

FILED  
U.S. DISTRICT COURT  
SAVANNAH DIV.

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF GEORGIA 2007 JAN 10 PM 4:39  
SAVANNAH DIVISION

CLERK *[Signature]*  
SO. DIST. OF GA.

ELIZABETH E. CAIN;  
DAVID KAMINSKY; and  
LARRY GIBSON,

Plaintiffs,

v.

CASE NO. CV407-06

U.S. ARMY CORPS OF ENGINEERS;  
GEORGIA STATE DEPARTMENT OF  
NATURAL RESOURCES, COASTAL  
RESOURCES DIVISION; SUSAN  
SHIPMAN; MARK A. DANA; and  
FRANCES M. DANA,

Defendants.

OPTIONAL FORM 69 (7-90)

**FAX TRANSMITTAL** # of pages **4**

To <i>Donald Stark</i>	From <i>MIKE GARDNER</i>
Dept./Agency <i>Armed Forces</i>	Phone # <i>650-4028</i>
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NSN 7540-01-317-7300 5099-101 GENERAL SERVICES ADMINISTRATION

ORDER

Before the Court is Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction. (Doc. 2.) Plaintiffs seek to enjoin the construction of a dock on the marsh in the Tom's Creek Basin on Wilmington Island. The Georgia Department of Natural Resources Coastal Division, acting under authority delegated by the U.S. Corps of Engineers, issued "fast-track" approval pursuant to the State of Georgia Programmatic General Permit No. PG00083. Plaintiffs claim that this decision was arbitrary and capricious and in violation of the Georgia Coastal Marshland Protection Act (CMPA), the State of Georgia Programmatic General Permit No. PGP0083, 960009050, the

Administrative Procedure Act, and the U.S. Rivers and Harbors Act of 1899. Plaintiffs have filed a Motion for Temporary Restraining Order and Preliminary Injunction with their Complaint.

Pursuant to Federal Rule of Civil Procedure 65(b), a temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if two conditions are met. First, the applicant must demonstrate, with specific facts shown by affidavit or by the verified complaint, that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition. Second, the applicant's attorney must certify to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting the claim that notice should not be required. If a temporary restraining order is granted without notice, the motion for preliminary injunction shall be set down for hearing at the earliest possible time. See Fed. R. Civ. P. 65(b).

Plaintiffs have offered evidence to show that they could suffer irreparable injury if a temporary restraining order is not entered. Through affidavits and attached photographs, they have shown that the construction may

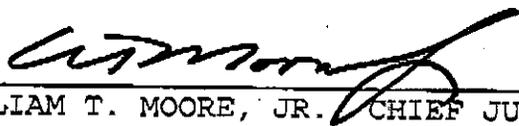
cause damage to the marsh wetlands and ecosystem, obstruction of the view from their property, and potential impediments to navigation. Plaintiffs have produced evidence that the proposed construction is many times larger than other docks in the area, arguing that this violates Condition J of the Programmatic General Permit. Plaintiffs' Complaint states that construction has already begun and is continuing. These specific facts are sufficient to show that Plaintiffs could suffer irreparable injury if a temporary restraining order is not entered. See Amoco Prod. Co. v. Vill. of Gambell, 480 U.S. 531, 545, 107 S. Ct. 1396, 94 L. Ed. 2d 542 (1987) (noting that "[e]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable. If such injury is sufficiently likely, therefore, the balance of harms will usually favor the issuance of an injunction to protect the environment.")

However, Plaintiffs' counsel has not provided information as to what efforts have been made to give notice to the Defendants. Similarly, counsel has not explained why notice should not be required. See Fed. R. Civ. P. 65(b). Because Plaintiffs have failed to comply

with the requirements of Rule 65(b), the Court is unable to grant a temporary restraining order at this time.

After reviewing the motion in support of injunctive relief, the Court finds that a hearing on Plaintiffs' motion is appropriate. Accordingly, the Court will hear arguments from counsel for Plaintiffs and Defendants on January 17, 2007 at 4:00 p.m. in the third-floor courtroom of the Federal Courthouse at 125 Bull Street, Savannah, Georgia. Plaintiffs will be afforded a total of forty-five minutes to advance their combined arguments in support of injunctive relief, and Defendants will be afforded a total of forty-five minutes to set forth their combined arguments in opposition. Plaintiffs are reminded that appropriate notice to Defendants is an essential element of the preliminary relief they seek. See Fed. R. Civ. P. 65(a)(1).

SO ORDERED this 10<sup>th</sup> day of January, 2007.

  
WILLIAM T. MOORE, JR. CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA