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July 21, 2011

After years of claiming to the courts,¹ the media,² and this board³ that servitudes appeared on our surveys, your lawyer finally admitted in April that it's not actually a servitude, but a levee toe. He said that toe establishes the existence of the levee there and he assumes it was constructed by the levee board. Therefore he claims, the doctrine of unopposed use applies.⁴ Mr. Estopinal, as a well published author⁵ and expert on surveys, can you tell us, does a simple notation of a levee toe on a survey say anything about who constructed it or does it indicate a servitude?

Mr. Barry, laws exist that allow the government in certain cases to claim land when it constructs levees without opposition.⁶ As a historian,⁷ what would you do if you found that the levee board did not and could not have constructed the levee in question? That it was constructed decades before 1890,⁸ the year that the first levee authority was created. In fact, even before the existence of the doctrine of unopposed use, would you speak up?

Mr. Barnes, you said that the taking of our property was perhaps unjust⁹, and you were right. From the levee's completion in 1853¹⁰ until this past January, no levee authority has ever constructed,¹¹ maintained, inspected,¹² or exercised any rights of way¹³ on the private properties that you voted to take.¹⁴ In 1993 when the other floodwalls were being built from land, the 17th Street Canal floodwall was built from a barge on the water side because the levee authority knew it had no rights to the private property portions of the levee.¹⁵

For seven months after the 2005 levee failures the Corps acknowledged its need for this land,¹⁶ and an obligation and intent to provide compensation.¹⁷ During this same time, the O.L.D. stated it had no records of having any rights to these properties.¹⁸ Instead of compensating for property rights taken, this board launched a scheme to find 'an alternative way to establish rights to the property'...O.L.D.'s words, not mine!¹⁹ Why? Is it because you know that in the end if you lose, you'll only have to pay the same compensation that you would have had to pay anyway? And your attorneys!...Aren't they already getting paid on a monthly retainer? Is that why you appealed rather than settle? Decisions not based on what is right or legal, but because the lawyers are getting paid anyway.

The choice is yours. Will you deal with documented facts and truth, end your defense of this suit and settle, or continue to inflict this abuse of power on the homeowners and to trust those lawyers...the ones who told you that there were servitudes on surveys when there were none?

¹ 17th Street Canal Coalition versus Orleans Levee District, ET AL May 29, 2009, Civil District Court Case #2008-6979 Division L. Top of page 22 of the transcripts.

² Times Picayune May 29, 2009 "Judge Rules in favor of 17th Street Canal homeowners over yard compensation.

³ Minutes of the SLFPA board meeting March 17, 2011

⁴ Minutes of the SLFPA board meeting April 21, 2011

⁵ "A Guide to Understanding Land Surveys" by Stephen V. Estopinal

⁶ Louisiana Revised Statute 19:14 The St. Julien doctrine, or the doctrine of unopposed use.

⁷ Wikipedia re:John M. Barry: "John M. Barry is an American author and historian..."

⁸ Act 93 of the 1890 General Assembly (Legislature) of Louisiana established the Orleans Levee District, also O.L.D. website. <http://www.orleanslevee.com>

⁹ Minutes of the SLFPA board meeting February 17, 2011

¹⁰ http://www.csa-railroads.com/Jefferson_and_Lake_Pontchartrain.htm

¹¹ The 17th Street Drainage Canal: Abstract by R.B. Seed and others from the Journal of Geotechnical & Geoenvironmental Engineering-ASCE May 2008

¹² Sworn U.S. Senate Committee testimony by Daniel H. Hitchings, P.E., Regional Business Director, Mississippi Valley Division, U. S. Army Corps of Engineers April 18, 2006. Also Times Picayune "Levee inspections only scratch the surface" by Gordon Russell, Nov. 25, 2005 this story actually earned a Pulitzer Prize for Excellence in Journalism it included statements by Jerry Colletti (Corps) and Stevan Spencer (O.L.D.) confirming no inspections.

¹³ April 4, 2008 letter from Linda Labure Corps Real Estate Div. to Stevan Spencer O.L.D.

¹⁴ Minute of the SLFPA board meeting May 15, 2008

¹⁵ Los Angeles Times; Levees Weakened as New Orleans Board, Federal Engineers Feuded by Stephen Braun & Ralph Vartabedian, Dec 25, 2005

¹⁶ Minutes of O.L.D. meetings held on; 11-9-2005, 12-06-2005, 01-03-2006, 03-15-2006

¹⁷ Times Picayune Dec 6, 2005 "Corps:Land needed to rebuild levees" by Mark Schlieffstein

¹⁸ Louisiana Attorney General Opinion #06-0168 (see Louisiana attorney general's website)

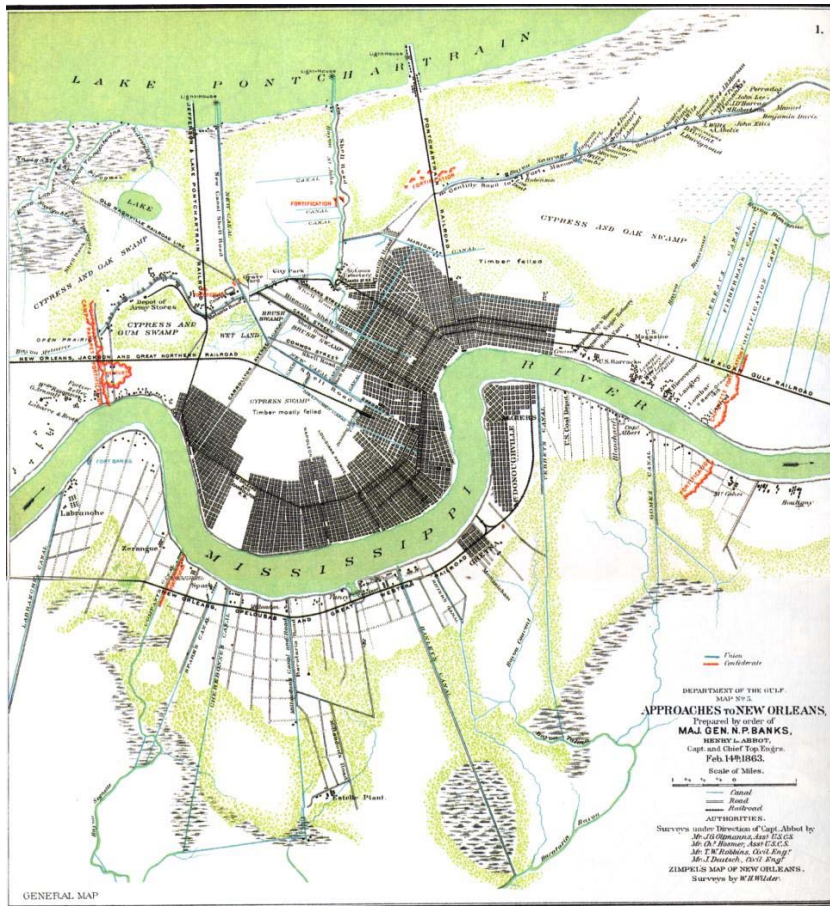
¹⁹ Louisiana Attorney General Opinion #06-0168 Background section: "...considered as an alternative way of establishing the levee district's rights..."



If levee board lawyers saw a levee toe on a survey of this private property, would they claim everything within six feet of the toe of this privately built levee for the levee board?



Upper Line Protection Levee (Circa 1900-1905 later called the 17th Street canal levee-Orleans Parish side.) looking south from near Lake Pontchartrain. Except for a floodwall project in the mid 1990s that respected the private portions of this levee, this levee remained essentially unchanged and continued to occupy the same footprint until the floodwall remediation project of 2011. This levee was not constructed, by any levee authority, nor were the private portions of this levee ever maintained or inspected by any levee authority. 100 years later, floodwalls constructed in this same reach of levee failed and flooded over 80% of New Orleans.



1863 a Civil War map of New Orleans (above) showing the Jefferson and Lake Pontchartrain Railroad (no canal) at the exact location of the current 17th Street Canal east levee. What is now known as the 17th Street canal levee was originally constructed as a foundation for this railroad. The canal was an unintended result from material dredged up to form the RR foundation. (See close up below)

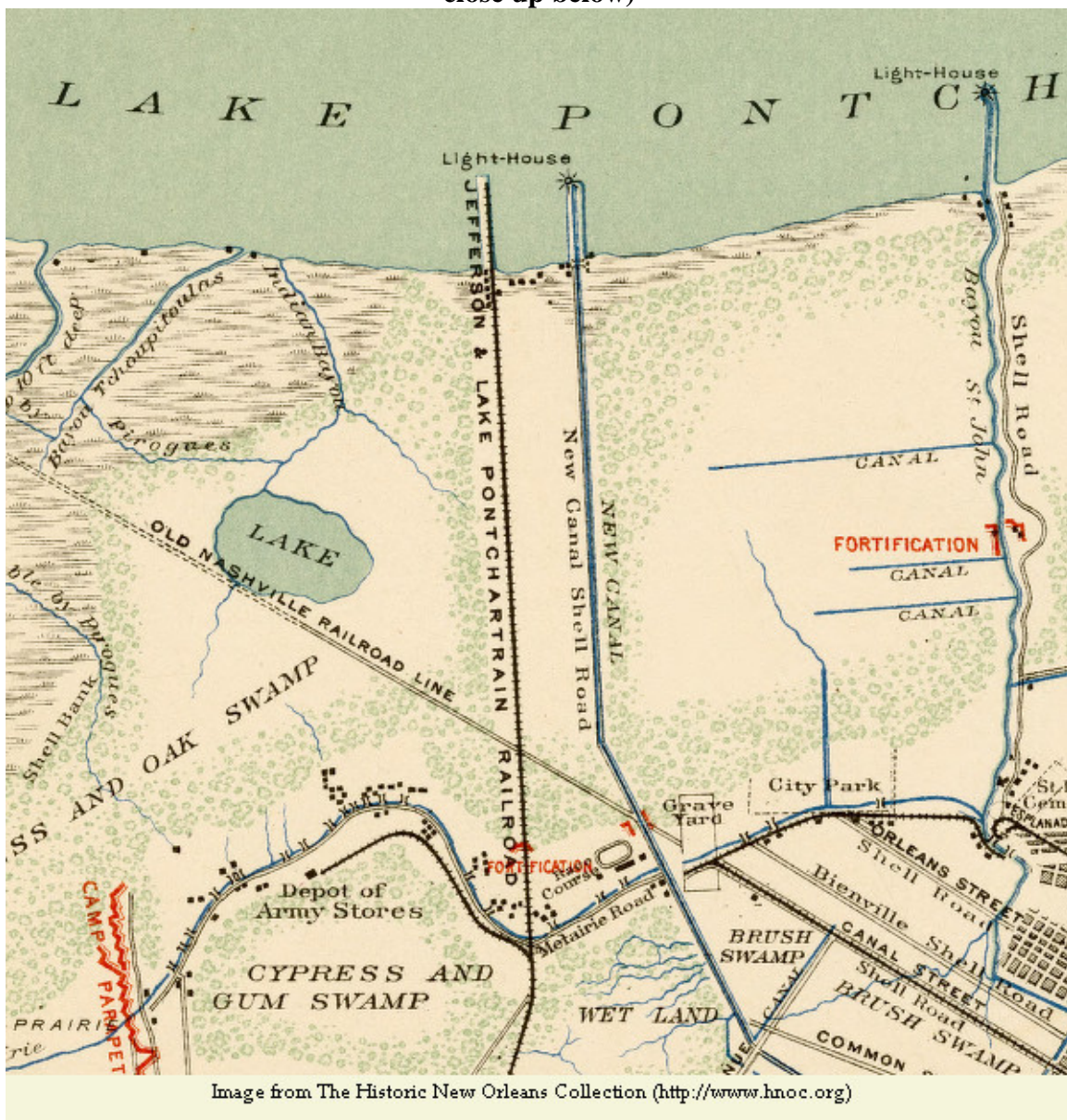
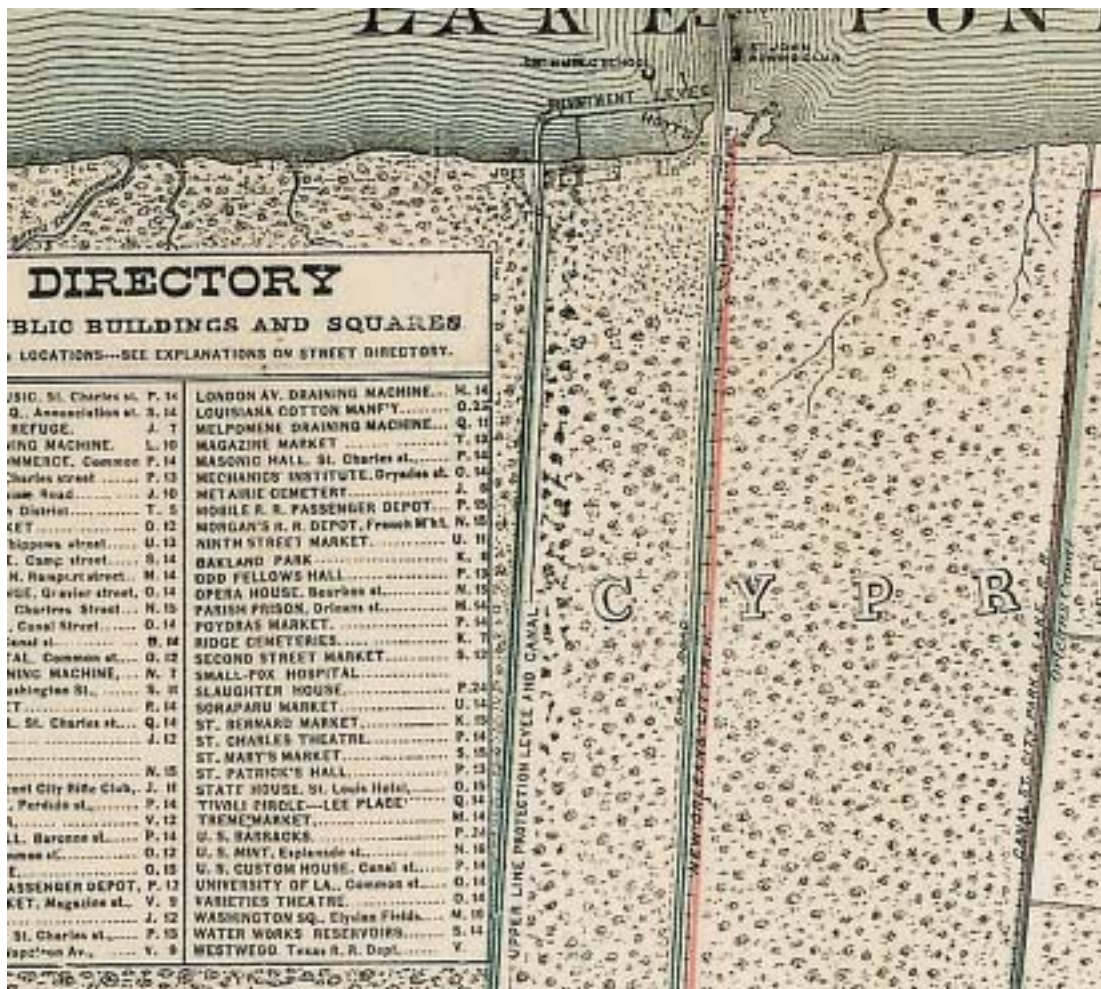


Image from The Historic New Orleans Collection (<http://www.hnoc.org>)



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By 1878 the railroad had ceased operation and the tracks removed. The remaining railroad foundation came to be called the Upper Line Protection Levee. This 1878 map of New Orleans by T. S. Hardee (above) shows the remaining 'Upper Line Protection Levee (and Canal) in existence 12 years before the creation of the first levee authority in 1890. (next page)



ORLEANS LEVEE DISTRICT

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MISSION STATEMENT

PUBLIC INFORMATION

FLOOD DEPARTMENTS

NON-FLOOD ASSETS



Mission Statement

The Orleans Levee District is dedicated to protecting the lives and property of the citizens of Orleans Parish by constructing, operating and maintaining the Mississippi River and Hurricane Protection Flood Control Systems and to providing safe and secure facilities for aviation, marine and recreational activities.

VISION

The Orleans Levee District is to be a proactive, public orientated, fiscally responsible, ethical and highly respected flood protection and service organization.

STATEMENT OF PURPOSE

The Orleans Levee District (the District) was established by Act 93 of the 1890 General Assembly (Legislature) of the State of Louisiana. The District is primarily responsible for the operation and maintenance of levees, embankments, seawalls, jetties, breakwaters, water basins, and other hurricane and flood protection improvements surrounding the City of New Orleans, including the southern shores of Lake Pontchartrain and along the Mississippi River. The District is responsible for the maintenance of 104.8 miles of levees and floodwalls, 200 floodgates, 103 flood valves, and two flood control structures. To enhance flood protection, the District, and the United States Corps of Engineers (USACE), participate and cost share in several joint flood protection projects relative to the Lake Pontchartrain and Vicinity Hurricane Protection Plan (LPVHPP).

Act 292 of the 1928 Louisiana Legislature authorized the District to dedicate, construct, operate, and maintain public parks, beaches, marinas, aviation fields, and other like facilities.

When the Orleans Levee District was formed, the levee on the eastern side of what is now known as the 17th Street canal had been in existence for well over 12 years, and therefore was not constructed by the Orleans Levee District.

