

ORDINANCE NUMBER 3 of 2011

AN ORDINANCE PROVIDING FOR REGULATION OF REMOVAL OF WATER FROM CANE RIVER LAKE IN ORDER TO PROTECT THE WATERBODY; PROVIDING FOR PENALTIES, AND ADVERTISEMENT.

WHEREAS, the Cane River Waterway District is a body politic and corporate subdivision of the State of Louisiana, created by Acts 1982, No. 391, R.S. 34:3261, et. seq.; and

WHEREAS FURTHER, the Cane River Waterway Commission (Sometimes hereinafter "Commission") was created for the purpose of establishing, operating and maintaining the Cane River Waterway; included in the powers delegated to the Commission is the power to adopt regulations to preserve the health, welfare and safety of the recreational and commercial users of Cane River Lake; and

WHEREAS FURTHER, among the powers and authority granted to the Commission under La. R. S. 34:3269 are the authority to "effectuate and maintain proper depths of water to accommodate the business of the Commission, and to regulate the use of water from the waterway" and "to otherwise regulate and be the regulatory authority of the Cane River Waterway and its use"; and

WHEREAS FURTHER, rights of riparian land owners are provided for at Louisiana Civil Code Article 657 which provides that the "owner of an estate bordering on running water may use it as it runs for the purpose of watering his estate or for other purposes" and at Louisiana Civil Code Article 658 which provides "the owner of an estate through which water runs . . . may make use of it while it runs over his lands. He cannot stop it or give it another direction and is bound to return it to its ordinary channel where it leaves his estate"; and

WHEREAS FURTHER, there are many riparian land owners that irrigate from Cane River Lake including agricultural users who use water from Cane River Lake to irrigate crops and water livestock and residential owners who use water to irrigate lawns and other plantings; and

WHEREAS FURTHER, the Commission recognizes that irrigation from Cane River Lake is important to all riparian land owners, and is particularly of importance to riparian land owners who irrigate crops with water from Cane River Lake; and

WHEREAS FURTHER, the Commission accepts that irrigation from Cane River Lake, as authorized by the Louisiana Civil Code, is a legitimate use of the water in Cane River Lake, but finds that this use must be balanced with other uses of Cane River Lake and that this use must be limited in order to protect Cane River Lake as a continuing viable water body; and

WHEREAS FURTHER, as of October 18, 2011, the water level of Cane River Lake was 93.5 feet above mean sea level; pool stage for Cane River Lake is 98 feet above mean sea level; thus, the Lake is currently 4.5 feet below pool stage; and

WHEREAS FURTHER, the Commission acknowledges that the current low level of Cane River Lake is primarily due to below average rain fall for the last two years but can only take action as to activities that are within the control of man; and

WHEREAS FURTHER, the Commission finds that continued low water level in Cane River Lake has or contributes to the following detrimental impacts:

- 1) The esthetic value of the lake is negatively impacted.
- 2) The land values of property on Cane River Lake may be reduced.
- 3) The extreme low water levels in Cane River Lake could have a negative impact on tourism and a resulting negative impact on income to local merchants and sales taxes to local governments.

- 4) Loss of use of the water body for recreation and fishing, which also results in a negative impact on income to local merchants and sales taxes to local governments.
- 5) Loss of 6-8 more inches in water level would create one or more land bridges, cutting off areas of the lake from each other which would create pockets of water that could lead to fish kills.
- 6) Engineering study has indicated that a two foot deficit is difficult to recover from with normal rainfall over the wet months.
- 7) Large segments of Cane River Lake have been closed to boat traffic due to the dangerous conditions created by low water level; and

WHEREAS FURTHER, the authority of the Commission to control the use of the waters of Cane River Lake is a regulatory function that includes the authority to regulate and limit irrigation from Cane River Lake; and

WHEREAS FURTHER, the Commission is of the opinion that such regulation will protect the rights of all riparian land owners to use Cane River Lake, will further benefit the people of the State of Louisiana, will increase commerce and prosperity and will improve the general health and living conditions of riparian land owners and other users of Cane River Lake; and

WHEREAS FURTHER, the Commission proposes to adopt an ordinance prohibiting irrigation from Cane River Lake or removal of water from Cane River Lake when the water level drops to 94.5 feet above mean sea level or lower, and this irrigation ban shall remain in place and continue until the water level rises to at least 95 feet above mean sea level;

WHEREAS FURTHER, duly authorized agents designated by the Cane River Waterway Commission shall inspect, monitor, and enforce the measures of this ordinance.

NOW THEREFORE, BE IT ORDAINED in legal session convened and in accordance with Louisiana R.S. 34:3261, et. seq., and specifically, R.S. 34:3269 (6) and (13) and R.S. 34:3268, any withdrawal, removal, and/or pumping of water from Cane River Lake is hereby prohibited when the water level in Cane River Lake drops to 94.5 feet above mean sea level or lower, and such prohibition shall continue until such time that the water level in Cane River Lake rises to 95 feet above mean sea level or higher.

BE IT FURTHER ORDAINED that the Commission may impose a civil compliance order directing any person deemed responsible for the withdrawal, removal and/or pumping of water from Cane River to cease and desist and impose a fine of \$200.00 per day for each day the violation continues up to a maximum of \$20,000.00. The fine shall commence on the day following the date specified for compliance in the civil compliance order issued by the Commission.

BE IT FURTHER ORDAINED that all fines imposed under this section shall be payable to the Cane River Waterway Commission.

BE IT FURTHER ORDAINED that if civil action is necessary to recover fines imposed under this section, the offenders shall be liable for the amount of the fine, legal interest from the date of assessment and all costs of recovery, including attorney fees and costs.

BE IT FURTHER ORDAINED that in the event that any person continues to withdraw, remove and/or pump water from Cane River in violation of the Ordinance and after receiving a civil compliance order, the Chairman of the Commission shall be authorized to file suit in District Court for the Parish of Natchitoches, Louisiana seeking a Court Order enjoining further withdrawal, removal and/or pumping of water from Cane River Lake in violation of this Ordinance.

BE IT FURTHER ORDAINED that all Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

BE IT FURTHER ORDAINED that if any portion of this Ordinance is declared to be invalid or unconstitutional in any manner, the invalidity shall be limited to that particular section or provision, and shall not affect the remaining portions of the ordinance, which shall remain

valid and enforceable, it being the intention of the Cane River Waterway Commission that each separate provision shall be deemed independent of all other provisions herein.

This Ordinance shall go into effect upon publication and in accordance with law.

Said Ordinance having been introduced on the 18 day of October, 2011, at a regular meeting of the Cane River Waterway Commission held at 244 Cedar Bend Road, City of Natchez, Louisiana.

Ordinance considered, on motion by _____ Vienne _____ and seconded by _____ Khoury _____, to adopt the ordinance, a record vote was taken and the following

Result was had:

YEAS: 4

NAYS: 0

ABSENT: 0

OBSTAIN: 1

Whereupon, the presiding officer declared the above Ordinance duly passed on this the _____ 18 day of _____ January _____, 2012.


