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Levee authority's tied vote Thursday means lawsuit against energy companies is still alive

East bank levee authority President Stephen Estopinal discusses his vote to continue an environmental damages lawsuit against 97 energy companies

East bank levee authority President Stephen Estopinal discusses why he voted against killing the authority's environmental damages lawsuit filed against 97 oil, gas and pipeline companies.

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The east bank levee authority's **environmental damages lawsuit** against 97 oil, gas and pipeline companies will continue, at least for now, after commissioners Thursday split 4-4 on a motion to kill the suit.

You can find live coverage of the meeting as it happened here.

The vote by the **Southeast Louisiana Flood Protection Authority-East** came in response to a bill sponsored by **Gov. Bobby Jindal** that stripped the levee agency of the authority to file that and other damage lawsuits, passed by the recently concluded 2014 session of the Legislature and signed into law by Jindal.

The motion Thursday was proposed by levee authority Vice President **Joe Hassinger**, who was among four members of the authority appointed by Jindal after the suit was filed. Hassinger was unanimously selected as the authority's vice president earlier in the meeting.

The lawsuit attempts to get the energy companies to either repair and mitigate damage done to wetlands or pay damages to the authority, with the money to be used to improve flood protection.

East bank levee authority vice president Joe Hassinger

Joe Hassinger, elected vice president of the Southeast Louisiana Flood Protection Authority-East on Thursday, explains why he asked the authority to kill its environmental damages lawsuit against 97 oil, gas and pipeline companies. His resolution failed on a 4-4 tie vote, with one authority commissioner absent.

The suit argues that the damage caused by drilling for oil and gas and by building pipelines has reduced or will reduce the ability of the levee system to meet its requirement to block storm surges caused

by a hurricane with a 1 percent chance of occurring in any year, a so-called 100-year storm.

Stephen Estopinal, who was unanimously selected as president of the authority on Thursday, voted against the motion to kill the suit, saying the lawsuit seems like the best way to either reduce storm surge risk through repairs or to provide the money needed in the future to increase levee heights to deal with the lost wetlands.

In presenting the motion, Hassinger warned that the attorneys' costs associated with the suit were rapidly growing. He also said the Legislature overwhelmingly approved the bill removing the authority's right to press the suit, so it was time for the legal battle to come to an end.

"They voted, they deliberated, they considered," Hassinger said of the Legislature's consideration of Senate Bill 459, which was sponsored by Sens. Robert Adley, R-Benton, and Bret Allain, R-Jennings.

"The governor signed the bill," he said. "You can argue about constitutionality, but the point is everybody knows the intent of the bill was to stop us and what we are doing. Why? Because we did in secret what should have been done in public.

"We don't get to make policy for the state," Hassinger said.

But Gladstone Jones, one of the lead attorneys representing the levee authority, urged members not to give up.

"You have a very good case," Jones said. "Not a single company has come out to say they haven't caused the damage."

Other commissioners opposing the suit also focused on the legal expenses that the authority – and ultimately taxpayers – might have to pay because of a "poison pill" provision in the contract with Jones and other lawyers for the authority. That provision requires that all attorney expenses be paid if the authority or some other party unilaterally ends the litigation before it is heard in court.

Commissioner Kelly McHugh estimated that bill could be more than \$7.5 million, including 14,000 hours of attorney time and \$700,000 in other expenses. Commissioner Jeff Angers said he'd been told the bill would total between \$2.9 million and \$11.6 million by the end of June. McHugh didn't explain the reason for the wide range in that estimate.

Former authority vice president John Barry, who led the efforts to file the suit before he was denied

reappointment by Jindal, said the clause mandating payment to the attorneys if the suit is suspended was in the contract to assure they'd get paid if state politicians attempted to kill the suit.

He said the decision to file the suit came after he and other members of the authority first approached former Coastal Protection and Restoration Authority Chairman Garret Graves to try to get the oil and gas industry to sit down and negotiate over the wetlands damages.

"When Garret said to us, 'I already tried that. They're not there yet,' it was an eye opener," Barry said. "How do you get them to own up to their responsibility?"

The answer, he said was the lawsuit.

But Hassinger was dismissive of Barry's arguments. In officially requesting a vote on his motion after an executive session behind closed doors, Hassinger said the poison pill provision was aimed at preventing the Legislature from stopping the authority.

The result, he said, was that the authority that was supposed to be above politics actually was practicing politics in a way that would be too costly for taxpayers.

Also opposing the lawsuit was new Commissioner Tyrone Ben of Violet, who said he'd rather see money that would go to the lawyers spent on levee improvements, especially since the Lake Borgne Levee District, which includes levees in St. Bernard, doesn't have enough money to pay its share of levee costs.

East bank levee authority commissioner Tyrone Ben

New Southeast Louisiana Flood Protection Authority-East commissioner Tyrone Ben of Violet explains why he voted Thursday to kill an environmental damages lawsuit filed by the authority against 97 oil, gas and pipeline companies.

But Commissioner Rick Luettich, a marine sciences professor at the University of North

Carolina, said he remained in favor of continuing with the lawsuit because the potential costs associated with the wetlands damage caused by the energy companies far outweighs the legal bills, in the event the authority would be required to pay them. Luettich is a co-creator of the ADCIRC storm surge model used by the Army Corps of Engineers in designing the rebuilt levee system around much of metro New Orleans.

Several members of the public who spoke in favor of continuing the suit suggested that it would be less costly to allow a court to rule on whether the suit should go forward. That's because if a court stops the suit, the so-called poison pill doesn't go into effect.

Janet Howard, executive director of the New Orleans-based Bureau of Governmental Research, said that organization has not taken an position on the merits of the lawsuit itself. But she urged the authority not to take any action that would remove its ability to press claims for damage in the future. She said if a judge

dismisses the case "with prejudice" because the authority requested it be dropped, the claims could not be taken back to court if the Legislature rescinded the new law in the future.

Sandy Rosenthal, director of Levees.org, which lobbied the corps and other federal agencies on behalf of building stronger levees after Hurricane Katrina, said taxpayers should not pay for the additional maintenance and upkeep of the levees caused by loss of wetlands resulting from the operations of the energy companies.

Steve Murchie, a spokesman for the New Orleans-based Gulf Restoration Network, agreed.

"It is totally acceptable for you to tell an industry that destroyed 600 square miles of the coast to fix what they broke," Murchie said.

Voting for Hassinger's motion to kill the suit were Hassinger, Ben, Commissioner Jeff Angers, and McHugh, all appointed to the authority by Jindal after the lawsuit was filed.

Voting against were Estopinal, Luettich, authority Treasurer Paul Tilly and Commissioner Paul Kemp, all of whom voted for the original lawsuit. Not attending Thursday's meeting was Secretary Louis Wittie, who voted in favor of the suit last year.

Following the meeting, Greg Beuerman, acting as spokesman for Chevron, Shell and BP, all defendants in the suit, said it was unfortunate the motion didn't pass. He said a hearing before U.S. District Court Judge Nannette Jolivette Brown on whether to return the authority's lawsuit to the New Orleans Civil Court is tentatively scheduled for July 9.

The energy firms moved the case from state to federal court soon after it was filed,

arguing that the allegations involve federal laws were better heard in federal court.

Greg Beuerman, spokesman for Chevron, Shell and BP, talks about the east bank levee authority lawsuit

Greg Beuerman, a spokesman for Chevron, Shell and BP, talks about the tie vote by members of the Southeast Louisiana Flood Protection Authority-East on a motion to kill an environmental damages lawsuit against 97 oil companies, including those he is representing.

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