the Power Sales Agreement.

Nothing in this article restricts or otherwise affects the licensees' authority to operate project reservoir levels for purposes other than hydroelectric power production.

C. Comments on Draft Article 412

The SRAs interpreted Draft Article 412 in the DEIS to recommend a significant revision and expansion of the RMP filed by the SRAs in March 2012 by requiring the SRAs to add 16 recreation sites as Project-sponsored recreation facilities. As the SRAs explained in their comments on the DEIS, the inclusion of additional sites as Project-sponsored recreation facilities—for which the SRAs would need to schedule and undertake improvements and for which the SRAs would become ultimately responsible for construction, management, and maintenance—was not supported by the record.

Instead, the record unquestionably demonstrates that recreation capacity far exceeds demand in the Project's remote, rural area.

The SRAs appreciate Staff's clarification in the FEIS that Staff's recommendations are not intended to require the SRAs to take on operation and management responsibilities for those recreation sites in the Project vicinity not owned and operated by the SRAs.¹⁴ The SRAs do not object to Staff's recommendation in the FEIS that, in addition to addressing all sites for which the SRAs have active management responsibilities, the RMP should identify and briefly describe those sites managed by state or county agencies that provide public access to Project waters, in order to provide a more complete picture of recreation activity in the Project area.¹⁵

The SRAs do object, however, to Staff's recommendation in the FEIS that the SRAs revise the RMP to include two more sites as Project-sponsored recreation facilities—Cow Bayou Wilderness Area (CBWA) and the Tourist Information Center—which Staff mistakenly characterizes as “within the [P]roject boundary and [which] provide shore-based recreational activities.”¹⁶ These sites are not within the current or proposed Project boundary, do not provide Project-related recreation activities, and are not needed to meet public recreation demand at the Project.

The CBWA is on SRA-LA lands outside of the current Project boundary.¹⁷ The SRAs excluded the site from the RMP because the CBWA, which is actually an

¹⁴ FEIS at 198.

¹⁵ *Id.* at 199.

¹⁶ *Id.* at 198.

¹⁷ Sheet 81 of Exhibit G, submitted by the SRAs on April 9, 2012, includes the area of the Project vicinity adjacent to the CBWA, which is not reflected on the exhibit because of its location outside of the Project boundary. Attachment B to these comments depicts the location of the CBWA in relation to the Project boundary.

undeveloped system of dirt roads and trails primarily for use of off road vehicles,¹⁸ does not provide any water-based recreation or facilitate any access to the reservoir, and does not provide any opportunities consistent with the recreational values of the Project. In fact, the FEIS recognizes that these trails are the only recreational feature at the CBWA, and that the site does not provide water access.¹⁹ While the site is adjacent to the Project, it fulfills no Project purpose. Because the SRAs' Project-sponsored recreation sites fully serve the current needs of many types of recreation users, expansion of the Project boundary to include the CBWA as a Project-sponsored recreation site is not supported by the record.

Inclusion of the Tourist Information Center as a Project-sponsored recreation site is similarly unwarranted. The Tourist Information Center was developed many years ago by the Louisiana Department of Culture, Recreation, and Tourism (LDCRT) as one of a number of highway rest stops at entrances around the state. More than a decade ago, after LDCRT sought to close the center because of low levels of use and insufficient funding, SRA-LA, as a state agency with headquarters in the building, agreed to fund it as a public service. The center provides travelers with informational brochures about the entire region, but the only amenity at the site is public restrooms. The playground equipment, bike rack, picnic tables, and swimming access adjacent to the building are not part of the Tourist Information Center, as the FEIS incorrectly states.²⁰ Rather, all of these recreational features are part of Pendleton Park, which provides day use access to

¹⁸ Recreation Report, App. A.

¹⁹ FEIS at 134, 143.

²⁰ *Id.* at 134.

Project lands and waters and also includes a fishing pier and an informational map mural, and, as the FEIS recognizes, is located adjacent to the Tourist Information Center.²¹

Unlike the Tourist Information Center, which is not within the SRAs' current or proposed Project boundary,²² Pendleton Park is included in the proposed Project boundary and as a Project-sponsored recreation facility in the RMP. The office complex that is the Tourist Information Center, however, does not provide any independent "shore-based recreational activities," as the FEIS mistakenly claims.²³ The building should not be brought into the Project boundary as a Project-sponsored recreation site.

Because the CBWA and the Tourist Information Center are not Project-sponsored recreation facilities within the Project boundary and do not provide public access to the reservoir, the SRAs believe that Draft Article 412, if included in the new license for the Project, should be revised to eliminate discussion of these two sites as Project-sponsored recreation sites. While the SRAs would not object to including a description of the CBWA and the Tourist Information Center in the RMP as regional recreation sites, the SRAs do not believe that they should be Project-sponsored recreation facilities subject to the requirements of the license. Draft Article 412 should therefore be revised as follows:

Article 412. *Revised Recreation Management Plan.* The licensees shall, within 1 year of license issuance, revise the Recreation Management Plan filed with the Commission on March 6, 2012, and file a revised plan for Commission approval, to include the following: (1) comprehensive inventory and descriptions of the ~~17~~ 15 identified public recreation facilities that the licensees are responsible for within the project boundary, including the 13 sites already identified in the Recreation Management Plan, ~~Cow Bayou Wilderness Area, Tourist Information Center,~~ and tailrace and spillway

²¹ *Id.* at 144.

²² Sheet 111 of Exhibit G, submitted by the SRAs on April 9, 2012, depicts the Project area in the vicinity of the Tourist Information Center. Attachment B to these comments depicts the location of the Tourist Information Center in relation to the proposed Project boundary, which encompasses all of the recreational features in this area associated with Pendleton Park.

²³ FEIS at 198.

areas; (2) brief descriptions and locations of the other recreation sites that are the responsibility of other federal, state, and local agencies including: six recreation sites within the Sabine National Forest, two state parks, and other public recreation facilities that provide access to the project; (3) a discussion of planned improvements at each licensee-managed site; (4) a schedule for when those improvements would be completed; (5) a spillway channel recreation access plan that: (a) identifies the conditions of the spillway channel access site and associated uses; (b) establishes specific criteria (either flow releases or associated reservoir levels) that would trigger closure of the site; and (c) provides a protocol for notifying recreationists who are present in the spillway channel before releases occur (e.g., sounding a siren) for public safety; and (6) a schedule for proposed recreation and visitor survey monitoring reports that would include provisions to file Recreation Management Plan updates every 12 years.

The revised plan shall be developed in consultation with the U.S. Forest Service, U.S. Fish and Wildlife Service, Texas Parks and Wildlife Department, Louisiana Department of Wildlife and Fisheries, Louisiana Department of Culture, Recreation and Tourism, American Whitewater, and the Sabine Whitewater Club. The plan filed with the Commission shall include documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the consultation list, and a specific description of how comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for agencies and other entities to comment before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on site-specific information.

The Commission reserves the right to require changes to the plan. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

D. Other Comments

Several of the draft license articles include proposed deadlines for the SRAs' implementation. Draft Article 401 provides for the SRAs to file site-specific erosion plans—in certain circumstances—"10 years after license issuance."²⁴ Draft Article 403 provides for the SRAs to file an erosion monitoring plan for Commission approval "within 1 year of . . . issuance of the license,"²⁵ and Draft Article 412 provides a similar

²⁴ *Id.*, Appendix B at B-1.

²⁵ *Id.* at B-3.

directive—“within 1 year of license issuance”—for the SRAs to file a revised RMP for Commission approval.²⁶

The timeframe for the SRAs to comply with other license articles, however, is tied to the date of license effectiveness. Draft Article 405 provides for the SRAs to file a flow release plan for Commission approval “[w]ithin 18 months after the effective date of the license.”²⁷ Draft Article 404 also is tied to the effective date of the license.²⁸ Similarly, the FPA section 18 eel prescription provides for the SRAs to file an upstream passage plan “[w]ithin 18 months after the effective date of the new license.”²⁹ Each of these provisions is consistent with the Offer of Settlement.

To facilitate consistency in license implementation and with the Offer of Settlement, the SRAs request the Commission take a uniform approach in the timing of these license requirements. Specifically, the SRAs request that the timing for Draft Articles 401, 403, and 412 be made from the effective date of the new license—as envisioned by Draft Articles 404, 405, and the FPA section 18 eel prescription—rather than from the date of license issuance.

II. CONCLUSION

The SRAs appreciate Commission Staff’s careful consideration of the SRAs’ detailed comments on the DEIS and the corresponding revisions reflected in the FEIS. The SRAs believe the FEIS appropriately recognizes the extensive commitments the SRAs have agreed to implement during the new license term under the Offer of

²⁶ *Id.* at B-11.

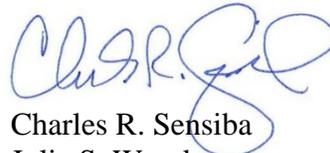
²⁷ *Id.* at B-5.

²⁸ *Id.* at B-3.

²⁹ *Id.*, Appendix C at C-2.

Settlement, and as part of the SRAs' complete proposal for relicensing the Project. The SRAs therefore request that the Commission adopt the SRAs' limited comments herein, and issue a new 50-year license for the Project.

Respectfully submitted,



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DATED: January 31, 2014

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 31st day of January, 2014.

/s/ Mealear Tauch
Mealear Tauch
Van Ness Feldman, LLP
1050 Thomas Jefferson Street, N.W.
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ATTACHMENT A

Toledo Bend Emergency call on power evaluation

from January 1, 2006 to January 21, 2014

Date	# units	run time	Total Run Time (hrs)	MWHrs produced	Lake Level daily avg.	Lake Surface (acres)	Discharge (cfs- assumed)	Volume Released (ac-ft)	Lake Level Decrease (inches)	Lake Level Decrease below 168-ft msl (inches)
Jan. 30, 2008	2 units	0630-0815	1.75	191	168.6	165,188	15,000	2,169.4	0.2	
Oct. 6, 2008	2 units	1700-2000	3.00	243	167.7	161,285	15,000	3,719.0	0.3	0.3
Dec. 21, 2008	2 units	1815 - 2130	3.75	232	168.4	164,612	15,000	4,648.8	0.3	
Jan. 28-29, 2011	1 unit	2330 - 0130 (on 29th)	2.00	72	164.2	145,300	7,500	1,239.7	0.1	0.1
Feb. 18-19, 2011	2 units	2315-0700 (on 19th)	7.75	568	164.6	147,100	15,000	9,607.4	0.8	0.8
April 26, 2012	2 units	1530 - 2045	5.25	400	170.7	175,358	15,000	6,508.3	0.4	
April 30, 2012	2 units	1715 - 2400	6.75	560	170.7	175,454	15,000	8,367.8	0.6	
									2.7	1.2

NOTES:

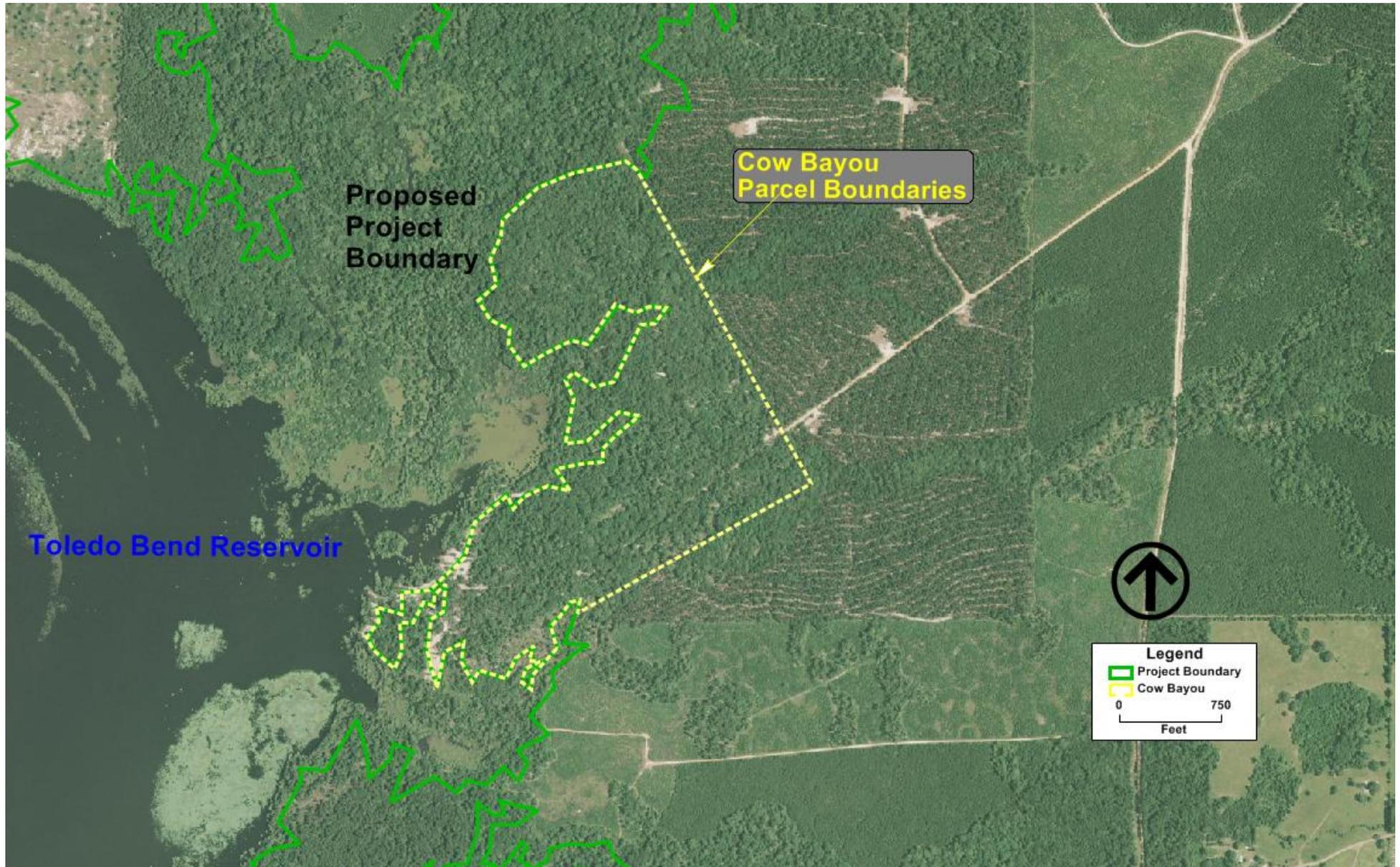
- 1.16-Inches: total decrease in lake level due to emergency power call with lake level below 168 from January 1, 2006 to January 21, 2014
- 2.68-inches: total decrease in lake level due to emergency power call from January 1, 2006 to January 21, 2014
- January 1, 2006 to January 21, 2014 - Time frame analyzed.

ATTACHMENT B

Tourist Information Center



Cow Bayou Wilderness Area



Document Content(s)

TBPJO Comments on FEIS.PDF.....1-19