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NEWS

Federal suit challenges pumps veto

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A federal suit challenging the Environmental Protection Agency's August 2008 veto of the Yazoo Backwater Project pumps is to be filed today in Greenville on behalf of the Board of Mississippi Levee Commissioners.

"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 attorney Damien Schiff of Pacific Legal Foundation, which is representing the Levee Commission.

Online

[Click here](#) for the EPA's Final Determination on the Yazoo Backwater Project and related documents.

Schiff, along with Mississippi Levee Board Chief Engineer Peter Nimrod and local officials, held an 11 a.m. press conference in Greenville to announce the lawsuit as the next step in a decades-long struggle over water that becomes impounded by levees on South Delta farmland and timberland during flood years.

The EPA wielded rarely used veto powers granted under Section 404 (c) of the 1979 Clean Water Act in August, stating the proposed \$220 million pumping station would be too harmful. It was only the 12th time the EPA had used the veto provision to ax a project, and the first time since 1990.

In the lawsuit, the levee commissioners contend the EPA had no legal right to use its veto power because the act says projects approved by Congress prior to Dec. 27, 1977, can't be vetoed. In sum, the suit says an executive agency, such as EPA, doesn't have the authority to void an act of Congress. The levee commission is relying on documents it obtained after the veto using the federal Freedom of Information Act and congressional approval of pumps dating to before World War II.

"Congress appropriated money for the pumping station in 1984 with the benefit of an environmental impact statement from the Army Corps of Engineers," Schiff said. "Congress approved this project with all the required information before it. EPA has only one duty in this matter: butt out."

The pumps were authorized by Congress in 1941 as the final piece of the Yazoo Backwater Project — a system of levees and drainage structures designed to keep Mississippi River floodwaters out of the the 4,093-square-mile backwater area. A lack of funding had delayed the project for decades following authorization. The levees and drainage structures of the backwater project were completed in 1978.

Designed by the U.S. Army Corps of Engineers, the pumps would be turned on during floods in which rainfall and backwater flooding are impounded in the backwater area due to high river stages that force all drainage structures closed. They would lift water out of the backwater area and pump it into the Mississippi River, where the Corps claims it would not have any noticeable effect on the river stage. Many of the pumps' supporters say without them, the levees that fence in the backwater area are more harmful than helpful.

"The residents of the Mississippi South Delta just want what was promised to them 68 years ago," Nimrod said. "It's time to complete the last phase of flood protection for the Mississippi Delta."

The pumps would be turned on only when the water stage inside the backwater area reaches 87 feet — about a foot beyond where crops begin to go under water. In 23 of the 31 years since the levees

were completed, the backwater area water stage has topped out beyond 87 feet.

Backwater flooding this year and in 2008 produced the third and sixth highest water stages since the completion of the levee system. An estimated 394,000 acres inside the levees went under water for much of May and June. Of that, 152,000 acres were cleared for farming.

Environmental groups say the pumps would do more harm than good for the area's ecology. The area is sparsely populated and the better alternative, some say, is to let it return to conditions that prevailed before about 1900.

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