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17th Street Canal homeowners sue to stop floodwall project

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By **Mark Schleifstein, The Times-Picayune**

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Homeowners along the New Orleans side of the 17th Street Canal have filed a civil suit in an attempt to stop the **Army Corps of Engineers** from beginning construction on a project that will strengthen floodwalls along the canal.

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'We all are in favor of hurricane protection,' said Randall Smith, an attorney representing the owners of seven homes along Bellaire Drive. And 'we should all also be in favor of maintaining the constitutional guarantee of just compensation for the taking of private property.'

In their lawsuit, the homeowners say the project, which involves mixing soil and cement deep underground along the levee line, will be disruptive and could damage their homes and yards. They're also concerned about noise from equipment that could approach 90 decibels, about as loud as a motorcycle.

The defendants in the suit are the **Southeast Louisiana Flood Control Authority-East** and the **Orleans Levee District**, which must grant access to the levee before the corps can begin its work.

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The request for temporary and permanent injunctions is the latest step by Bellaire Drive homeowners who are angry that they have not been compensated for what they believe is an illegal expansion of the footprint for the combined floodwall and levee. The expansion was required by the corps to meet new construction standards adopted after the floodwall failed during **Hurricane Katrina** in August 2005.

In 2008, the corps ordered the removal of all fences, trees and structures within 6 feet of the "toe" of the levee. Homeowners contend that extended the levee footprint by as much as 31 feet into their backyards, which in some cases included the foundations of garages and mother-in-law apartments.

Civil District Judge Kern Reese ruled in the homeowners' favor in a separate lawsuit filed in July 2008 demanding compensation for the removal of trees and fences.

That decision was overturned in 2009 by the state 4th Circuit Court of Appeal, which found that state law allows the levee agencies to use the disputed property as it sees fit. The appeals court also ruled that only people who owned the land along the canal at the time the original levee was built -- possibly more than 100 years ago -- could claim compensation for the

use of the property by the levee agencies.

However, the 4th Circuit returned the case to Reese with instructions to issue an order in favor of the levee districts, and Reese has yet to issue that order.

Tommy Anzelmo, an attorney for the defendants, said he plans to file a motion with Reese to consolidate the new lawsuit with the one that Reese is now reconsidering. Reese is expected to hold a hearing on the homeowners' request for a preliminary injunction on Friday, he said.

Meanwhile, in December, the corps awarded a \$10.2 million contract to New Orleans-based Bailey-CKY JV to strengthen the 17th Street Canal floodwalls, which were rebuilt after Katrina. The new work will take five months and includes using huge augurs to mix cement with soil up to 80 feet below the surface to strengthen the floodwalls.

There are no plans to delay that work, a corps spokeswoman said last week. The corps is not a party to either of the lawsuits filed by the homeowners. If it were, the lawsuit would likely have been moved to federal court, Anzelmo said.

When the floodwall strengthening is complete, the canal will be allowed to hold water up to 8 feet above sea level during rain. Concern about the walls' strength caused the corps to limit water in the canal to 6 feet. If it reaches that level, the New Orleans Sewerage & Water Board and the Jefferson Parish Drainage Department will be required to stop pumping water into the canal, which could cause flooding in some areas of the city and Metairie.

The canals originally were designed to contain 12 feet of water, including both rainfall and storm surge from Lake Pontchartrain. But during Katrina, a segment of floodwall on the canal's New Orleans side failed when water reached 11 feet. Research after the storm on the soil under the floodwalls and the wall design resulted in the lower "safe water" level, even when a stronger floodwall was built atop deeper steel sheet pilings.

Storm surge also was eliminated from the canal when temporary floodgates were built at the canal's northern end. Those will eventually be replaced with a permanent pumping station and gate structure.

"This helps ensure the walls don't fail, even under heavy rainfall," Levee Authority President Tim Doody said of the improvements. "We see this as a safety issue for the city and for Jefferson Parish."

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