



Louisiana Sea Grant Legal Program

Louisiana Coastal Law Email Update Service Issue #27, February 2009

Cases

Judge orders oil company to pay for wildlife refuge pollution

Federal magistrate Judge Daniel Knowles put Texas Petroleum Investment Co. on probation for two years and ordered the company to pay \$525,000 for a brine spill that polluted the Delta National Wildlife Refuge. In October, the company pleaded guilty to a misdemeanor violation of the Clean Water Act. U.S. Attorney Jim Letten said that the brine spill occurred in March 2005, when a storage tank overflowed due to a salt-water injection well malfunction.

Source: AP, *Judge: Oil co. must pay \$525K for polluting refuge*, The Advocate (Jan. 22, 2009) (on file with the LSGLP).

News

Federal government begins oyster insurance

The U.S. Agriculture Department's Federal Crop Insurance Corporation approved a pilot program to offer group insurance to Louisiana Oyster growers. Under the program, oyster producers can buy a guarantee that the oyster harvest will be at least 90% of the expected harvest. The program comes in the wake of hurricanes Gustav and Ike, which wiped out as much as 30% of state oyster crops.

Source: Nikki Buskey, *Insurance for oysters is state's first*, The Daily Comet (Dec. 1, 2008) (on file with the LSGLP).

Oyster farming hurt by hurricanes

Although tens of millions of dollars in recovery aid has been dedicated to Louisiana fisheries, oyster farmers remain in desperate need of help. The Louisiana coast produces 40% of the oysters consumed in the United States each year. Although the damage is not yet certain, Hurricane Gustav, which resulted in the closing of all state harvest areas by the Department of Health and Hospitals as a precautionary measure against illness, may have wreaked far more havoc on Louisiana oyster beds than Hurricanes Katrina and Rita. Labor shortages also plague the industry.

Source: Allen M. Hohnson, Jr., *Hurricanes hamper oyster farming*, The Advocate (Dec. 11, 2008) (on file with the LSGLP).

Cap on oyster boats in Louisiana fails to keep Texans from the waters

A new cap on the number boats allowed to fish Louisiana's public oyster reefs, meant to reduce out of state competition and to protect the oyster resources, is having unintended consequences. Boats that already have licenses from anytime between 2004 and May 31, 2007, are grandfathered in under the program. If a retiring owner sells his permitting boat, the permit is lost and must be reissued to the new owner. This restriction does not apply to those who harvest oysters on private leases. Already, twenty requests for appeals to get permits have been filed with the Department of Wildlife and Fisheries. The law does not affect many of the out-of-state boats it originally targeted because the owners obtained a license in the past, but now Louisiana oyster fishers are unable to get permits.

Source: Chris Kirkham, *New cap on oyster boats won't keep Texans out of Louisiana waters*, The Times-Picayune (Jan. 5, 2009) (on file with the LSGLP).

Texas tries using oyster shells to protect wetlands

A Louisiana oyster biologist, Richard Angelico, came up with the idea of filling heavy-duty nylon sacks with oyster shells that trap sediment and slow wave energy before they come to shore. Now the invention is being used in Matagorda Bay, Texas, where these oyster baskets are successfully protecting and building shoreline with each buffered wave that brings silt to the marsh. Garret Graves, state head of Coastal Restoration and Protection, commented that this method does generate oysters and protect the coast but fails to "serve a significant effect in reducing storm surge," and the baskets may become projectiles during hurricanes. However, Texas officials reported no serious effects to the oyster baskets in the wake of Hurricanes Gustav and Ike.

Source: WDSU.com, *Louisiana oyster shells could prevent coastal erosion; Texas uses La.-invented method*, WDSU New Orleans (Nov. 19, 2008) (on file with the LSGLP).

Best methods for coastal restoration a matter of debate

More research is needed to determine the best methods for coastal restoration, said speakers at the Louisiana Coastal Area Science board. Speakers from the region focused on issues surrounding freshwater diversions. Shoaling—the depositing of sediment in a navigational waterbody that makes it more shallow—is one of many potential problems for planned diversions such as the West Bay Diversion in Plaquemines Parish. Additionally, the lack of water quality monitoring stations to record flow, chemical content, and other information, is another problem that makes the science surrounding river diversions unclear.

Source: Amy Wold, *Coastal work methods debated*, The Advocate (Dec. 4, 2008) (on file with the LSGLP).

Louisiana officials outraged over Corps delays in hurricane protection plans

Nearly three dozen legislators expressed their frustration at the Army Corps of Engineer's delays in producing a "Category 5" protection plan during a joint meeting held by Bobby Jindal's coastal czar, Garrett Graves. If the Corps' recommendations do not make it to Congress by 2010, they will face additional political obstacles because they will not qualify for the "fast track" approval that was created legislatively in 2007. The Corps' "Louisiana Coastal Protection and Restoration Study" is still not complete, more than a year after the original deadline. The plan is now scheduled for completion in late June, after which there may be additional delays as it awaits approval by senior Army officials. Part of the delay is due to the Corps' process, which did not involve identifying and endorsing specific projects, but rather involved the lengthy development of

a complex “risk-informed decision matrix” which produced five groups of alternative plans for regions along the coast.

Source: Mark Schlefstein, *Corps delays in hurricane protection plans outrage Louisiana officials*, The Times-Picayune (Jan. 13, 2009) (on file with the LSGLP).

Stimulus money could be dedicated to coastal restoration efforts

The National Audubon Society has issued a public statement encouraging stimulus money be allocated for coastal restoration projects in Louisiana. State officials at the Governor’s Office of Coastal Activities are formulating a list of projects to pitch in a bid for some of the stimulus funds; however, the list will not be complete until the selection criteria for “shovel-ready” projects are formulated.

Source: Nikki Buskey, *Stimulus could mean local restoration dollars*, The Courier, Houmatoday.com (Jan. 18, 2009) (on file with the LSGLP).

Coastal restoration and flood protection create jobs, business in Louisiana

Almost \$6 billion in public contracts will take effect this year, in an unprecedented push to increase flood protection and battle coastal erosion in Louisiana. The Army Corps of Engineer’s budget for the state matches many past annual budgets for the whole nation. Dimas Salvia, an executive at a Brazilian firm called Odebrecht Construction, commented that the firm expects this spending to generate “a substantial amount of jobs and opportunity.”

Source: Jen DeGregorio, *Coastal restoration means big business for Louisiana*, The Times-Picayune (Feb. 1, 2009) (on file with the LSGLP).

River diversions are the plan for the future, Governor’s Commission says

The Governor’s Advisory Commission on Coastal Protection, Restoration and Conservation recommended that the state with federal partners should develop a “system-scale” plan to increase sediment in an effort to build wetlands, despite the current battle with the corps over who should be responsible for costs of increased dredging. The recommendation will be sent to the state’s congressional delegation, corps officials and the Mississippi River Commission.

Source: Mark Schleifstein, *Major river projects urged*, The Times-Picayune (Feb. 6, 2009) (on file with the LSGLP).

Canal barrier for Westwego OK’d by Corps

The Army Corps of Engineers approved a plan to build a floodgate to block storm surge from entering the Company Canal in Westwego, which currently has a temporary gate. The gate leaked during Hurricane Gustav. The permanent floodgate will be accompanied by earthen levees, a small pumping station, and raised floodwalls. The plan is intended to protect the area from the 100-year flood.

Source: Paul Rioux, *Corps OKs better canal barrier*, The Times-Picayune (Jan. 27, 2009) (on file with the LSGLP).

Corps begins storm barrier project in Industrial Canal

In early December, workers began construction of a concrete wall with two navigation gates that will stretch between levees along the Mississippi River-Gulf Outlet (MRGO) and the Gulf Intracoastal Waterway. Designed to protect against a storm that has a 1% chance of occurring in any year, the first phase of the project will create a 20-foot-high barrier due to be complete next August. The entire project will be complete by June 2011. The \$695 million project will block water from Lake Borgne from moving into the Industrial Canal. Tim Doody, president of the Southeast Louisiana Flood Protection Authority-East, said this project is not the end and “what we really want to see is a 500-year level of protection.”

Source: Mark Schleifstein, *Corps starts work on massive storm barrier in Industrial Canal*, The Times-Picayune (Dec. 5, 2008) (on file with the LSGLP).

Corps will survey 17th Street Canal in Metairie

Fifty-seven landowners in Metairie received official notices that private property will be surveyed for levee encroachments. Surveyors will mark levee rights of way and will identify objects—including trees, shrubs, and fences—that are required to be removed from the area. Some regulators said after Hurricanes Katrina and Rita that failure to maintain levee rights of way harmed the levees. According to many levee engineers, trees and other objects near the levee may become uprooted during storms and compromise the integrity of the levee. Most encroachments are located between Rosebud Street and the New Orleans Sewage and Water Board’s Pump Station No. 6.

Source: Sheila Grissett, *Corps of Engineers to survey Metairie side of 17th Street Canal*, The Times-Picayune (Jan. 5, 2009) (on file with the LSGLP).

Locals argue oil companies should pay to repair damage done to the coast

Tulane environmental law professor Oliver Houck and Houma Indian tribe chief Brenda Dardar are among the vocal critics who argue that the oil-and-gas industry should pick up the tab for the damage done to coastal areas from 10,000 miles of canals cut through the marshes. Analogizing the situation in Louisiana’s coasts to Appalachian strip-mining, Houck and others assert that the oil companies should have to be responsible for coastal loss they caused in the same way that the coal industry had to pay for the damages resulting from strip mining. Industry spokesmen disagree, pointing to the billions of dollars in taxes paid by oil-and-gas companies. Bobby Jindal’s coastal czar Garret Graves essentially agreed with this position, stating that the industry basically *is* paying directly, in the form of taxes and money paid for the right to drill. Since Hurricane Katrina, hundreds of millions of dollars have been spent on coastal restoration studies and projects, but the state estimates that the work has restored little more than 20 square miles of wetlands.

Source: Dennis Woltering, *Big Oil hurt coast, so why doesn’t it pay for repairs*, The Houma Courier (Dec. 5, 2008) (on file with the LSGLP).

State officials plan another study for Morganza system

The Morganza-to-the-Gulf hurricane-protection system will be studied by a state-appointed group to be sure that the system is compatible with coastal restoration efforts. The system, intended to protect Terrebonne and parts of Lafourche, has been in the works for over a decade now, but has come up against criticism that it will harm the wetlands and encourage development in sensitive areas. Nevertheless, Terrebonne officials voted in late September— just a week after Hurricane

Ike flooded thousands of homes in the area— to begin designing the levees that they say will be built initially without using federal funds. The Morganza system is meant to protect the area for up to a Category 3 hurricane.

Source: Nikki Buskey, *Up next: Another levee study*, The Daily Comet (Dec. 10, 2008) (on file with the LSGLP).

According to new computer model, MRGO exacerbated Katrina flooding

Scientist Ivor Van Heerden says that new computer modeling shows that flooding would have been reduced by 80 percent if MRGO had not existed when Hurricane Katrina hit the New Orleans region. Van Heerden, who has been an outspoken critic of the Corps of Engineers, also states that the model proves that one mile of healthy wetlands can reduce storm surge by one foot. The modeling was done by the LSU Hurricane Center in conjunction with a modeling company from the Netherlands and engineers from the University of California at Berkeley. Van Heerden also disclosed to members of the Southeast Louisiana Flood Protection Authority-East that he receives funding from the legal team suing the corps over Katrina flooding.

Source: Sheila Grissett, *New computer storm model condemns role MRGO played in Katrina flooding*, The Times-Picayune (Dec. 18, 2008) (on file with the LSGLP).

Two closures of MRGO scheduled to be constructed in summer of 2009

The Mississippi River Gulf Outlet (MRGO) will be closed at the north end as a part of a larger surge protection system by the end of the summer, federal officials say. The second closure will be further south at Bayou La Loutre and will consist of a rock structure across the channel that will serve as a mainly symbolic, environmentally beneficial plug to decommission MRGO as a navigation channel. Officials predict that this plug will begin to restore the hydrology of the area and will be a step towards restoration of the area's marshes.

Source: Amy Wold, *MRGO closures on tap*, The Advocate (Dec. 22, 2008) (on file with the LSGLP).

Communities dispute FEMA maps

The Louisiana Recovery Authority, along with officials from Terrebonne and Lafourche as well as other state agencies, are disputing flood maps released by FEMA that could raise flood insurance costs and impose strict building standards. Earlier this month, state officials wrote a letter to FEMA asking the agency to halt the release of the maps, pointing out possible errors and technical concerns. A FEMA spokesman responded that the maps had been developed in conjunction with the state of Louisiana and that when they are presented in a public meeting, there will be a 90-day period for communities to challenge their scientific accuracy. Once the time has passed, the communities will have 18 months to either adopt the maps or reject them and be ineligible for the National Flood Insurance Program (NFIP). The NFIP is the only insurance available for locals to buy flood insurance policies. State and parish officials plan to join forces to appeal the maps.

Source: Nikki Buskey, *Locals fight FEMA maps*, The Daily Comet (Jan. 5, 2009) (on file with the LSGLP).

FEMA releases new flood maps for Orleans area residents

After years of waiting, people in the Orleans region finally had access to FEMA flood maps starting on February 4th. The maps reflect the state of flood protection as of June 2007 and are available at http://www.nola.com/news/index.ssf/2009/02/new_fema_maps_detail_local_flo.html .

Source: Chris Kirkham, Sheila Grissett and Mark Schleifstein, *Long-awaited FEMA maps give residents detailed snapshot of flood risks*, The Times-Picayune (Feb. 5, 2009) (on file with the LSGLP).

Gulf of Mexico dead zone growing, report says

A new report by the National Research Council calls on the Environmental Protection Agency and the U.S. Department of Agriculture to take quick action in finding solutions to reduce the annual “dead zone” occurrence in the Gulf of Mexico. The “dead zone” is a lifeless, oxygen-depleted, New Jersey-sized area of the Gulf and is largely due to agricultural practices in the “Heartland.” Excess nutrients from fertilizer run-off and wastewater drains encourage algae blooms in the Gulf that later die and deprive the water of oxygen. The report states that the current piecemeal efforts are not enough and suggests that federal agencies form conservation projects to gauge which methods are most effective. The report also suggests that federal agencies work with state authorities to set limits on nutrient discharge in waterways.

Source: Chris Kirkham, *Report sounds alarm on Gulf of Mexico dead zone*, The Times-Picayune (Dec. 22, 2008) (on file with the LSGLP).

Officials undecided on how to spend federal fisheries relief

An estimated \$27 million will come from the federal government for relief to the seafood industry throughout the state in the wake of hurricanes Gustav and Ike. Proposals for how to use the money abound, including public fishing piers, inland safe harbors for storms, a fisherman’s market along the Gulf Intracoastal Waterway, a public cold-storage facility, and a Port of Terrebonne plan. Each idea is viewed by some as not being the best way to use the money. Parish and state officials are in talks with the local seafood industry to decide which ideas will move forward.

Source: Naomi King, *Officials seek input on federal fisheries aid*, The Daily Comet (Jan. 8, 2009) (on file with the LSGLP).

Panel approves large-scale fish farming in Gulf but many obstacles remain

Gulf of Mexico Fisheries Management Council, a 17 member regional body that sets Gulf fishing regulations, approved large-scale fish farming in the Gulf of Mexico. However, the plan still needs approval from the National Oceanic and Atmospheric Administration and the U.S. Department of Commerce, and also faces other administrative hurdles. The approved fish-farming plan has drawn opposition from more than 100 groups that fear environmental damage or damage to the local fishing industry. One of the major criticisms is that these regulations should be developed by Congress rather than by the regional authority. The current plan would allow for 10-year permits to create offshore fish farms, with an expected five to twenty of such operations created within the next ten years. The plan allows farmers to raise only native Gulf fish and does not allow shrimp farming. Currently there are only a handful of aquaculture operations offshore in the United States, off of the coasts of Hawaii and New Hampshire.

Source: Chris Kirkham, *Gulf of Mexico fish farms still face series of hurdles*, The Times-Picayune (Jan. 30, 2009) (on file with the LSGLP).