

NEEDED LEGISLATION FOR RESTORATION

Acquisition of Right-of-Ways

The principle of value of property at the time of the taking was used to construct the Larose to Golden Meadow Hurricane Protection System. Fair market values were determined by appraisers.

This approach is no different from a private purchase in that most people have a relatively small range of value. The large exception is that values can range greatly due to speculation and potential.

When public need for property is warranted the property or right-of-way should be based solely on fair market price as the time of the taking. Our practice at the Levee District was to pay a little more than the median estimate because it is a forced sale. This principle reflects the true market, and in most cases, provides the private property owner his investment and his increased valuation if the market is good. If the market is down, the forced sale can cause some real losses. This situation could legitimately be mitigated to some extent.

Recent government decisions are interpreting full extent of the loss to include future investments and profits. This is not the normal business transaction among two willing parties.

The logic is flawed in many respects. One is that the person will receive profits above his investments. All business ventures are not successful, yet the present interpretation is that all businesses are successful and will prosper. Even more primary is that many potential investments never take place, yet judges are interpreting the law with the assumption that potential will always be realized.

Another important point is that in many cases the public taking, whether for roads, levees or utilities, helps insure the achievement of its potential for those projects and their financial success. In the cases where the taking truly obstructs the potential of the individual property and takes away its potential, these necessary public projects allow more of the community to fulfill its potential or sustain its productivity.

Acquisition of Appropriation and Expropriation

It is a fact that not all landowners will negotiate with the government for public rights-of-way. As a last resort the ability to take property for the public good must be available for restoration.

It may be interesting to construct the rationale for the 1849 Federal Act which transferred federal land in Louisiana to the state with the intent for the state to sell that property and with the proceeds build flood protection. To some extent restoration projects can act as and assist in flood prevention.

The use of a quick take law similar to that used for levee rights-of-way would be extremely beneficial. Although you may have quick take, the eventual settlement cost of the property may cause hesitation by the state because of unpredictable valuation by the courts. This could be alleviated with the principle of fair market value at the time of the taking, which insures a more predictable purchase price.

Public Water Bottom

The whole body of law concerning state vs. private ownership of subsided or eroded property must be reviewed. Laws could be enacted which would encourage cooperation in restoration which may help avoid a taking.

Leasing State Water Bottoms

The need for the state to have complete and unencumbered use of its water bottoms, vis-à-vis restoration, should be implicit and non-negotiable. Since the oyster industry has a mandated tagging program, valuation of past leases and present production is documented. Compensation, should it be necessary, should be based solely on valuation based tagging.

Navigation Issues

Successful restoration will reduce or eliminate water access to camps and industrial locations. The state should prepare standards of assistance or compensation to equally deal with this expectation.

Natural Productivity

The natural resources of the state are under the sole management of the state except for migratory species which may include both fish and birds and endangered species. The state must be prepared to project for ecosystem changes from restoration projects and provide advance notice and guidance to affected user groups.

Coastal Zone Management Act

The state may shift emphasis from maintaining to restoration.

Laws Supporting the Leveeing of the Mississippi

Revenues from Louisiana water bottoms have been directed to several state agencies. Reassessments are being made of what money is being generated and what the benefit is for the use of that money. Levee Districts have received money to control flooding on the Mississippi. Other agencies such as Wildlife and Fisheries also receive funding through funds generated by Louisiana water bottoms.

Oil Production in State Boundaries

Although we are requesting that the Federal government reassess its use of oil revenue supported by the Louisiana coast, we have not asked the state to do the same. Two-thirds of the oil and gas revenue to Louisiana has been produced in coastal Louisiana is 3-mile offshore border. We have used these funds statewide. We should ask whether more of this revenue should stay in the coastal zone to deal with the land loss problem.

Federal Laws and Agencies

Several state and federal agencies comment or permit in South Louisiana. Due to the uniqueness of the Louisiana's deltaic wetlands, laws and initiatives which work to protect fisheries and habitat in other states can cause problems and delays for projects which are necessary to protect the ecosystem in Louisiana. A statement of purpose and intent should be agreed to by federal agencies and state government.

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