

**MINUTES OF
SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITY-EAST
FINANCE COMMITTEE MEETING
HELD ON AUGUST 19, 2021**

PRESENT: K. Randall Noel, Chair
Roy M. Arrigo, Committee Member

The Finance Committee of the Southeast Louisiana Flood Protection Authority-East (FPA or Authority) met on August 19, 2021, at the Franklin Avenue Administrative Complex, Meeting Room 201, 6920 Franklin Avenue, New Orleans, Louisiana. Mr. Noel called the meeting to order at 9:30 a.m.

Opening Comments: None.

Adoption of Agenda: The Committee adopted the agenda as presented.

Approval of Minutes: The Committee approved the minutes of the Finance Committee meeting held on July 15, 2021.

Public Comments: None

Regional Finance Director's Report:

John Burgess, Interim Regional Finance Director, reported the following:

- The auditors are at the Franklin Facility and will be wrapping up their field work for the FY 2020-2021 Financial Audit. No issues have been reported to date.
- Finance is continuing its preparatory work for the implementation of the new Asset Management System. A temporary person was hired to do data cleansing.
- A Pronto workshop for the New Asset Management System is scheduled for the week of September 13th and the following week. The target go-live date for the new software system is July 1, 2022. The current system and new Asset Management System will run parallel with the goal of completing testing by July 1st.

New Business:

A. Budget to actual report for 4th Quarter.

Mr. Arrigo advised that all of his questions regarding the budget to actuals were answered in the summary that was provided. Mr. Noel asked about the item line in Legal that exceeded the budget.

Mr. Burgess advised that the East Jefferson Levee District (EJLD) was over the budget on Legal; however, the Orleans Levee District (O.L.D.) and Lake Borgne Basin Levee District (LBBLD) did not exceed the budget on Legal.

Michelle White, Executive Counsel, explained that the taking cases in Orleans and East Jefferson Parishes are basically the only uninsured cases. Two cases are pending in East Jefferson: the Labruso case, which is being handled by the Attorney General's (AG) Office, and the Southport case. The FPA was not sure when developing the budget estimates about how soon litigation would recommence due to Covid-19. As litigation recommenced on the Southport case, Burglass & Tankersley (Burglass) began working towards a realistic settlement demand. Therefore, the budget was exceeded due to unanticipated litigation activity after a long period of inactivity (as much as a year). The State, as well as the FPA, are defendants in this suit. Thus far, the defendants' collective decision has been that it would be better from both a precedent standpoint and a legal strategy standpoint to continue their defense. The plaintiff in the Southport case alleged that work that had taken place resulted in an expanded levee servitude that constituted a taking. Chris Humphreys, Director of Engineering, provided the documentation that Engineering had to the FPA's counsel to support the FPA's position that the servitude had not expanded.

Ms. White advised that the Labruso case is being defended by the AG's Office since they are defending State lands and the Coastal Protection and Restoration Authority. The FPA's defense is aligned with the AG's Office; therefore, the AG's Office was asked to also defend the FPA rather than take on the cost. The action took place too long ago in the past to be litigated. The litigant claims that when the pump stations were made permanent, rather than an interim measure, it constituted the date of the taking. The case valuation for both East Jefferson cases are in the several million-dollar range.

Ms. White advised that there is one taking case in Orleans Parish, which is valued in the range of seven to nine million dollars for purchasing 6-feet of property from every property owner along both sides of the London Avenue Canal. It is in the FPA's best interest to continue its defense from the standpoint of a potential judgment, as well as the precedent that would be set if the plaintiff is successful and the statute providing for the 6-foot and 15-foot setoff is shown to be a taking resulting in the FPA having to compensate everyone along the 6-foot and 15-foot zones. The trial court had granted the other party's motion for summary judgment saying that LA R.S. 33:225, the statutory provision for the restricted zone, was a taking; however, the judge did not know who did the taking—the Legislature, State lands, or the levee district. The Robert case has been in a holding pattern because the FPA was waiting for a decision from the 4th Circuit Court. The decision, which was favorable for the FPA, came last week, which means that the litigation will once again move forward. The 4th Circuit Court reversed the decision stating that it was not appropriate to grant a summary judgement finding that it was a taking. The Association of Levee Boards of Louisiana filed an amicus brief on this issue in support of the FPA.

Ms. White explained that on most of the approximately 14 pending suits, the SIR is \$100,000, or in the case of motor vehicle accidents \$50,000. The costs do not show up under the Legal budget.

Mr. Morgan explained, relative to the 15-foot zone, that when the U.S. Army Corps of Engineers was finalizing the design of the Hurricane and Storm Damage Risk Reduction System, it implemented a 15-foot zone, which had not been previously defined, to protect levees from tree growth and other endangerments because part of the failure during Hurricane Katrina was associated with a swimming pool constructed close to the toe of the levee. Ms. White explained that this is the situation along the 17th Street Canal and that the area where there are no longer houses was acquired by the USACE on the O.L.D.'s behalf for the work that it needed to do post-Katrina. After it was no longer needed, the land was placed in the name of the O.L.D.

Mr. Burgess advised that there are several large projects that will be pushed into the FY 2022 budget due primarily to weather delays.

B. Discussion and recommendation on proposed resolution to authorize the Regional Director or her designee to take the necessary steps to develop and implement a policy requiring that employees of the FPA and each of the levee districts within its jurisdiction be immunized against COVID-19, consistent with the law and with the guidance provided by the State Civil Service, subject to any exceptions that such law and guidance may require.

Ms. White explained that under Louisiana State Civil Service the FPA cannot require an employee to be vaccinated as a condition of employment. It is acceptable under State Civil Service for the FPA to require routine testing for unvaccinated employees, which is also consistent with State and Federal law. Mr. Noel noted that masks would still be needed because of the risk of break through infections. He pointed out that there are some individuals who cannot be vaccinated. Ms. Chandler advised that medical and religious exceptions would be built into the policy. Ms. White clarified that after speaking with Mr. Morgan, the intention was to put the issue before the Board to determine whether there was general support for such a policy. Staff would consult with State Civil Service, monitor litigation, and ensure compliance with CDC guidance, as the policy is developed. She pointed out that in the time that it takes to develop such a policy, if supported by the Board, one or more of the vaccines could be approved by the FPA, which would remove most of the legal barriers, if there are any.

Mr. Arrigo stated that he supported the resolution and that this is a fluid situation; however, he had confidence in the staff that the policy will be kept legal, even if changes are required.

Mr. Morgan advised that he requested that the resolution be placed on the Board's agenda so that the Board could do the most that it can to protect FPA employees and to ensure that the FPA can provide the appropriate storm response.

Ms. Chandler advised that about 70 percent of FPA employees have been vaccinated. The concern is that if most members of a team are not vaccinated, there is more risk for viral spread and the entire team could potentially be unable to provide storm response.

The Committee will recommend that the Board adopt the resolution.

C. Update on legal contracts and expenses.

Ms. White explained that there are three Workers Compensation (WC) cases, which are being handled by WC, seven personal injury cases, two of which are bicycle accidents on the All Weather Access Road (AWAR) in Jefferson Parish, and the remainder of the cases are motor vehicle accidents. There are five Civil Rights suits in Federal Court regarding police activity. The majority of the cases, which are being defended by Mark Hanna with the Mouldou Bland law firm, are relative to broad allegations.

There was no further business; therefore, the meeting was adjourned at 9:55 a.m.