

UNITED STATES DISTRICT COURT FEB 18 4 50 PM '76  
EASTERN DISTRICT OF LOUISIANA  
NEW ORLEANS DIVISION

B. JONES  
CLERK  
*[Signature]*

SAVE OUR WETLANDS, INC. (SOWL)	*	
Plaintiff	*	
versus	*	CIVIL ACTION
EARLY RUSH, et al.	*	NO. 75-3710
Defendants	*	SECTION A(B)
* * * * *	*	

NOW INTO COURT through undersigned counsel comes the complainant, Save Our Wetlands, Inc., who with respect moves this Honorable Court to allow plaintiff to amend and supplement the original complaint pursuant to Rule 15 of the Federal Rules of Civil Procedure, in the following manner:

37.

Public Law 89-298 requires local interests and agencies to contribute 30% of the cost of construction of the Hurricane Protection Plan works. The insuring agency in Orleans Parish is the Orleans Levee Board, which has signed acts of assurance with the U.S. Army Corps of Engineers that it is financially able to meet its obligation of funding for the project. In fact, the Orleans Levee Board has no present financial means to meet this obligation, nor is there a realistic expectation of its ever being able to meet this obligation.

38.

The Orleans Levee Board's available funding for the project originates from a 3-mil real estate tax increase, passed by the voters of Orleans Parish in March, 1974. The Levee Board stated at that time that the purpose of the tax was to "provide funds to construct and maintain levees, levee drainage, flood protection and all other purposes incidental thereto." In proposing the tax increase, the Levee Board guaranteed dedication of the revenue to the construction of

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35 specific flood-protection projects in the New Orleans area. The Orleans Levee Board made public guarantees and statements that none of this tax revenue would be used for "controversial environmental projects," and that specifically none of the tax revenue would be used to fund the Chef Menteur and Rigolets Barrier portions of the Hurricane Protection Plan.

39.

After passage of the March, 1974 tax referendum, the Orleans Levee Board, through its president, Guy LeMieux, announced that new federal legislation, Section 192 of H.R. 10203, would allow it to fulfill its obligation to construct the 35 specified works, while at the same time freeing sufficient funds to permit the Levee Board to provide its required funding for completion of the Hurricane Protection Barrier Plan, over a 25-year period.

40.

The 3-mil tax increase will, according to current Levee Board estimates, generate \$41,529,147 over an 11-year period. According to the Levee Board's "Proposed Schedule of Expenditures," construction of 30 of the 35 guaranteed flood protection works will cost \$30,957,152 in cash contributions, while generating \$14,150,180 in federal credits for work completed.

41.

The Levee Board, according to its estimates, will have a total of \$24,722,175 in available funds to pay for the remaining five guaranteed projects, which are included in the Hurricane Protection Plan, and to meet the required 30% share of the construction costs of the Rigolets and Chef Menteur barriers.

42.

Total payments, with interest, required by the U.S. Army Corps of Engineers from the Orleans Levee Board for the barrier project are \$49,648,000, in accordance with the provisions of Public Law 89-298. Thus, the Orleans Levee

Board is in reality financially able to meet less than half its total funding obligation for construction of the Hurricane Protection Project.

43.

In fact, events subsequent to the publication of the above figures have shown that the Levee Board estimates of the cost of construction of the 35 works guaranteed in the March, 1974 tax referendum were unrealistically low. To date, three of the 35 guaranteed works have been let for contracts. The original estimates for construction of these projects totaled \$69,450. The actual cost of the contracts bid and accepted totaled \$266,433, or approximately 283% above the estimated cost.

44.

Plaintiff alleges that the Levee Board is committed to a first obligation of constructing the 35 specific works guaranteed in the March, 1974 tax proposal; that only after meeting this obligation can the Levee Board apply those tax revenues to other project works; that in light of existing contract awards, the immediate application of \$24,722, 175 toward construction of the Rigolets and Chef Menteur barriers threatens completion of the 35 works guaranteed in the March, 1974 proposal.

45.

Plaintiff alleges that the Levee Board, by signing such Acts of Assurance with the U.S. Army Corps of Engineers, is guaranteeing funds which it does not presently possess, and is acting in violation of the provisions of Public Law 89-298 and its requirement of 30% local funding; that the Corps of Engineers, by accepting such Acts of Assurance, is acting in violation of Public Law 89-298; that such Assurances are baseless assertions, and thus the Corps of Engineers is obligating the United States Government to an expenditure of funds, the 30% local share, which have not been appropriated by the U.S. Congress; that

which grants to Congress alone the power and duty to appropriate from the United States Treasury.

46.

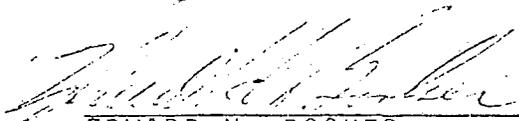
Plaintiff alleges that the U.S. Army Corps of Engineers, by proceeding with construction of the Hurricane Protection Barrier Project without having secured the 30% local funding requirement under Public Law 89-298, is committed to an illegal expenditure of federal funds and taxpayers' money; all of which is in violation of plaintiff's rights of due process and equal protection under the United States Constitution.

W H E R E F O R E, plaintiff prays:

1. That the Court issue a declaratory judgment that defendants have failed to comply with the requirements of Public Law 89-298, in that they have failed to require the local insuring agency in Orleans Parish, the Orleans Levee Board, to provide 30% of the funding for this project;
2. That the Court issue a declaratory judgment that defendants' decision to proceed with the project through an Act of Assurance by which the Orleans Levee Board committed itself to a financial obligation it had no realistic expectation of being able to fulfill, was arbitrary and capricious;
3. That the Court enjoin defendants from proceeding with the project until such time as the Orleans Levee Board can adequately demonstrate its ability to fund its required \$49,648,000 share of the project;
4. That the Court enjoin defendant Orleans Levee Board from funding any money arising from the March, 1974 tax increase to projects other than those 35 works guaranteed by the Levee Board, until such time as those 35 works are completed, or until such time as it can be adequately demonstrated that any supplementary use of these funds would not endanger completion of the 35 works.

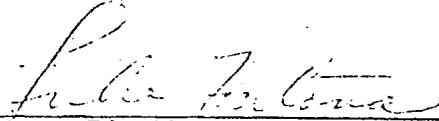
Plaintiff Save Our Wetlands, Inc., reiterates the prayer of the original complaint, and prays that this

amended and supplemental petition be decreed sufficient in law and that it be served upon all defendants.



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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
NEW ORLEANS DIVISION

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CIVIL ACTION

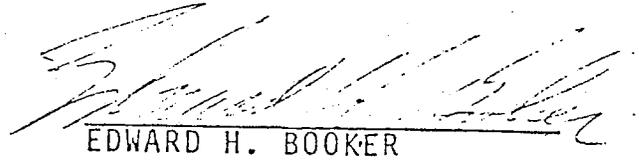
NO. 75-3710

SECTION A(B)

MEMORANDUM

Rule 15 of the Federal Rules of Civil Procedure grants discretion to the District Judge to allow amendments to be filed after the answer, and further provides that leave to amend "shall be freely given when justice requires."

Respectfully submitted,



EDWARD H. BOOKER

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
NEW ORLEANS DIVISION

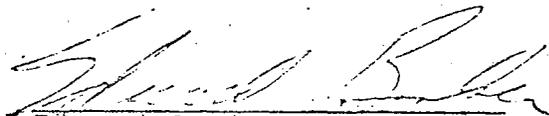
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vs.

EARLY RUSH, et al.

- To: 1.) John R. Schupp  
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500 St. Louis St.  
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- 2.) Richard J. McGinity  
Attorney for Orleans Levee Board  
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New Orleans, La. 70112

Please take notice, that the undersigned will bring the attached motion in for hearing before this Court, Section A, United States District Court Building, New Orleans Division, 400 Royal Street, on Wednesday, March 10, at 10 a.m.



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