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U.S.

Decade After Katrina, Pointing Finger More Firmly at Army Corps

By **CAMPBELL ROBERTSON** and **JOHN SCHWARTZ** MAY 23, 2015

NEW ORLEANS — Nearly 10 years on, one might assume that the case of Hurricane Katrina is closed.

That the catastrophic flooding of this city was caused not merely by a powerful storm but primarily by fatal engineering flaws in the city's flood protection system has been proved by experts, acknowledged by the United States Army Corps of Engineers and underscored by residents here to anyone who might suggest otherwise.

But the efforts to establish responsibility with ever more precision — to ascertain just how many of those flaws were due to engineering, politics or money — have not stopped.

A pending article in the peer-reviewed journal *Water Policy*, written by experts involved in some of the most significant previous examinations of the catastrophe, sets out to refine some high-profile early versions of the factors that led to the disaster. The article rebuts assessments of the levee system's design process that had spread responsibility around to include local officials, and it contends that fault should fall even more squarely on the corps.

“All I'm trying to do is set the record straight,” said J. David Rogers of the

Missouri University of Science and Technology, the lead author of the article, whose view of the exact allocation of blame has shifted as he has come across new information. “There’s no bad guy that I’m trying to slap their hands.”

Efforts aimed at ensuring definitive historical accountability are being complemented by a separate but no less dogged pursuit of legal liability. This month, a federal judge ruled that the federal government owed compensation to the owners of certain flooded property in and near New Orleans, raising the prospect that after a decade of legal setbacks, the elusive goal for many here, some kind of restitution, may be in sight.

The journal article focuses on a key debate that long preceded the storm. This debate centered on how best to prevent flooding from the city’s three major drainage canals, which jut into the city from Lake Pontchartrain. The levees and flood walls along two of these canals failed during the hurricane, letting water pour through neighborhoods and drown scores of people.

A high-profile 2006 report, underwritten by the National Science Foundation, upheld a common refrain: that local officials in New Orleans had contributed to the disaster by forcing the corps to build less-effective protection for the city than the corps had wanted to build.

The corps had proposed a plan that would have put gates at the mouths of the canals that could be closed as a storm approached. The city’s levee board members and other officials pushed for an alternate corps plan: the construction of several miles of levees and flood walls along the canals.

The gates “would have been the superior technical solution,” the 2006 report stated. “Dysfunctional interaction” between local officials led to the long stretches of levees and flood walls, which failed catastrophically. News accounts after the storm echoed these findings.

But Professor Rogers, who was one of the authors of the 2006 report, has concluded that those earlier findings “may have been both historically and

logically flawed.”

The authors of the study looked through a more extensive record, including hundreds of pages of meeting minutes examined by researchers from Levees.org, a New Orleans activist group. They found nothing to suggest that local officials had “behaved irresponsibly,” or that the corps or levee board had “believed that the risk would be significantly increased” by raising the levees and flood walls instead of building the gates.

The authors also rebutted a notion, repeated in the news media, that the corps had been blindsided by back-room deals in Washington concerning the design that had been sought by lobbyists on behalf of the levee board.

The levee board is not spared criticism, but the report concludes that it had valid concerns about the gate plan and that the board’s flaws, such as its enthusiasm for investments not related to flooding and for largely ceremonial levee inspections, were not factors in the breaches during the hurricane.

The corps had proposed the gates as an equally effective but far less expensive option, Professor Rogers said, but once the flood walls were chosen, its engineers failed to notice some critical warning signs in their studies, with disastrous results.

The aim of the article, as Professor Rogers said, is a rebalancing. That the corps was primarily at fault has not been contested, even by its leadership.

“We’re not ducking our accountability and responsibility in this,” Lt. Gen. Carl A. Strock, who was chief engineer of the corps, said in a 2006 interview, upon the release of a 6,000-page federal report that found that the flood-control complex surrounding New Orleans had been “a system in name only.”

General Strock did say in that interview that some of the decisions behind the system had been influenced by local officials, who had disliked earlier plans. But, he said, “at the end of the day, we have to stand by the decisions.”

Admissions like these had generally not been seen as legally risky. Lawsuits brought by residents after the hurricane repeatedly ran up against federal statutes that guarantee immunity to the federal government for flood-control work.

But since 2005, a separate legal theory has been quietly tested in the courts. This theory states that the flooding of thousands of homes by levee breaches in St. Bernard Parish and the Lower Ninth Ward of New Orleans — flooding that was distinct from the canal breaches discussed in the journal — constitutes an illegal taking of property by the government. The property owners are thus owed compensation, just as if their land had been seized for any public use.

On May 1, Judge Susan G. Braden of the United States Court of Federal Claims in Washington agreed with this theory, basing her decision to a large degree on the corps's own findings. Though federal officials have not commented on a potential appeal, the judge recently gave the government until Aug. 10 to decide whether to appeal, enter mediation or wait for a judgment.

Judge Braden's ruling could have significant consequences for future disasters, said Robert R. M. Verchick, an environmental law professor at Loyola College of Law in New Orleans.

The corps's relative openness about its shortcomings may have been possible because the legal risks appeared so low, Professor Verchick said. He suspects that this is also why there was little discussion of a compensation fund after the storm, as there had been after the Sept. 11 attacks.

“There didn't seem to be any credible threat of litigation against the federal government because they seemed to be almost completely immune,” he said. Now that there appears to be an avenue for legal action even in flood-related matters, Professor Verchick said, this may change.

Since the storm, the corps has built a \$14 billion hurricane system around the city, which has drawn praise from Judge Braden and Professor Rogers — and from other, perhaps less expected, corners.

“I feel safe now,” said Tommy Tommaseo, a plaintiff in the lawsuit and the owner of Rocky & Carlo’s, a restaurant in St. Bernard Parish that flooded during the hurricane, for the first time in its 50 years. Mr. Tommaseo pointed out that parish voters had twice recently voted down a tax increase for levee maintenance, a sign, he said, that people do not feel in danger.

His son Rocco was less sure about that. He was also skeptical that the court decision would change the “huge misconception” about what happened 10 years ago.

“Everything is Hurricane Katrina — nobody thinks about the levees,” he said. “I don’t think this will change anything.”

Correction: May 31, 2015

Because of an editing error, a picture caption with an article last Sunday about efforts to determine responsibility for the flooding in Louisiana after Hurricane Katrina misidentified a levee that was among those that failed. The levee shown was along the Inner Harbor Navigational Canal; it was not the 17th Street levee.

Campbell Robertson reported from New Orleans, and John Schwartz from New York.

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