

**ASSOCIATION OF LEVEE BOARDS OF LOUISIANA  
74<sup>th</sup> ANNUAL MEETING**

**LEGAL ADVISORY MEETING CLE**

**APPROPRIATION OF LEVEE SERVITUDES  
IN LOUISIANA**

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## A. Appropriation of Levee Servitudes in Louisiana:

Traditionally, under Louisiana Civil Code Article 665 and its prior versions dating to before the Louisiana Purchase, a servitude in favor of the public for purposes of constructing and maintaining levees is imposed upon all land along navigable streams. Article 665 provides as follows:

Art. 665. Legal public servitudes

Servitudes imposed for the public or common utility relate to the space which is to be left for the public use by the adjacent proprietors on the shores of navigable rivers and for the making and repairing of levees, roads, and other public or common works. Such servitudes also exist on property necessary for the building of levees and other water control structures on the alignment approved by the U.S. Army Corps of Engineers as provided by law, including the repairing of hurricane protection levees.

All that relates to this kind of servitude is determined by laws or particular regulations.<sup>1</sup>

Louisiana levee districts are authorized to adopt acts of appropriation through resolution to exercise this public servitude when the levee district board determines that land burdened by the servitude is necessary for levee or levee drainage purposes.<sup>2</sup> While Article I, §4 of the Louisiana Constitution guarantees that one cannot be deprived of his property except for public purpose and with just compensation paid to the owner or into the court for his benefit, such guarantee is not provided to owners of land burdened by a levee servitude under Article 665.<sup>3</sup> The reason the right to compensation is not extended to appropriated property is because the laws of the State of Louisiana have long provided, even prior to the Louisiana Purchase,<sup>4</sup> that a servitude is imposed

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<sup>1</sup> Acts 2006, Act 766 of the Louisiana Legislature added the language relating to alignments approved by the U.S. Army Corps of Engineers. This significance of this addition will be discussed further below.

<sup>2</sup> La. R.S. 38:301(C).

<sup>3</sup> *Dickson v. Board of Commissioners of Caddo Levee District*, 210 La. 122, 26 So. 2d 474 (La. 1946); La. Const. Article I, §4(E) and Article VI, §42(B). See also, *DeSambourg v. Board of Commissioners for the Grand Prairie Levee District*, 621 So. 2d 602 (La. 1993).

<sup>4</sup> See, *Dickson, supra*, for a comprehensive history of appropriations in Louisiana, specifically noting at p. 131: “From the earliest Colonial days, when the Louisiana Territory was in the possession of France and Spain, no grants of lands were ever given without a specific reservation being made therein for the common use of the public of all rights to the shores of rivers and bayous upon which they might front. These two countries never divested themselves of title to lands lying immediately adjacent to navigable streams. [French and Spanish land grants have specific reservations of such riparian property.] This policy, during the Spanish occupation of the territory, became merged with the law relative to servitudes to be found in the ancient *Las Siete Partidas* of Spain and, in time, found its way into the First Civil Code adopted by the Territory of Orleans (comprising what is now known as the State of Louisiana) in 1808, after the Louisiana Territory had been acquired by the United States, the basic principles relative to servitudes in *Las Siete Partidas* being included therein almost verbatim, thus insuring that the shores of navigable rivers and streams in this state would always be kept free for the public levee and other public purposes.” See also, *DeSambourg, supra*, for comprehensive history of the evolution of the levee districts in Louisiana and appropriation of the levee servitude by those public entities.

on all lands bordering on navigable rivers and streams for construction and maintenance of levees, roads, and other common or public works.<sup>5</sup> Thus, public levee servitudes have been around for centuries and the establishment thereof is deeply rooted in the Louisiana's French and Roman civil law tradition. As noted by the U.S. Supreme Court, "the riparian owner enjoys his property sub modo, i.e. subject to the right of the public to reserve space enough for levees, public roads and the like" and "never acquires complete dominion".<sup>6</sup> The property "never passes free of this reservation by a deed to a purchaser."<sup>7</sup> While the land in the remaining states of the United States necessary for levee purposes can only be used after expropriation and proper indemnification, the State of Louisiana and its designated levee districts and other political subdivisions have the right to act first, i.e. the authority to appropriate such land to a use to which it is subject under Civil Code Article 665, and talk later. Put simply, the act of appropriation does not involve the acquisition of a right in property but the act of the levee board providing notice to the owner of the land burdened with such servitude that the levee district intends to exercise the public right to the property. As noted by the La. Supreme Court: "[H]owever unfair it may seem to the owners of this type of land they are without right to complain because their acquisition of such land was subject by law to this ancient servitude and the private mischief must be endured rather than the public inconvenience or calamity."<sup>8</sup>

Beginning with the adoption of Section 6 of Article XVI of the 1921 Constitution, Louisiana law began providing payments for appropriated lands even though the law maintained the "act first – talk later" procedure, the first amount paid being a price not to exceed the assessed value for the preceding year.<sup>9</sup> Nonetheless, since the state always had a right of servitude over riparian property that it could have exercised without paying compensation, the amounts provided are considered "purely gratuitous".<sup>10</sup> Beginning with the Louisiana Constitution of 1974, Article VI, §42 provided that "lands and improvements thereon actually used or destroyed for levees or levee drainage purposes shall be paid for as provided by law." In response to that provision, the legislature adopted what is now La. R.S. 38:301, providing for a measure of compensation at fair market value and thus made payments for certain appropriations consistent with the general constitutional provisions providing compensation for the expropriation or taking of private property.<sup>11</sup> Nonetheless, the payment under Louisiana law still remained a gratuity, the legislature retaining the right under Article VI, §42 to provide no compensation for appropriations, if it so desired. In fact, the statute specifically provides that no compensation is due for batture lands<sup>12</sup> or property under the control of the state or any political subdivisions for the purpose of commerce.<sup>13</sup>

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<sup>5</sup> *Dickson, supra* at p. 128.

<sup>6</sup> *Eldridge v. Trezevant*, 160 U.S 452, 16 S.Ct. 345, 40 L.Ed. 490 (1896) at 16 S.Ct. 347, quoting *Ruch v. New Orleans*, 43 La. Ann. 275, 9 So. 473 (La. 1891); See also, *Dickson, supra*.

<sup>7</sup> *Id.*

<sup>8</sup> *Dickson, supra*. at p. 136.

<sup>9</sup> *Id.* at p. 129.

<sup>10</sup> *Id.*; See also, *Danzinger v. U.S.*, 93 F.Supp. 70 (E.D. La. 1950).

<sup>11</sup> See, *Wynat Development Co. v. Board of Levee Com'rs for the Parish of Orleans*, 97-2121, (La. 4/14/98), 710 So. 2d 783.

<sup>12</sup> Batture lands are a class of riparian lands made up of alluvial accretions annually covered by "ordinary high water," i.e. the highest level the river inevitably reaches during annual seasons of high water, which is the highest stage a river can be expected to reach annually, but not the level the water reaches during major flood events. Put simply, this is the area of land between the ordinary low water mark and the ordinary high water mark on a stream.

In addition to providing the appropriate method by which compensation is to be provided, La. R.S. 38:301 also provides the general procedure by which appropriation takes place. Generally, the statute provides the following procedure for effectuating an appropriation and compensating the landowner for such appropriation:

1. Adopt a formal resolution describing the area to be utilized for levee and levee drainage purposes and delineating whether the areas will be burdened with a permanent or temporary levee servitude.
2. Notice of the resolution shall be provided to the landowner by certified mail within five days of the adoption of the resolution.<sup>14</sup>
3. Immediately after the adoption of the resolution, an estimate of the compensation due shall be made, i.e. an appraisal should be conducted.
4. If revenues are available to pay the compensation due, the levee board shall pay such compensation to the owner within one year of the actual taking, use, damage, or destruction of the property.<sup>15</sup>

While not generally required by the statute, most levee districts by custom and practice publish the appropriation resolution and attached maps, plats, or property descriptions in the official journal of the levee district as well as file in the conveyance records of the clerk of court in the parish where the property is located.<sup>16</sup>

With regard to Terrebonne Levee and Conservation District (TLCD) and the South Lafourche Levee District (SLLD), the statute provides a slightly different but more specific procedure for effectuating an appropriation and gratuitous compensation. The additional provisions for the TLCD procedure require the following:

1. Following adoption of the appropriating resolution, notice is to be provided by certified mail to the last record property owner as reflected in the parish assessment rolls at the address recorded on the assessment rolls.<sup>17</sup>
2. Within ten days of adoption of the appropriating resolution, notice must also be provided by publication in the official journal of the TLCD.

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Nonetheless, the Article 665 servitude can burden lands landward of the ordinary high water mark. See, *DeSambourg, supra*.

<sup>13</sup> La. R.S. 38:301(C)(1)(i) and (j).

<sup>14</sup> The statute is internally inconsistent in that Paragraph (C)(1)(a) provides for notice “within ten days of the date of passage” of the appropriating resolution while Paragraph (C)(1)(g) provides that “[n]otice by certified mail shall be given to the owner within five days of the adoption of the resolution.” Out of precaution, it is advisable and prudent that levee districts provide the notice within five days rather than ten.

<sup>15</sup> The statute distinguishes “use”, which occurs upon adoption of the resolution, from “actual use”, which presumably requires some physical or overt action of the appropriating authority to exercise dominion over the property appropriated. Thus, the one year time limit may not begin running on the date of adoption of the appropriating resolution by the board. La. R.S. 38:301(C)(1)(g).

<sup>16</sup> See Appendix A for a detailed suggested procedure for handling of appropriations.

<sup>17</sup> The provision does not provide whether notice should be provided within ten days or five days after adoption of the resolution but does indicate that notice is completed upon mailing. Therefore, it is advisable to use the five day notice provision out of an abundance of caution. See, La. R.S. 38:301(C)(1)(b)(ii).

3. Payment of TLCD's estimated compensation is to be made by certified mail to the last record property owner as reflected in the parish assessment rolls at the address recorded therein.<sup>18</sup>
4. All claims regarding the compensation paid by TLCD shall be limited to the fair market value of the property and must be filed in the parish district court within 180 days after the mailing of payment.
5. Additionally, an owner or co-owner of property appropriated by TLCD may, within sixty days after adoption of the appropriating resolution, contest the validity of the appropriation as it pertains to that owner's property interest by filing a petition in the parish district court. After the filing of such petition, the levee district may proceed to expropriate the property in accord with the customary method of expropriation by levee districts provided in La. R.S. 38:351, *et seq.* Failure to timely make such claim results in the loss of all rights to challenge the appropriation, except claims for compensation.

Thus, this special procedure for TLCD provides additional protections to the landowner regarding their ability to challenge compensation and the necessity of the appropriation while allowing the levee district to rely on the assessors rolls for determining the appropriate parties for notification and compensation purposes.<sup>19</sup>

Under federal jurisprudence, the U.S. Supreme Court, the lower appellate courts, and the district courts have consistency approved the general appropriation of riparian property, declaring it to be consistent with the due process clause of the U.S. Constitution and finding that it does not constitute a taking requiring compensation under the 5<sup>th</sup> Amendment of the U.S. Constitution.<sup>20</sup> Appropriation of the use of the levee servitude under Civil Code Article 665 has been determined to be private injury resulting from the exercise of a legal right that is "damnum absque injuria", i.e., injury without loss.<sup>21</sup> The U.S. Supreme Court has specifically found that the historical background of the levee servitude and the appropriation process "makes clear that the rights of the State in property subject to the servitude are very broad" and "can be exercised in the way found to be 'most expeditious from an engineering, economical, and practical standpoint.'"<sup>22</sup> The Court further concluded:

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<sup>18</sup> The general one year period for making payment is still applicable.

<sup>19</sup> Similar provisions are provided for the South Lafourche Levee District.

<sup>20</sup> See, *General Box Co. v. U.S.*, 351 U.S. 159, 76 S.Ct. 728, 100 L.Ed. 1055 (1956); *Wolfe v. Hurley*, 46 F.2d 515 (W.D.La.1930), affirmed 283 U.S. 801, 51 S.Ct. 493, 75 L.Ed. 1423 (1931); *Maynard v. U.S. through U.S. Corps of Engineers, Dept. of Army*, 587 F.2d 788 (5<sup>th</sup> Cir. 1979); *Danzinger, supra*. State jurisprudence has also consistently held that the appropriation process and method of payment thereunder, while gratuitous, meets the due process requirements of both the federal and state constitutions. See, *DeSambourg, supra*; *Board of Commissioners of Tensas Basin Levee District v. Franklin*, 219 La. 859, 54 So. 2d 125 (1951); *Delaune v. Board of Commissioners for the Pontchartrain Levee District*, 230 La. 117, 87 So. 2d 749 (1956); *Hathorn v. Board of Commissioners of the Red River, Atchafalaya, Bayou Boeuf Levee District*, 218 So. 2d 335 (La. 3<sup>rd</sup> Cir. 1969).

<sup>21</sup> *Danzinger v. U.S., supra*.

<sup>22</sup> *General Box Co., supra.*, citing, *Board of Commissioners of Tensas Basin Levee District v. Franklin, supra*.

By law, and for the good of all, lands were made available to the State for levee purposes in as convenient a manner to the State as was necessary for the public welfare, and with little regard for the severity of the obligations imposed on the individual property owner.<sup>23</sup>

Based on this analysis, the U.S. Supreme court found that the State can legally exercise its “obviously comprehensive rights” without an opportunity to provide the owner of the land burdened with a levee servitude advanced notice of its actions. Thus, the State of Louisiana and its appropriating authorities can “act first and talk later” without violating the 5<sup>th</sup> Amendment takings clause and the 14<sup>th</sup> Amendment due process clause.

The above discussion notwithstanding, it is noted that all of the current jurisprudence approving the use of appropriation by levee districts to exercise the Article 665 public levee servitude has dealt with riparian lands. Additionally, where lands were not riparian or used for a levee purposes not associated with flooding on the stream on which the appropriated lands fronted, i.e., including use of certain lands for back levee hurricane protection fronting Lake Pontchartrain, the courts have found that appropriation could not be used to obtain a levee servitude.<sup>24</sup> Nonetheless, following Hurricane Katrina, the Louisiana legislature modified Article 665 to impose a public levee servitude on “property necessary for the building of levees and other water control structures on the alignment approved by the U.S. Army Corps of Engineers as provided by law, including the repairing of hurricane protection levees.”<sup>25</sup> This addition effectively reversed the case law limiting the servitude to riparian lands in instances where the Corps of Engineers has approved a particular levee alignment. The amendment now allows levee districts to appropriate a levee servitude over lands, whether riparian or not, when the Corps of Engineers approves a particular levee alignment. The potential issue here is whether appropriations of such “alignment lands” result in the acquisition of a levee servitude that had not previously and historically burdened the properties over which it will be imposed. Therefore, the question could arise as to whether an appropriation of such property meets with the same “due process” approved under the older jurisprudence and whether the new “alignment lands” servitude constitutes a compensable taking of property as previously held by the courts in the non-riparian appropriation cases. No appellate court cases have addressed this issue.

Nevertheless, appropriation of levee servitudes on “alignment lands” as a method of condemnation should still hold up under a due process analysis. First, the appropriation process has a long standing history in Louisiana and in most cases, provides payment to the landowner at fair market value, even when such payment is not necessarily due. Second, while appropriation uses a “take first but pay later” approach versus traditional expropriation “pay first” approach, part of the reason the appropriation “take first” method for exercising the Article 665 servitude has been approved by the courts at all levels is the recognized importance of levees in Louisiana and the need to assure that levees construction is not delayed by the usual expropriation process and that construction be carried out as expediently as possible for the purpose of protecting the health, safety, and welfare of the public and avoiding calamity. In fact, since the enactment of

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<sup>23</sup> *General Box Co., supra*.

<sup>24</sup> See, i.e. *DeSambourg, supra*; *Delaune v. Board of Commissioners for the Pontchartrain Levee District*, 230 La. 117, 87 So. 2d 749 (La. 1956) and its progeny.

<sup>25</sup> Acts 2006, No. 776, § 1, effective August 15, 2006.

the 1974 Louisiana Constitution, the process as set forth in La. R.S. 38:301 guarantees that a landowner will be fairly compensated for the levee servitude imposed and has a right to challenge the amount of that compensation and the necessity for the appropriation. Other than the timing of payment, appropriation therefore generally provides the same protections to a landowner as traditional expropriation.<sup>26</sup> Nonetheless, caution should be used when a levee district appropriates non-riparian lands. It seems acquisition via a “quick take” expropriation proceeding might be less prone to challenge unless a specific threat to public health, safety, and welfare can be articulated to justify the need to use appropriation in as expeditious manner as possible to avoid a potential calamity.

## **B. The Federal Uniform Relocation Act (URA) and Regulations and the Use of Appropriation of Levee Servitudes for Federal Projects**

The URA is a federal law that establishes minimum standards for federally funded programs and projects that require the acquisition of real property (real estate) or to displace persons from their homes, businesses, or farms. The URA’s protections and assistance apply to the acquisition, rehabilitation, or demolition of real property for federal or federally funded projects. The URA is implemented through government-wide regulations at 49 CFR Part 24. The objectives of the URA are (1) to provide uniform, fair and equitable treatment of persons whose real property is acquired or who are displaced in connection with federally funded projects, (2) to ensure relocation assistance is provided to displaced persons to lessen the emotional and financial impact of displacement, (3) to ensure that no individual or family is displaced unless decent, safe, and sanitary (DSS) housing is available within the displaced person's financial means, (4) to help improve the housing conditions of displaced persons living in substandard housing, and (5) to encourage and expedite acquisition by agreement and without coercion.<sup>27</sup> Generally, the URA applies to federal agencies or state agency, i.e. local or state agencies and political subdivisions, acquiring property for federal projects or programs.<sup>28</sup> Before a federal agency may approve a grant to, or contract, or agreement with, a state agency, where federal financial assistance is provided, the state agency is required to provide assurance that it will comply with the URA and the regulations thereunder. For example and of relevance to most levee districts, all current model Project Partnership Agreements and other cooperative agreements with the United States Army Corps of Engineers require adherence to the URA.<sup>29</sup> Nonetheless, a state agency may obtain a waiver of compliance with the real estate acquisition provisions of the URA, 42 U.S.C. §§4651-4651, if state law provides an exemption.<sup>30</sup>

In general, the real estate acquisition provisions of the URA and the implementing regulations provide that an acquiring agency, whether state or federal, should follow certain

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<sup>26</sup> As previously noted *infra*, the appropriation procedures specific to TLCD and SLLD appear to provide even greater protections to a landowner than the general procedures set forth in La. R.S. 38:301.

<sup>27</sup> See “Overview of URA” at HUD website at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/affordablehousing/training/web/relocation/overview](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/training/web/relocation/overview).

<sup>28</sup> 42 U.S.C. §4629.

<sup>29</sup> See model agreements at <http://www.usace.army.mil/Missions/CivilWorks/ProjectPartnershipAgreements.aspx>.

<sup>30</sup> 42 U.S.C. §4655 and 49 CFR §24.4

procedures when acquiring property for a federal project or program.<sup>31</sup> The provisions are applicable “to the greatest extent practicable under State law.”<sup>32</sup> The procedures include the following pertinent requirements that must be met before initiation of eminent domain proceedings, i.e. expropriation:

1. Appraising the property and establishing just compensation prior to initiating negotiations;
2. Inviting the property owner to accompany the appraiser during the property inspection process;
3. Providing the owner with a written offer of just compensation and a summary of what is being acquired;
4. Paying for property before possession, and;
5. Reimbursing expenses resulting from the transfer of title such as recording fees, prepaid real estate taxes, or other expenses.<sup>33</sup>

Comparing the URA and its implementing regulations to the appropriation of levee servitudes by a levee district under Louisiana law, it is clearly evident that the permissible procedures under each law are in conflict. In particular, the URA requires certain actions be taken before an acquiring agency may move forward with obtaining possession of property needed for a federal project or program, including appraisal, notice, and offer and payment of compensation. Appropriations under La. R.S. 38:301 allow these actions to be taken after the property is appropriated or acquired through adoption of a levee board resolution. Nonetheless, appropriations, as previously mentioned, have been permitted under Louisiana law since the territory was governed by French and Spanish law and such procedure has been regularly approved in both the federal and Louisiana courts. The appropriation procedure also additionally assures that the landowner is compensated in accord with Louisiana law in a timely and fair manner. Therefore, it would appear reasonable to be allowed to deviate from the URA when using appropriation as a method to obtain levee servitudes for federal projects as the process is generally within the spirit of the URA.

In addition to waivers being reasonable for appropriations under the URA and the implementing regulations, it appears that long standing Louisiana jurisprudence would make the URA inapplicable to any levee servitudes obtained validly through the appropriation procedure. The basis of the URA is that the agency engaged in obtaining land rights by “acquiring” land rights under threat of the exercise of a state’s eminent domain authority. However, as set forth in the Louisiana jurisprudence cited above, there is no “acquisition” involved in a levee district’s exercise of an Article 665 servitude through an appropriation resolution. In fact, the State of Louisiana, for the benefit of the public, already owns a legal servitude over all riparian lands for purpose of use for “levees, roads, and public works”, a servitude held by the sovereign prior to the Louisiana Purchase and which has never been transferred to the private riparian owners. The act of appropriation is simply notice to the riparian landowner that the state, through the levee district, intends to exercise its right to use the levee servitude, a property right the public, i.e. the State of Louisiana, already owns in perpetuity. The fact that the constitution and the state

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<sup>31</sup> See, generally, 42 U.S.C. §§ 4651 and 4652 and 49 CFR §§24.102 - 24.105.

<sup>32</sup> 49 CFR 24.101(5)(d) and 42 U.S.C. §4655(a)(1).

<sup>33</sup> See, 42 U.S.C. §§4651 and 49 CFR §§24.102.

legislature provide compensation to the riparian owner when the state exercises its legal servitude on certain types of underlying property does not change the character of the servitude and the owner thereof. Such compensation is “merely gratuitous” and not compensation resulting from the state’s exercise of its right of eminent domain to acquire a right to property it did not previously own under the long standing law of the state. Thus, since appropriation does not involve the exercise of eminent domain, the URA is never triggered.<sup>34</sup>

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<sup>34</sup> As previously noted herein, the 2006 changes to Article 665 imposing a levee servitude upon “alignment lands” might arguably be considered a “taking” under federal and state eminent domain jurisprudence. Therefore, the URA might be triggered in such circumstances. Nonetheless, since the “act first – pay later” procedure provided in law for appropriating a levee servitude meets due process requirements, a waiver of the URA procedural requirements based on conflicting state law should be allowed and should be sought from the appropriate federal agency.

## APPENDIX A: SUGGESTED APPROPRIATION PROCEDURE

- 1) Obtain documentation or survey of official alignment, whether approved by Corps or the levee district, with description of property needed and the type of servitude required, i.e. permanent or temporary, with property descriptions. A map of official alignment will need to be obtained from Corps of Engineers, if property is not riparian to a navigable waterway.
- 2) Adoption of the resolution by the Levee Authority:
  - a. The resolution must specify and delineate what areas are to be appropriated and whether the areas appropriated will be burdened with a permanent levee servitude or a temporary servitude for levee construction purposes.
  - b. Based on C.C. Article 665, the servitude must be on a Corps alignment or on a navigable waterway.
    - i. Regarding non-riparian land, the jurisprudence does allow for appropriation of land that was originally riparian when separated from the public domain even if it is not now riparian if the property taken 'is within range of the reasonable necessities of the situation, as produced by the forces of nature, unaided by artificial causes", or includes "all adjoining lands within the reasonable necessities for flood control unaided by artificial causes." See, *Board of Commissioners for Pontchartrain Levee District v. Baron*, 236 La. 846, 109 So.2d 441 (1959) and cases therein. If any of the land to be appropriated would be using a Corps alignment under the new provisions of Article 665, it would be helpful to have classified as riparian or near riparian property. This would cover both aspects of Article 665.
    - ii. It should also be noted that the jurisprudence indicates an appropriation only provides a servitude, whereas an expropriation would allow taking of fee title, subject to necessity of need for such interest in the property.
  - c. Use, i.e. taking, occurs at the time the levee board formally adopts its resolution specifically describing an area to be utilized for levees and levee drainage purposes through the exercise or acquisition of a permanent or temporary servitude. The "actual use" must occur within two years of the adoption of the resolution. La. R.S. 38:301 does not specifically say this but it should be assumed the resolution "description" of the property to be taken should be via plat, metes and bounds, or other appropriate acceptable property description. Thus, the statute can likely be interpreted as providing that "use of the servitude" passes to the levee board upon

resolution adoption and therefore, grants immediate right of use of the property.

- 3) Provide written notice to the owner of the property:
  - a. While La. R.S. 38:301 does not require filing, it is suggested that the resolution be filed in the Parish Conveyance records. This could be considered written notice to the landowner as well as any third parties. This is also consistent with state law on filing of documents effecting real property. It is suggested that filing should be made in both the parish which is the domicile for the levee authority as well as the parish where the property is located if the property is outside the domicile of the levee district.
  - b. Send notice by certified mail to the owner of the property within five days of the resolution. (As noted previously, the statute has two time limits for notice, it would be suggested that following the shorter time limit would prudent.)
  - c. The Terrebonne and South Lafourche Levee Districts' special provisions provide the mail should be sent to the last record owner as reflected in the parish assessment rolls at the assessment roll record address and that "notice shall be completed upon mailing." As there is a difference, it might be safer to make sure notice is given to owner from assessment rolls as well as any other available public records where other levee districts are making an appropriation since there is an obvious distinction for Terrebonne and South Lafourche.
  - d. While Terrebonne and South Lafourche Levee Districts are required to publish in the official parish journal, there is no such requirement for other levee districts. Nonetheless, it would appear to be prudent to follow this procedure for any levee district as doing so adds another level of "due process" notice in the event of a challenge and is a procedure that is already being followed by some levee districts. If the parish of appropriation is not the domicile parish of the levee district, publication in the domicile parish and parish where property located would also be wise.
  
- 4) Estimate the Compensation due in accord with the provision of R.S. 38:301:
  - a. Estimation to be made "immediately after the actual taking", no time frame is given and thus would be subject to a reasonableness standard. A time period of 90 – 120 days should be more than adequate to obtain appraisals and easily defended in court.
  - b. The levee board must also make and estimate revenues available from all sources from which to make the payment of the compensation.
  - c. The measure of compensation is provided in R.S. 38:301(C)(1)(h) generally as "fair market value" with considerations for remainder damages. Reasonable attorney fees, not exceeding 25% of the difference, may be awarded if the amount awarded by a court is less than the compensation provided by the levee district. The statute does not provide

or the number of appraisals that are necessary but guidance might be found in the levee district expropriation provisions under La. R.S. 38:353, requiring at least two appraisals.

- d. While not required by the statute, it would likely be prudent for the levee board to approve the amount of compensation by a resolution at one of its meetings.
- e. Compensation must be paid to “the owner within one year after the actual taking, use, damage, or destruction of the property” but only “if revenues [are] available to the levee board sufficient to pay the compensation due”. See La. R.S. 38:301(C)(2). It is noted that “actual use” and “use” (adoption of resolution) are used and defined separately in the statute. See La. R.S. 38:301(C)(1)(g) and (C)(1). Thus, the one year appears to run only from the time the levee district takes physical possession of the property in some manner or begins activities impacting the property appropriated. Caution however should be exercised as there appear to be no jurisprudence on when the time period begins to run.

## APPENDIX B: RELEVANT CASE LAW