

# PUBLICATION

---

## Fifth Circuit Affirms Dismissal of Coastal Erosion Lawsuit Against Oil and Gas Defendants

**Authors: Adam Zuckerman**

**March 03, 2017**

**On March 3, 2017, the United States Fifth Circuit Court of Appeals affirmed the district court's ruling dismissing a lawsuit filed by the Southeastern Louisiana Flood Protection Authority against dozens of defendants in the oil and gas industry. The Fifth Circuit also affirmed that it had federal question jurisdiction over the lawsuit.**

In the lawsuit, the Levee Board alleged that the defendants' exploration and production activities (including dredging canals) damaged coastal lands and thereby increased the risk of coastal flooding and the cost of protecting against such flooding.

Regarding federal question jurisdiction, the Levee Board did not expressly plead an exclusive federal cause of action, but did rely on federal law to supply the defendants' alleged duties to the Levee Board [e.g., the Rivers and Harbors Act of 1899 (RHA) and the Clean Water Act of 1972 (CWA)]. The defendants contested that those federal laws create such duties. The Fifth Circuit concluded that these contested questions of federal law could have significant implications to an extensive federal permitting scheme, giving rise to federal question jurisdiction.

The Fifth Circuit next considered the district court's order dismissing the Levee Board's lawsuit. The Fifth Circuit agreed with the district court that the RHA, the CWA and Louisiana's Coastal Zone Management Act (CZMA) do not create duties owed by the defendants to the Levee Board. "[N]either federal law nor Louisiana law creates a duty that binds Defendants to protect the Board from increased protection costs that arise out of coastal erosion allegedly caused by Defendants' dredging activities." Moreover, the Fifth Circuit concluded that other state law causes of action related to "natural servitudes" and "dominant estates" were not supported by the Levee Board's allegations.

The Fifth Circuit's jurisdictional ruling is likely to spur additional briefing on motions to remand pending in other litigation brought by the Parishes of St. Bernard and Cameron, the State of Louisiana, and the Louisiana Department of Natural Resources (LDNR) asserting CZMA violations by various upstream and midstream companies. Similarly, the Fifth Circuit's ruling will likely be raised in other similar lawsuits filed by private landowners, Parishes, the State and the LDNR. Click [here](#) to read a copy of the Fifth Circuit's ruling.