

MS Levee Board announces Lawsuit against EPA

EPA illegally vetoed the Yazoo Backwater Project

On August 11, 2009, the Mississippi Levee Board filed a lawsuit against the U.S. Environmental Protection Agency (EPA) arguing that EPA had no legal authority to veto the Yazoo Backwater Project. This vital pump project would have protected against devastating floods in the lower Mississippi Delta. Therefore, construction of the Yazoo Backwater Project must be allowed to go forward.

The EPA vetoed the pump project in August, 2008, claiming that the project would harm wetlands. However, the Clean Water Act (Section 404(r)) prohibits EPA from vetoing any project approved by Congress when the environmental impacts of the project were



Peter Nimrod, Chief Engineer, outlines the Lawsuit against EPA

made known to Congress before construction began. Such is the case with the proposed pumping station for the Yazoo Backwater Project.

The Board is represented by attorneys with Pacific Legal Foundation (PLF), a public interest legal organization, headquartered in Sacramento,

that is the nation's leading watchdog for balance and common sense in environmental regulations.

"Federal law is clear: EPA cannot pull the plug on this vitally important pumping station, because Congress OK'd it after a formal environmental briefing," said PLF attorney Damien Schiff.

"This project is necessary to the lives and homes of thousands of people, as well as businesses and farmland. Congress authorized the



Damien Schiff, PLF Attorney, answers questions

Yazoo Backwater Project as early as 1941 and Congress appropriated money for the pumping station in 1984 with the benefit of an environmental impact statement from the Army Corps of Engineers. Congress approved this project with all the required information before it. EPA has only one duty in this matter: To butt out."

The Mississippi Levee Board found out about the transmittal to Congress of the 1982 environmental impact statement through a Freedom of Information Act request last year. The Board notified the EPA of its discovery, but the EPA nevertheless went forward with issuing its veto of the pump station.



DDT article from August 12, 2009

See **LAWSUIT** on Page 2 ➔

EPA preparing to again abuse their Veto Authority

EPA illegally vetoed the Yazoo Backwater Project in August, 2008 using their authority found in Section 404(c) of the Clean Water Act. EPA has vetoed 12 projects since 1972. The Yazoo Backwater Project was their 12th veto and their first since 1990. EPA has only vetoed two flood control project at this point.

In an August 8, 2009 interview with new EPA Administrator Lisa Jackson with the *St. Petersburg Times*, the reporter



Lisa Jackson, EPA

stated that, "The U.S. Army Corps of Engineers issues more permits for wetlands destruction in Florida than any other state. *The EPA has the power under the Clean Water Act to veto those permits, but hasn't blocked a single permit in Florida since 1988.* It has used its veto power nationwide only 12 times since 1972. *Now that you're in charge, will the EPA become more aggressive about using its veto*

power to protect wetlands — not just in Florida but in places like West Virginia, where the Corps is allowing coal companies to slice the tops off mountains?" **New EPA Administrator Lisa Jackson** answered, "That whole process had become a bit toothless. I asked my staff what they did, and they said, "We made our concerns known to the Corps and we didn't hear back." ***The Corps and the public should know that, instead of just expressing objections, the EPA will once again use its veto***

power. We're likely going to get to the point where we don't agree and we have to veto. The Corps of Engineers understands when the EPA has concerns, it's going to raise them. We're going to do our jobs."

The Mississippi Levee Board is very concerned that EPA has and will continue to **abuse** its authority in Section 404(c) to veto other flood control projects throughout the nation if Congress doesn't intervene and limit EPA's veto authority. ■



LAWSUIT from Front page

“EPA is trying to impose its will even after being notified that Congress was fully apprised of the environmental issues when it approved funding for the pumps,” said Schiff. “EPA can’t say the 1982 environmental impact statement was deficient, because the statement followed standard Army Corps policies and procedures that were then in effect. Our lawsuit asks the court to remind the EPA that it is not above the law, and the law says EPA can’t overrule Congress to block the pumps.”

The pumping station: vital protection against devastating floods

The purpose of the proposed pumping station is to reduce the effects of catastrophic flooding in the lower Mississippi Delta. When the Mississippi River floods, the natural gravitational flow of other



smaller rivers in the area is impeded, causing them to overflow and inundate the Backwater Area. Earlier this year, devastating floodwater overtook 400,000 acres including 152,000 acres of agricultural land, causing extensive economic damage.

The pumping station would lift waters out of the Yazoo Backwater Area, back into the Mississippi River, to flow down to the Gulf of Mexico.

Peter Nimrod, Chief Engineer of the Mississippi Levee Board, stated, “The residents of the Mississippi South Delta just want what was promised to them 68 years ago. It is time to complete the last phase of flood protection for the Mississippi Delta.”

An environmentally sensitive project

“The EPA lacks authority to block the pumping project for clear legal reasons, based on the



Steele Bayou Structure



Bill Newsome, President of Sharkey County Board of Supervisors



Al Rankins, Washington County Supervisor, makes a statement



Clay Adcock, Holly Bluff farmer, makes a statement



Clifton Porter and Supporters gather at the press conference

Clean Water Act,” PLF’s Schiff explained. “But even if that weren’t the case, the agency’s veto would still be unjustified because this is a carefully designed, environmentally sensitive project. For example, it includes a reforestation component that would result in the planting of new vegetation across more than 55,000 acres.”

Peter Nimrod stated: “The Yazoo Backwater Project is a model project that will not only provide flood protection with the pump, but will vastly increase benefits for every environmental resource including wetlands, terrestrial, aquatic and duck habitat, through the reforestation of the one-year floodplain.” ■

River Course students continue long tradition

BY FRANK WORLEY

Fifty-two students from Warren Central High School continued a tradition started years ago - riding on one of the Vicksburg District’s inspection barges at the closing of the semester-long course that teaches about the Mississippi River and how it is managed.

The aptly named Mississippi River Course is offered at both public high schools, Vicksburg High in the fall and Warren Central in the spring. Students receive briefings from employees of the Engineer Research and Development Center, Mississippi

Valley Division, as well as the Vicksburg District, the sponsor of the course.

The class consists mostly of graduating seniors, although a few sophomores and juniors are eligible to participate.

From the history of the river, to revetment, to management of wetlands, and of course flood control, the students get a complete “birds eye” view of how the U. S. Army Corps of Engineers manages the mighty waterway.

This year’s students were treated to not only a tour of the Mississippi River but also a tour of



the Motor Vessel (MV) BENYAURD, and were even treated to an impromptu thunderstorm while underway.

Each student was given an opportunity to “drive” the MV during the 3 hour tour, and each was awarded an “Honorary Pilot’s License” at the conclusion of the trip.

The course at Warren Central is taught by Mr. Matt Gullett who is a graduate of Vicksburg High’s version of the River Course. The purpose is not only to teach high school students about the river and how the Corps manages it, but also is an opportunity to talk with graduating seniors about their career goals and invite them to explore career opportunities with the Corps and the U.S. military. ■



2009 Yazoo Backwater Event



Valley Park, MS – Ag land going underwater



Cary, MS – Road and ag field underwater

This Spring Mother Nature clearly showed, for the second consecutive year, the absolute necessity of the completion of the Yazoo Backwater Project. With the third highest stages on record at the Steele Bayou Structure and over 393,700 acres flooded, the textbook argument the Mississippi Levee Board has been making for completion of the Project unfolded.

The gates of the Steele Bayou Structure were closed on May 10, 2009, and reopened 25 days later on June 10th. In 2008, the gates were closed for a total of 56 days. On that basis alone 2008 sounds twice as bad as 2009. The river-side crests were 96.2 and 100.1 in 2009 and 2008

respectively. The main difference however, was the amount of rainfall received in the Mississippi Delta during this 25 day period.

In 2008 below normal rainfall was recorded while the gates were

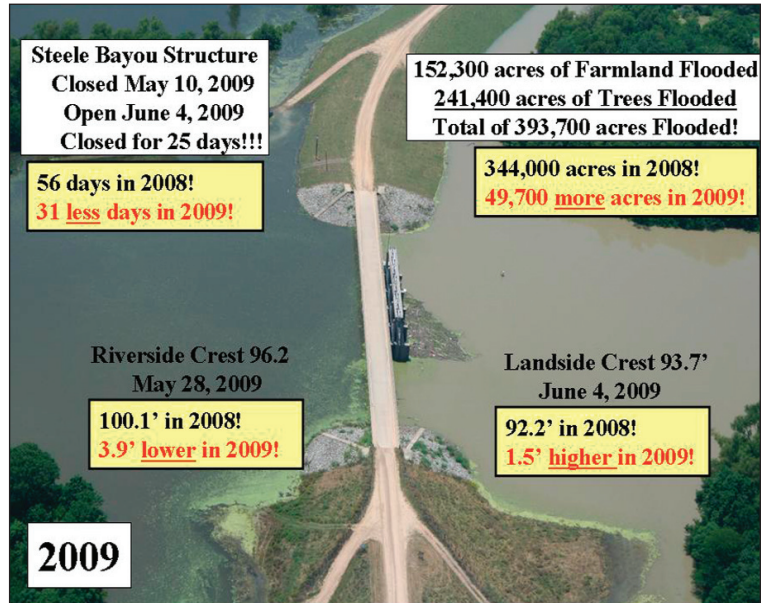
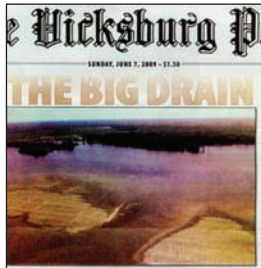
closed. In 2009, normal to above average rainfall fell in the Basin which led to a landside crest of 93.7 feet, 1.5 feet above the crest from the previous year.

This resulted in 393,700 acres flooded. Of this total, 152,300 acres of farmland and 241,400 acres of timberland were under water. The 2008 acreage flooded was 49,700 acres less than 2009 at 344,000 acres flooded.

This is the precise scenario that the Board has stated can and will happen. When high stages on the

Mississippi River impede flow on the Yazoo River and cause backwater in the South Delta, the gates of the Steele Bayou Structure are

closed. When the gates are closed drainage from the Mississippi Delta is trapped. Any rainfall from the 4,093 square mile basin adds to the problem and a pump station is required to pump water over the Yazoo Backwater Levee. ■



ABOVE: 2008 vs 2009 Backwater Events; BELOW: Historical Backwater Events

| HISTORICAL BACKWATER EVENTS YBW AREA – LANDSIDE Since 1978 | | |
|------------------------------------------------------------|----------------------|---------------|
| | 1973 (May 15) | 101.5' |
| 1. | 1979 (May 4) | 96.5' |
| 2. | 1983 (June 7) | 95.8' |
| 3. | 2009 (June 4) | 93.7' |
| 4. | 1997 (April 8) | 93.3' |
| 5. | 1991 (May 6) | 92.5' |
| 6. | 2008 (May 7) | 92.2' |
| 7. | 1984 (May 29) | 92.0' |
| 8. | 1993 (May 19) | 91.5' |
| 9. | 1994 (May 13) | 90.9' |



Eagle Lake, MS – Ag field half flooded



Blanton, MS – Ag field half flooded



Backwater County Road underwater

LEVEE BOARD ATTENDS MEETINGS IN WASHINGTON D.C.

Board seeks Appropriations for Flood Control Projects and provides ongoing project updates to the Mississippi Congressional Delegation



U.S. Capitol

The Mississippi Levee Board traveled to Washington, D.C., and met with the Mississippi Congressional Delegation during March 16–18, 2009. This annual trip provides the delegation with a status update of ongoing flood control projects in the Mississippi

Delta and it is an opportunity for the Levee Board to discuss funding requirements for U. S. Army Corps of Engineers projects in the Mississippi Delta.

During the visits with the Congressional Delegation, Chief Engineer, Peter Nimrod provided updates on the existing Mainline Mississippi River Levee Enlargement & Berms project, the status of the Steele Bayou Sedimentation Reduction Project, and the Yazoo Backwater Project. Funding requests for projects within the Mississippi Delta were presented.

On Wednesday, March 18, the



Congressman Bennie Thompson and Peter Nimrod

Mississippi Levee Board contingent attended the Mississippi River Congressional Caucus Hearing in the U.S. Capitol with

Rep. Marion Berry (Arkansas), Rep. Leonard Boswell (Iowa), Rep. Mike Ross (Arkansas) and Rep. Russ Carnahan (Missouri). ■



Senator Thad Cochran staffers with Board



Senator Roger Wicker staffers with Board



Congressman Bennie Thompson and Congressman Travis Childers with MS Levee Board

AMERICAN RECOVERY & REINVESTMENT ACT OF 2009 – “STIMULUS BILL”

Stimulus Bill (**\$787B**) expenditures were released on April 28, 2009:

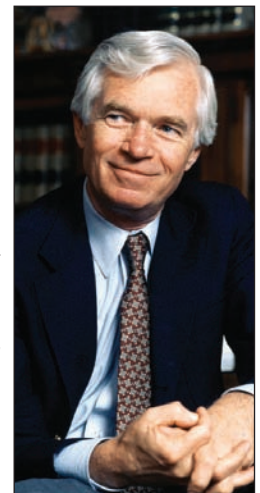
\$375M for the MR&T Project (\$148.2M for MS). Including the following in the MS Delta:

- \$1M for Maintenance Gravel for the YBW Levee.
- \$390K in maintenance gravel for MRL.
- \$4.2M for LIDAR for the whole Delta.
- \$1.5M for Phase 3 - Steele Bayou Sed. Red. Project. \$1.5M for Phase 4 - Steele Bayou
- \$4M for Steele Bayou - Item 66B Channel Relocation - Phase II.
- \$4.3M for relief wells for Items 488L, 485R & 457R.
- \$11.5M for Upper Yazoo Project Item 7B.
- \$15.73M for Upper Yazoo Project Item 7C.
- \$549K for Greenville Harbor dredging.
- \$535K for Vicksburg Harbor dredging.



FY2010 APPROPRIATIONS UPDATE

The White House Budget had \$248M for the FY2010 MR&T Project. On June 25, 2009, the House Subcommittee approved \$251M for the MR&T Project. On July 10, 2009, the Senate approved \$340M for the MR&T Project! The next step is for these appropriations to go to Conference. The Mississippi Levee Board is pleased with our Mississippi Congressional Delegation with the adds to the MR&T Project appropriation. Sen. Thad Cochran (MS) is the ranking member of the full Senate Appropriations Committee. ■



Sen. Thad Cochran

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COMMISSIONER PROFILE

FRED A. BALLARD, JR., *President* 2009 A MILESTONE YEAR

Board of Mississippi Levee Commissioners President Fred Ballard has quietly gone about reaching several milestones recently. This summer he has celebrated his 75th birthday, his 55th wedding anniversary with his wife Sammie and completed 21 years of outstanding service to the Mississippi Levee Board.

Mr. Ballard, a Leland native, was elected to the Board in July 1988 to fill the seat held by DeLoach Cope. Ballard was elected by his fellow Board members as President in July 1998. He is a strong supporter of interior drainage improvement projects and flood control projects serving the Mississippi Levee District.

Mr. George Grugett, the Executive Vice President of the Mississippi Valley Flood Control Association, of which the Levee Board is a member, states, "Mr. Fred's 11 years of service as an active member of the executive committee of the Mississippi Valley Flood Control Association has benefited the sister levee boards throughout the Mississippi Valley; the 10 members of the Executive Committee are charged with the management and direction of the Association."

A top ranked, competitive athlete, Mr. Ballard continues to play golf and tennis when he can take a break from his farming operation near



Fred Ballard

Leland, Mississippi. In the past few years, his tennis teams regularly advance to the United States Tennis Association State Championships and they have won numerous State Titles and a Sectional Championship! He also continues to enjoy the outdoors with his family and friends crappie fishing and deer hunting.

The Ballards are the proud parents of Kim, Leah and Bo and they have 3 grandchildren and one great-grandchild. As a lifelong member of the First Baptist Church in Leland, Mr. Ballard continues his legacy of service. ■

BOARD MEETING RECAP

JANUARY: The Board of Mississippi Levee Commissioners took the following action at their January 12, 2009, regular meeting: reviewed bids and awarded Worker's Compensation to SouthGroup, fencing material to McCoy's; authorized advertisement for bids for 1/2-ton pick-up truck, 3/4 ton 4 wheel drive crew cab and 3/4 ton crew cab; chemicals for use in 2009; concurred with permit issued to the Greenville Yacht Club for a sewer force main crossing the Mainline Levee; received 2008 Certificate of Merit Award for Operations & Maintenance of Flood Control Projects from the Vicksburg District for the 50th consecutive year; and received status reports on all ongoing projects in the Mississippi Levee District and meetings attended. ■

APRIL: The Board of Mississippi Levee Commissioners took the following action at their April 6, 2009, regular meeting: reviewed bids and awarded general liability, automobile and property insurance to SouthGroup, 1/2-ton pick-up truck and 3/4 ton 4 wheel drive crew cab to All-Star Chevrolet, 3/4 ton crew cab to James Ceranti; authorized advertisement of bids for helicopter application; concurred with permits issued to DuFour Petroleum, L.P. for an 8" petroleum pipeline crossing the Big Sunflower River and to Harold May for culvert replacement on the north bank of the Connecting Channel; and received status reports on the Mississippi River Highwater event and all ongoing projects in the Mississippi Levee District and meetings attended. ■

JULY: The Board of Mississippi Levee Commissioners took the following action at their July 13, 2009 regular meeting: adopted 2009-2010 budget; set ad valorem tax rate of 2.40 mils (same as last year); concurred with permits issued to Francis Landing Land Company, Columbia Gulf Transmission Company, Jimmy Sanders, Inc. and Twin County Electric Power; received Chief Engineer's Annual Report on the levee, interior drainage and on all ongoing projects in the Mississippi Levee District; accepted bid on helicopter application work by Provine Helicopters from Greenwood, MS; and received a report of the Mississippi River Highwater and Yazoo Backwater Event. ■



COMMISSIONERS:

FRED A. BALLARD, JR., PRESIDENT, *Washington County*
KENNETH RODGERS, VICE-PRESIDENT, *Humphreys County*
JOHNNY ROBINSON, *Washington County*
JAMES W. HOUSE, JR., *Bolivar County*
NOTT WHEELER, JR., *Bolivar County*
ROY NICHOLS, *Issaquena County*
LAURANCE CARTER, *Sharkey County*

STAFF:

PETER NIMROD, *Chief Engineer*
ROBERT M. THOMPSON, *Assistant Engineer*
CHARLES S. TINDALL, III, *Attorney*
JUDY B. ROSS, *Treasurer*
GINGER MORLINO, *Secretary*
PATRICK BOLLS, *Maintenance Superintendent*
RICK BOYD, *Engineering Technician*

CORPS OF ENGINEERS PRESENTS AWARD TO MISSISSIPPI LEVEE BOARD

Board has achieved Award for 50 consecutive years



Lt. Col. Gregory Raimondo addressing the Levee Board



Lt. Col. Raimondo presents 50th consecutive award to Fred Ballard

The Board of Mississippi Levee Commissioners held their regularly scheduled meeting January 12, 2009, at which time the U.S. Army Corps of Engineers presented the Mississippi Levee Board the 2008 Certificate of Merit for the Operation and

Maintenance of Flood Control Projects. Lt. Colonel Gregory Raimondo, Deputy District Engineer of the Vicksburg District, commended the Board on achieving this distinction for 50 consecutive years. The Board of Mississippi Levee

Commissioners was organized shortly after the Civil War in November, 1865. The Constitution of the State of Mississippi requires the Board to protect the Delta from flooding. The Board currently operates and maintains 163 miles of Mainline

Mississippi River Levee, the 13 mile Brunswick Extension Levee, the 28 mile Yazoo Backwater Levee and the 8 mile Greenville Harbor Dike. The Board also has the maintenance responsibility for 350 miles of interior streams located throughout the Delta. ■

PROJECT UPDATES

LEVEE ENLARGEMENT PROJECT UPDATE:

Completed Work:

- 23.2 miles. Items 477L, 496L & 502L

On-going Construction:

- Item 488L, 8.8 miles, 99% Complete
- Item 474L, 3.4 miles, 51% Complete

Work to be Advertised in 2009:

- Item 468L, 4.7 miles

Future work remaining:

- 28.9 miles



STEELE BAYOU SEDIMENTATION REDUCTION PROJECT UPDATE:

Completed Work:

- Phase I – 11 sites

On-going Construction:

- Phase II – 14 sites, 62% Complete

Work to be Advertised in 2009:

- Phase III – 9 sites



Item 474L: Dumping material, scrapers hauling material, Riverside clearing

FEDERAL LEGISLATIVE ISSUES

Proposals in Washington, D.C. will hurt Flood Control!

“ENVIRONMENTAL ORGANIZATIONS” INCREASE HOLD ON WASHINGTON D.C.!

PROPOSED CHANGES TO THE PRINCIPLES & GUIDELINES FOR FEDERAL AGENCIES

WRDA 2007 directed the Secretary of the Army to revise the 1983 Principles & Guidelines for water resource projects. CEQ has taken over the proceeding, with an expressed goal of broadening the application of the Principles government-wide. We have serious concerns with the manner in which this process is being conducted. As a primary matter, the Army Corps of Engineers is the agency best suited and most experienced to deal with these issues. The Congress recognized this when it directed the Secretary of the Army to update the Principles. The most significant concern of the Secretary's proposed revision to the existing Principles and Standards is a **minimum benefit cost ratio (BCR) of 1.5** for adding increments to Federal investment in a water resources project. The arbitrary threshold of 1.5 for incremental investment adds to the substantial confusion that abounds throughout the proposed guidance. Under this criterion project alternatives with greater BCRs would get higher weights over those with lesser BCRs – “while meeting critical needs.” The emphasis on higher BCRs in this proposal would sacrifice significant net benefits and is inconsistent



with “efficient use of the nation's resources” as asserted in the National Objective. Historically, the Secretary has formulated and selected a flood risk management plan based on maximizing net national economic development benefits. In this procedure, benefits are estimated based on the value of flood damages with no direct benefit associated with reducing flood risk. Public safety has been incidental to economic optimization. As a consequence, low income communities with low property values generally receive less public safety protection from flood risk management projects. The experience of Hurricanes Katrina and Rita demand a substantial and clear statement of the manner in which Corps' flood safety projects will integrate public safety. The Secretary's proposed Principles related to public safety are vague and ambiguous. ■

WHITE HOUSE EXECUTIVE ORDER – FLOODPLAIN MANAGEMENT

On June 15, 2009, the White House sent out a memo to override P&G by revising a 1977 Executive Order (EO 11988) on management of flood prone areas. If this EO is revised — it



could prevent future structural projects on floodplains! This will override the Corps P&G - without public input! Also included in this proposed EO is the movement from protection of the 100-year floodplain to the **500-year floodplain**. The White House is pushing non-structural flood control measures over structural flood control!

NATIONAL LEEVE SAFETY COMMITTEE

The National Committee on Levee Safety was established in 2008. In January they released a report containing recommendations for a National Levee Safety Program. Among the recommendations is a mandatory requirement of risked based flood insurance for those who live in areas protected by levees. Approximately 40% of United States citizens live behind a levee! ■



ENERGY BILL

Congress is currently crafting legislation that will fundamentally transform the way Americans produce and consume energy by imposing a “cap and trade” requirement on carbon emissions and mandating a several fold increase in the production of electricity from “renewable sources” such as wind and solar power. This proposed legislation will adversely impact nearly every segment of the nation's

economy. According to the Heritage Foundation gasoline and natural gas prices could increase by 74 and 55 percent, respectively, and the average family would pay an additional \$1,500 each year for electricity resulting in a \$7.4 trillion loss in gross domestic product and a net loss of as many as 1.9 million jobs. Mississippi and other States that primarily use fossil fuels for generating electricity would bear the brunt of these losses to the U.S. economy, crippling their ability to sustain economic growth and compete in a global economy. ■

CLEAN WATER RESTORATION ACT (CWRA)

The Clean Water Restoration Act (CWRA) is currently before the Environment and Public Works Committee. If enacted, this bill (S. 787) would authorize unprecedented expansion of federal authority over all waters, land, and people of the United States. The intent of this bill is



to overturn two landmark U.S. Supreme Court decisions that limited the ever-expanding jurisdictional reach of the U.S. Government under the Clean Water Act (CWA). The Supreme Court's SWANCC decision in 2001 ruled that the CWA does not provide regulatory authority over isolated wetlands. Instead, any such jurisdiction is within the purview of the affected state. The Supreme Court's Rapanos decision in 2006 went further by limiting federal authority under the CWA to only those cases where there is a clear connection to navigable water. This bill would greatly expand federal jurisdiction beyond anything previously seen in Congress. For example, the term “navigable waters” would be replaced with “waters of the U.S.,” including farm ponds, intermittent wetlands, sloughs, potholes, etc. ■

BACK IN TIME: Walter Sillers



Walter Sillers was born in Jefferson County, Mississippi, on March 2, 1852, and moved at the age of two with his family to Bolivar County. He practiced law in Beulah and later Rosedale where he made his home. He was the owner of several plantations in Bolivar County.

According to his daughter, Florence Sillers Ogden, the "...greatest interest of his public career was centered in the building and maintaining of a protective levee system in the Mississippi Delta."

He spent much of his life serving the Board of Mississippi Levee Commissioners whether as a levee inspector or guard during floods, as Board Member or as Board President.

He was a strong proponent of the Eudora Floodway which would have removed floodwaters from the Mississippi River near Eudora, Arkansas. The water would have followed a path down Cypress Creek, the Atchafalaya, the Red River and on to the Gulf of Mexico.

Mr. Sillers was a member of the Board from July 1914 to July 1918 during which time he served as Board President from 1914 to July 1916. He was again elected to the Board and served from July 1924 to July 1931. His son, Walter Sillers, Jr. was appointed Board Attorney in July 1926 and served in that capacity until July 1930.

Walter Sillers died at his home on Levee Street in Rosedale on January 3, 1931. ■



Walter Sillers home on Levee Street in Rosedale, MS



Walter Sillers Coliseum at DSU in Cleveland, MS

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