DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, CORPS OF ENGINEERS
P. O. BOX 60267
NEW ORLEANS, LOUISIANA 70160

LMNOC 1 April 1977

SUBJECT: St. Tammany Parish Police Jury v. Clifford L. Alexander and Colonel Early Rush, USDC, ED, Louisiana, Civil Action No. 77-976 "C"

THRU: ~~Division Engineer, Lower Mississippi Valley~~ 4 Apr 77
~~ATTN: LMVOC~~

TO: HQDA (DAEN-CCK)
WASH DC 20314

1. In accordance with the requirements of ER 1180-1-1, paragraph 72-209, there is forwarded a copy of the petition in the above-noted case, served on the Agency on 31 March 1977.

2. The petition basically sets forth the same cause of action as Save Our Wetlands v. Rush, et al., USDC, ED, La., No. 75-3710. Accordingly, we expect the two cases to be consolidated for hearing and trial.

FOR THE DISTRICT ENGINEER:

1 Incl (trip)
as

JOSEPH A. TOWERS
District Counsel

[illegible] IN A CIVIL ACTION

[illegible] Form No. [illegible]

United States District Court

FOR THE

EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION FILE NO. 77-976

SECTION C

ST. TAMMANY PARISH POLICE JURY

Plaintiff

v.

CLIFFORD L. ALEXANDER

COLONEL EARLY RUSH

Defendant

SUMMONS

[illegible] Defendant :

Colonel Early Rush
District Engineer
U. S. Army Corps of Engineers
Foot of Prytania St.
New Orleans, LA

You are hereby summoned and required to serve upon Lloyd R. Walters, Esq.

[illegible] Plaintiff's attorney , whose address

SMITH & WALTERS
747 Robert Road
P. O. Drawer Q
Slidell, LA 70459

[illegible] answer to the complaint which is herewith served upon you, within 60 days after service of this [illegible] upon you, exclusive of the day of service. If you fail to do so, judgment by default will be [illegible] against you for the relief demanded in the complaint.

NELSON B. JONES

Clerk of Court.

Jeanne Dauzy *Deputy Clerk.*

March 30, 1977

[Seal of Court]

[illegible] is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

ST. TAMMANY PARISH POLICE JURY, in its official capacity as the governing body of St. Tammany Parish, Louisiana

versus

CIVIL ACTION

77-976

SECTION C

CLIFFORD L. ALEXANDER, in his official capacity as Secretary of the United States Army; COLONEL EARLY RUSH, in his official capacity as District Engineer, United States Army Corps of Engineers, New Orleans District

1. COMPLAINT OF PLAINTIFF

Plaintiff, St. Tammany Parish, seeks in this action to declare unlawful and to enjoin construction of the U. S. Army Corps of Enginee project entitled "Lake Pontchartrain, Louisiana and Vicinity Hurricane Protection Project (Barrier Plan)."

2. JURISDICTION

This court has jurisdiction and venue under 28 USC 1331 (federal question); 5 USC 701-706 (Administrative Procedures Act); 28 USC 2201-2202 (Declaratory Judgment Act); 28 USC 1391 (venue); 16 USC 661 et seq. (Fish and Wildlife Coordination Act); 16 USC 470 (National Historic Preservation Act); 16 USC 1531 et seq. (Endangered and Threatened Species Preservation Act of 1973). The amount in controversy, with respect to the plaintiff, exclusive of interest and costs, exceeds ten thousand dollars.

3. PARTY PLAINTIFF

Plaintiff, St. Tammany Parish, is located north and east of New Orleans and includes a substantial portion of Lake Pontchartrain. The Barrier Plan will affect St. Tammany Parish and part of the Barrie Plan is physically located within St. Tammany Parish, particularly the control structure and navigation locks at the Rigolets Pass between Lake Pontchartrain and Lake Borgne. St. Tammany Parish includes many persons that actually use, hunt, canoe, fish, crab, photograph, boat and recreate in Lake Pontchartrain and the adjacent areas include within the Barrier Plan. Also included within St. Tammany Parish are: (a) professional fishermen who depend upon the fish and shellfish harvested from the area; (b) the shipbuiling industry which depends upon navigation in Lake Pontchartrain, the Rigolets Pass and Lake Borgne; and, (c) seafood restaurants that depend upon Lake Pontchartr and the immediate vicinity for the harvesting of seafood and shellfis for retail sale.

4.

Plaintiff, St. Tammany Parish, will sustain irreparable injur if construction of the Lake Pontchartrain and Vicinity Hurricane Protection Project (Barrier Plan) is commenced or completed. The harm and injury which will result to the Parish and its citizens as a result of this project include: (1) loss and destruction of natural and scenic resources utilized and enjoyed by residents of St. Tammany Parish; (2) loss and destruction of fisheries and wildlife resources utilized and enjoyed by the citizens of St. Tammany Parish; (3) denia of plaintiff's right to have a full and good faith disclosure of the impact of the project set forth in an environmental impact statement as required by the National Environmental Policy Act and other federa and state statutes; (4) loss of tax revenues generated by the shipbuilding industry, the fish and seafood industry, the recreational retail-sales industry and the boating industry; (5) monetary loss to

the Parish of St. Tammany by virtue of local contributions required by the Flood Control Act of 1965 (P.L. 89-298) and the Water Development Act of 1974 (P.L. 93-251), the Flood Control Act approved June 22, 1936, (P.L. 74-761) and (33 USC 701c).

5. PARTIES-DEFENDANT

Defendant, Clifford L. Alexander, is Secretary of the United States Army and defendant, Colonel Early Rush, is the District Engineer of the New Orleans District of the United States Army Corps of Engineers. Defendants, Alexander and Rush, are the officials of the United States Government responsible for the planning, construction and completion of the Barrier Plan, in accordance with all applicable laws, rules and regulations.

6. DESCRIPTION OF ACTION

The project is authorized by P.L. 89-298, approved by Congress October 27, 1965, and will cost $327 million dollars. The project provides for construction of a hurricane barrier and control structure and navigation locks at the Rigolets Pass to Lake Pontchartrain; a hurricane barrier and control structure and navigation canal at the Chef Menteur Pass to Lake Pontchartrain; a new levee along the Citrus and New Orleans East Lakeshores; the improvement and enlargement of existing protective works on the south shore of the Lake along the Gulf Inter-Coastal Waterway and the Inner Harbor Navigational Canal; a dual purpose lock and control structure at Seabrook; and necessary modifications to roads, pipelines, pumping stations, and drainage facilities. Following the completion of the Barrier Plan and the control structures and the navigation locks, the flow regime between Lake Pontchartrain and Lake Borgne through the Rigolets Pass will be greatly reduced and this will affect the navigation, the salinity levels, the migration of fish and shellfish and the entire marsh and wetland areas around the Barrier Plan. The Chalmette area plan provides for the construction of a new levee along the south shore of

Mississippi River-Gulf outlet from the Inner Harbor Navigational Canal to the vicinity of Verret, and thence to the Mississippi River. Also provided for are control structures at Bayou Bienvenue and Dupre and a drainage structure at Whitehall Canal. The project also provides for construction of a new levee along the Lakeshore and St. Charles Parish, currently in deferred status.

The plaintiff seeks declaratory and injunctive relief on the following causes of action:

7.

Defendants have failed to comply with the requirements of the National Environmental Policy Act by failing to adequately discuss the effects of the proposed project on marsh and wetland areas surrounding Lake Pontchartrain and their inhabitants.

8.

Defendants have failed to comply with the requirements of NEPA by failing to discuss all reasonable alternatives to the proposed project, and the environmental consequences thereof.

9.

Defendants have failed to comply with the requirements of NEPA by failing to adequately discuss and explore secondary effects of the project, such as population growth and urban expansion upon marsh and wetland areas, especially problems of subsidence or sinking of land.

10.

Defendants have failed to comply with the requirements of NEPA by failing to adequately discuss the environmental impact of new urban and sub-urban growth which will take place on shorelands allegedly to be protected by the Barrier Plan.

11.

Defendants have failed to comply with the requirements of NEPA by failing to attempt to reflect environmental costs in the benefits to cost determination.

12.

Defendants have failed to comply with the requirements of NEPA and the National Historic Preservation Act by failing to consider the direct and indirect effects of the project on Fort Pike, which appears on the National Register of Historic Properties, and is subject to 16 USC 470.

13.

Defendants have failed to comply with the requirements of the Endangered and Threatened Species Preservation Act of 1973 by failing to adequately assess the impact of the project on protected species in the area; by failing to affirmatively act to protect endangered species in the area; and by failing to consider the effect upon endangered species in the area; and by failing to consider the effe upon endangered and threatened species of subsequent developments made possible by the construction of the Barrier Plan.

14.

Defendants have failed to comply with the requirements of the National Environmental Policy Act and the Fish and Wildlife Coordination Act by failing to adequately assess fish and wildlife losses occasioned by the project, to make adequate provision for the mitigation of these losses, to attempt to quantify and consider these losses in the decision to proceed with the project, and by failing to comply with the requirements of the Natural and Scenic Rivers Act, La.R.S. 56:1841-1849 (1975).

15.

Defendants, in light of the above-enumerated failures, taken as a whole, have based the decision to proceed with the project on an assessment of the balance of costs and benefits which is so defective as to render the decision arbitrary and capricious in violation of Section 101 of NEPA and Section 10 of the Administrative Procedure Act, 5 USC 701 et seq.

16.

Defendants have failed to comply with the requirements of

33 USC 701c in that St. Tammany Parish has refused to: (1) provide any financial assurance or contribution; (2) provide without cost to the United States all lands, easements and rights-of-way necessary for the construction of the project; (3) hold and save the United States free from damages due to the construction works; or (4) maintain and operate all the works after completion.

17.

Defendants have failed to comply with the requirements of 33 USC 701c by proceeding with the Barrier Plan without assurance by the political subdivisions or other responsible local agencies that they will (1) provide any financial assurance or contribution; (2) provide without cost to the United States all lands, easements and rights-of-way necessary for the construction of the project; (3) hold and save the United States free from damages due to the construction works; or (4) maintain and operate all the works after completion.

18.

The defendants have failed to comply with the requirements of NEPA by failing to adequately describe and discuss the completed Rigolets portion of the Barrier Plan. As of the date of the filing of this suit, the completed Rigolets portion of the Barrier Plan has neither been described nor discussed.

19.

The defendants have failed to comply with the requirements of NEPA by failing to adequately describe and discuss the effect of the Standard Project Hurricane (following completion of the Barrier Plan) on St. Tammany Parish and its inhabitants, many of whom live on Lake Pontchartrain.

20.

Plaintiff alleges that unless a preliminary and permanent injunction is issued against the project, plaintiff will sustain immediate and irreparable injury and harm.

WHEREFORE, plaintiff prays:

1. That the court issue a declaratory judgment that the defendants have failed to comply with the requirements of NEPA, with the requirements of the Fish and Wildlife Coordination Act, the Endangered and Threatened Species Preservation Act of 1973, and the National Historic Preservation Act;

2. That the court enjoin defendants from proceeding with the project until such time as all relevant federal and state statutes have been complied with;

3. That the court award such other relief as it may deem necessary and appropriate.

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Slidell, Louisiana 70459
643-8335

By _____
Martin A. Smith, Jr.

By _____
Lloyd R. Walters
Trial Attorney