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## Louisiana Agency to Sue Energy Companies for Wetland Damage

By John Schwartz – July 24<sup>th</sup>, 2013

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Louisiana officials will file a lawsuit on Wednesday against dozens of energy companies, hoping that the courts will force them to pay for decades of damage to fragile coastal wetlands that help buffer the effects of hurricanes on the region.

“This protective buffer took 6,000 years to form,” the state board that oversees flood-protection efforts for much of the New Orleans area argued in court filings, adding that “it has been brought to the brink of destruction over the course of a single human lifetime.”

The lawsuit, to be filed in civil district court in New Orleans by the board of the Southeast Louisiana Flood Protection Authority-East, argues that the energy companies, including BP and Exxon Mobil, should be held responsible for fixing damage caused by cutting a network of thousands of miles of oil and gas access and pipeline canals through the wetlands. The suit alleges that the network functioned “as a mercilessly efficient, continuously expanding system of ecological destruction,” killing vegetation, eroding soil and allowing salt water to intrude into freshwater areas.

“What remains of these coastal lands is so seriously diseased that if nothing is done, it will slip into the Gulf of Mexico by the end of this century, if not sooner,” the filing stated.

A spokeswoman for BP said that the company would have no comment. A spokesman for Exxon Mobil said the company had no comment at this time.

Gladstone N. Jones III, a lawyer for the flood protection authority board, said the plaintiffs were seeking damages equal to “many billions of dollars. Many, many billions of dollars.”

Mr. Jones acknowledges that the government, which has strong protection against lawsuits, might bear some responsibility for loss of wetlands. But, he noted, Washington had spent billions on repairs and strengthening hurricane defenses since the system built by the Army Corps of Engineers failed after Hurricane Katrina. By taking the oil and gas companies to court, he said, “we want them to come and pay their fair share.”

The role of the industry is well documented in scientific studies and official reports. Remediation efforts called for by the state’s Coastal Protection and Restoration Authority in a 2012 report note, “Dredging canals for oil and gas exploration and pipelines provided our nation with critical energy supplies, but these activities also took a toll on the landscape, weakening marshes and allowing salt water to spread higher into coastal basins.”

The suit argues that the environmental buffer serves as an essential protection against storms by softening the blow of any incoming hurricane before it gets to the line of levees and flood walls and gates and pumps maintained and operated by the board. Losing the “natural first line of defense against flooding” means that the levee system is “left bare and ill-suited to safeguard south Louisiana.”

The “unnatural threat” caused by exploration, the lawsuit states, “imperils the region’s ecology and its people’s way of life – in short, its very existence.”

John M. Barry, an author and a member of the flood protection authority board, noted that there were other causes of coastal wetlands loss, including decisions by the Corps of Engineers over the decades to design navigation and flood control systems for the Mississippi River that kept its waters from delivering the sediment that once nourished the wetlands. Still, he said, “We just want them to fix what they broke.”

The lawsuit relies on well-established legal theories of negligence and nuisance, as well as elements of law more particular to the Louisiana Civil Code, including “Servitude of Drain,” which relates to changing patterns of water flow and drainage across the Bayou State. Even though the industry has been producing oil and gas for 100 years, because the damage is continuing to occur, the board argues, the statute of limitations should not apply.

Walter Olson, a Cato Institute expert on litigation who often expresses skepticism about civil litigation, said that he could not comment extensively without seeing the filing, but he said, “It sounds like the sort of thing you couldn’t dismiss out of hand.” He said some environmental lawsuits, like one against power companies over the effects of climate change on sea-level rise and its effect on the tiny Alaskan town of Kivalina, incorporate creative legal arguments that may not stand up in court.

“It’s not Kivalina,” he said, if the plaintiffs can point to specific people or entities causing specific damage. He added that proving causation in court, however, “can be a big headache.”