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DEPARTMENT OF THE ARMY

NEW ORLEANS DISTRICT, CORPS OF ENGINEERS

P.O. BOX 60267

NEW ORLEANS, LOUISIANA 70160-0267

REPLY TO
ATTENTION OF:

November 7, 1985

LMNRE-AL

Mr. William F. Baity, Esquire
Assistant United States Attorney
500 Camp Street
New Orleans, Louisiana 70130

Dear Mr. Baity:-

Enclosed is a copy of the citation and petition for the matter entitled Wilson P. Abraham, Robert F. Azor and John F. Schwegmann vs. Board of Commissioners of the Orleans Levee District and the U. S. Army Corps of Engineers.

Kindly advise this office of the name of the Assistant United States Attorney who will represent the Corps in this matter.

Also, as this matter is filed in state court, please have this matter removed to Federal District Court and set a date for a hearing on the preliminary injunction.

If you have any questions, our staff attorney, Mr. Randy Florent, at 862-1987, is coordinating the agency support in this matter. Thank you in advance for your prompt attention to this matter.

Sincerely,

Joseph A. Towers
District Counsel

Enclosure

Copies Furnished: with enclosure

Cdr, DAEN-CCK

LMVOC

DEPARTMENT OF THE ARMY
ENGINEER REGIMENT, CORPS OF ENGINEERS

FORM 53 (REV. 1/85)

ATTORNEY'S NAME RICHARD J. TOMENY, JR.
AND ADDRESS 3500 North Mullen Street
Metairie, Louisiana

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 85-18341

DIVISION J

DOCKET 5

WILSON P. ABRAHAM, ROBERT F. AZAR
AND JOHN F. SCHWEGMANN
VS

THE BOARD OF LEVEE COMMISSIONERS OF THE
ORLEANS LEVEE DISTRICT, ET AL
CITATION

TO: THE U S ARMY CORPS OF ENGINEERS
Through the District Engineer
Col. Eugene Witherspoon, Army Corps of Engineers
Foot of Prytania Street, New Orleans, Louisiana

YOU HAVE BEEN SUED. And you are further ordered to show cause on the 22nd day of November, 1985 at 9:00 O'Clock A.M. why a preliminary injunction should not issue herein. You must either comply with the demand contained in the INJUNCTION petition, a certified copy of which accompanies this citation, or file an answer or other legal pleading in the office of Clerk of this Court, Room 402, Civil Courts Building, 421 Loyola Avenue, New Orleans, Louisiana, within fifteen (15) days after the service hereof under penalty of default.

ADDITIONAL INFORMATION
Legal assistance is advisable and you should contact a lawyer immediately. If you want a lawyer and can't find one, you may call the New Orleans Lawyer Referral Service at 561-8828. The New Orleans Referral Service operates in conjunction with the New Orleans Bar Association. If you qualify, you may be entitled to free legal assistance through the New Orleans Legal Assistance Corporation; you may call 529-1000 for more information. **COURT PERSONNEL ARE NOT PERMITTED TO GIVE LEGAL ADVICE.**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of The Civil District Court for the Parish of Orleans, State of Louisiana October 30th, 19 85

Clerk's Office, Room 402, Civil Courts Building
421 Loyola Avenue, New Orleans, Louisiana

DAN FOLEY, Clerk of
The Civil District Court for the
Parish of Orleans, State of Louisiana

by D. D. Rourke
Deputy Clerk.

SHERIFF'S RETURN:
(for use of process servers only)

RETURN FOR PERSONAL SERVICE

On the _____ day of _____ 19____ served a copy of the within
On _____
person _____
Return same day

Deputy Sheriff of Orleans Parish

DOMICILIARY SERVICE

On this _____ day of _____ 19____ served a copy of the wit
on _____
by leaving same at _____ the dwellingho
or usual place of abode _____
in the hands of _____
a person of suitable age and discretion, residing therein as a mem
of _____ domiciliary establishment, whose na
and other facts connected, with this service I learned by interrogat
said
the said _____
being absent from _____

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. *85-18341* DIVISION *9* DOCKET *2*

WILSON P. ABRAHAM, ROBERT F. AZAR
and JOHN F. SCHWEGMAN

VERSUS

THE BOARD OF LEVEE COMMISSIONERS OF THE
ORLEANS LEVEE DISTRICT and
THE U.S. ARMY CORP OF ENGINEERS

FILED: *OCT 25, 1985*

DEPUTY CLERK

PETITION FOR PRELIMINARY
AND PERMANENT INJUNCTION

The petition of Wilson P. Abraham, Robert F. Azar and John F. Schwegman, all persons of the full age of majority and domiciled in the Parish of Orleans respectfully shows:

I.

The plaintiffs all own property which abuts the toe of the levee along that section of the levee shown in the plans prepared by the U.S. Army Engineer District, New Orleans, Corps of Engineers dated January 2, 1985 entitled Lake Pontchartrain Louisiana and Vicinity, High Level Plan, New Orleans Lakefront Levee, London Avenue Canal to West End Boulevard, (the Plans) between Station 164+15.00 and Station 192+04.86.

II.

The Board of Levee Commissioners of the Orleans Levee District and the U.S. Army Corps of Engineers have prepared the Plans for the alleged purpose of improving flood protection for the City of New Orleans.

III.

Plaintiffs have voiced several complaints to the defendants during the course of preparing the Plans, and have been repeatedly assured that no action would be taken in connection with the construction contemplated by the Plans without prior notice to plaintiffs.

IV.

Upon information and belief, plaintiffs allege that on or about September 30, 1985, without any notice to plaintiffs as requested by plaintiffs and agreed to by defendants, the defendants awarded a contract and authorized the contractor to proceed with said construction.

V.

The Plans call for construction which is unlawful, and the plaintiffs will be permanently and irreparably injured by defendants' activities. The plaintiffs are therefore entitled to have said construction preliminarily and permanently enjoined for the following reasons.

VI.

The crown of the existing levee which abuts plaintiffs' properties is currently at an elevation of sixteen (16') feet by reference to the National Geodetic Vertical Datum (NGVD). (All further references to elevations herein are expressed in feet and refer to NGVD).

VII.

The Plans call for the levee crown elevation to be raised to nineteen (19') feet immediately behind plaintiffs' properties.

VIII.

Such construction will cause defendants to encroach on plaintiffs' properties both during and after construction all without legal authority to do so.

IX.

The elevation of the levee to nineteen (19') feet will create additional and unreasonable hazards for plaintiffs' properties in that the increase in elevation will:

- a) increase the drainage burden,
- b) increase security risks, and
- c) destroy plaintiffs' privacy.

X.

All of the above nuisances on plaintiffs' properties will substantially and adversely affect the value of plaintiffs' properties, thereby depriving plaintiffs' of their property without just compensation. Such a taking or condemnation of plaintiffs' property without just compensation deprives plaintiffs of due process and equal protection of the law.

XI.

The elevation of the levee by the defendants is unnecessary, unreasonable, arbitrary, and capricious for the above and following reasons:

XII.

The plaintiffs' properties lie between the London Avenue Outfall Canal and Bayou St. John.

XIII.

Neither of these waterways currently has, nor do the Plans call for the construction of, any flood control structure.

XIV.

The elevation of the levee to nineteen (19') feet will in no way improve the flood protection of the City because any flood waters would inundate the City by merely passing around the levee and into the City through the London Avenue Outfall Canal and Bayou St. John.

XV.

Without flood control structures at these waterways, the City will not be protected any better by a nineteen (19') foot levee than by a sixteen (16') foot levee.

XVI.

Upon information and belief the plaintiffs allege that the Plans have not been approved by the State Department of Public Works as required by law.

XVII.

The Plans call for the construction of a levee which is in violation of Section XII of the Building Restrictions for Lake Terrace Subdivision in that the increased elevation of the levee adversely affects the adjacent property owners all as is more fully described above.

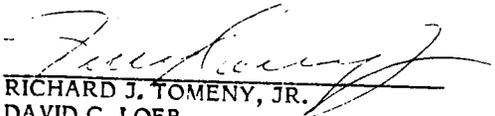
XVIII.

Because the defendants have awarded a contract and authorized work to commence all pursuant to the Plans, and because the plaintiffs will suffer irreparable injury, loss and damage as a result of the contemplated elevation of the levee as described herein, it is necessary that a preliminary injunction issue, without bond, enjoining, preventing and restraining defendants from raising the levee elevation above its current elevation along that section of the levee from Station 164+15.00 to Section 192+04.86.

WHEREFORE, the plaintiffs, Wilson P. Abraham, Robert F. Azar and John F. Schwegman, respectfully pray that the defendants, the Board of Levee Commissioners of the Orleans Levee District and the U. S. Army Corps of Engineers be duly served and cited to appear and answer this petition; and that the defendants be ordered to appear on a date and at a time to be set by this

Court to show cause why a preliminary injunction should not issue herein, without bond, enjoining, restraining and preventing the defendants, their directors, officers, employees, agents, partners, and/or any cooperating agency from elevating the levee beyond its existing elevation along that portion of the levee from Station 164+15.00 to Station 192+04.86 all as is more fully shown on the Plans, and that in due course a permanent injunction issue herein to the same effect.

Respectfully Submitted,


RICHARD J. TOMENY, JR.
DAVID C. LOEB
GAUTHIER, MURPHY, SHERMAN,
MC CABE & CHEHARDY
3500 NORTH HULLEN STREET
METAIRIE, LOUISIANA 70002
(504) 456-8600

PLEASE SERVE:

The Board of Levee Commissioners
of the Orleans Levee District
through its President,
Emile W. Schneider
Suite 202, Administration Building
New Orleans Lakefront Airport
New Orleans, Louisiana 70126

The U.S. Army Corps of Engineers
through the U.S. Attorney
210 Hale Boggs Federal Building
500 Camp Street
New Orleans, Louisiana 70130

and through the District Engineer
Col. Eugene Witherspoon
Army Corp of Engineers
Foot of Prytania Street
New Orleans, Louisiana

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. DIVISION DOCKET

WILSON P. ABRAHAM, ROBERT F. AZAR
and JOHN F. SCHWEGMAN

VERSUS

THE BOARD OF LEVEE COMMISSIONERS OF THE
ORLEANS LEVEE DISTRICT and
THE U.S. ARMY CORP OF ENGINEERS

FILED: _____ DEPUTY CLERK

ORDER

Considering the foregoing petition:

IT IS HEREBY ORDERED that the defendants herein, the Board of Commissioners of the Orleans Levee District and The U.S. Army Corp of Engineers, show cause on the 22 day of Nov, 1985 why the preliminary injunction prayed for in the above captioned proceeding should not issue without bond.

New Orleans, Louisiana, this 30 day of October, 1985.

(Sgd.) Richard J. Garvey

JUDGE

PLEASE SERVE:

The Board of Levee Commissioners
of the Orleans Levee District
through its President,
Emile W. Schneider
Suite 202, Administration Building
New Orleans Lakefront Airport
New Orleans, Louisiana 70126

The U.S. Army Corps of Engineers
through the U.S. Attorney
210 Hale Boggs Federal Building
500 Camp Street
New Orleans, Louisiana 70130

and through the District Engineer
Col. Eugene Witherspoon
Army Corp of Engineers
Foot of Prytania Street
New Orleans, Louisiana

A TRUE COPY
D. J. Rouche
DEPUTY CLERK, CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LA