

**MINUTES OF
SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITY-EAST
LEGAL COMMITTEE MEETING
HELD ON SEPTEMBER 3, 2009**

PRESENT: Stradford Goins, Chairman
George Losonsky, Committee Member
Thomas Jackson, Committee Member
Timothy Doody, President

The Legal Committee met on September 3, 2009, in the in the Second Floor Hall, Lake Vista Community Center, 6500 Spanish Fort Boulevard, New Orleans, Louisiana. Chairman Stradford Goins called the meeting to order at 11:43 a.m.

Opening Comments: None.

Adoption of Agenda: The agenda was amended to include the discussion of a recent change in the public bid law. The amended agenda was unanimously adopted by a roll call vote.

Approval of Minutes: The minutes of the August 6, 2009 meeting were approved.

Public Comments: None.

New Business:

A. Approval of Legal Invoices (SLFPA-E, OLD, EJLD and LBBLD).

Mr. Jackson requested that invoice summaries list the full name of attorneys in lieu of his/her initials. He also noted that on one of the invoices an attorney billed at two different rates, which was probably the result of the attorney earning a higher rate on the attorney general's rate schedule upon reaching an anniversary for years of experience. Mr. Lacour advised that he would find out the reason for the inconsistency.

Mr. Jackson requested that a status of the Bohemia Spillway litigation be provided to the Board in executive session. Mr. Doody commented that the Authority is having an historical account of the Bohemia Spillway prepared. He also commented on the need to involve the Legislature in working out a solution on the Bohemia Spillway issues. Mr. Jackson pointed out the drain this litigation is taking on Orleans Levee District's resources.

The Committee discussed case management. Mr. Lacour pointed out that, excluding the Katrina cases, the Bohemia Spillway litigation and the cases inherited from the previous boards, the Authority has experienced very little litigation. Mr. Losonsky commented on the need for better strategic management and project management of

litigation. He recommended that regular periodic summaries be provided for each case to include monies spent to-date, legal strategy and major changes in the case. Mr. Goins requested that invoices also include a running total of the amount spent for each case. He recommended that attorneys provide a recommendation of a settlement amount, along with a brief summary of the case, in executive session.

Committee members agreed that future invoices would not be paid unless the new formats include monies paid to-date on each case.

The Committee approved the legal invoices listed on the summary of legal invoices as of September 3, 2009.

B. Report on pending litigation.

Robert Lacour, General Counsel, provided a report on pending litigation, as follows:

Montano case - The plaintiff's claim will probably be reduced due to certain circumstances.

Schudmach and Edenborn cases - Mr. Anzelmo has met several times concerning possible settlement.

Cordova case - None of the depositions taken thus far has attributed any negligence to the levee district's maintenance personnel.

Gabriel case - An appraisal is awaited for an attempt to work out a settlement.

Katrina Flood cases - The limited fund, no opt out, settlement proposal is before Judge Duval. Judge Duval would like to try the MRGO cases before proceeding with the Katrina flood cases.

Sid Mar case – Sid Mar is claiming compensation for property it owns and for East Jefferson Levee District (EJDL) property on which it is situated. The EJLD has a title policy for its property and must remain in the case to protect its interest. The plaintiff will appeal a decision that sends the case from Federal court back to the State court.

The following cases are on appeal:

17th Street Canal tree removal litigation

Ulysses Williams vs. O.L.D.

Theodore Lange vs. O.L.D.

West End Tennis and Fitness Club - Motions for summary judgment are being filed.

Olivier case – Has been moved to federal court and involves land that was commandeered for borrow. The Pizanni and Borgnemouth cases are similar to Olivier.

Violet Dock case – A suit was instituted for the temporary taking of property. The U.S. Army Corps of Engineers was told that it could park trailers on the land after Hurricane Katrina; however, it was later discovered that the land was private property.

A. Clem - EEOC claim was turned down.

Fernandez case – compensation is currently being discussed and involves a quick-take of property.

Mr. Jackson commented on the taxes paid by the public to the levee districts for flood protection having to be used to deal with litigation. He suggested some type of legislative action be sought to provide immunity for the levee districts from litigation. Mr. Doody advised that the Legislative Committee of the Association of Levee Boards will be discussing legal issues common to all levee districts throughout the State. Mr. Lacour commented on the ability of the State through the enactment of legislation to provide immunity to levee districts when acting in their flood protection capacity.

C. Discussion of appropriation – Article 665 of the Civil Code.

Mr. Lacour advised that until 2006 Civil Code Article 665 read, as follows: “Servitudes imposed for the public or common utility relate to the space which is to be left for the public use by the adjacent proprietors on the shores of navigable rivers and for the making and repairing of levees, roads and other public common works.”

Mr. Lacour explained that when Louisiana joined the Union, landowners with property adjacent to a navigable river or stream had the obligation of building a levee. The State assumed the obligation; however, in return for assuming this burden the property owner had to allow the space to build the levee and for borrow. The levee boards for many years received servitudes for land under the levees with the property owners still owning the land. Subsequently, legislation was passed stating that land owners were to receive the assessed value as a gratuity. The U.S. Supreme Court ruled that this did not violate the Fifth Amendment. In the 1980’s the Legislature determined that land owners would be paid the full fair market value of land, except for batture. Batture is historically defined as the land between the low and the high water mark. Levee districts can appropriate land by adopting a resolution with compensation for land that is not batture.

Mr. Lacour stated that in 2006 the following was added to Civil Code Article 665, “Such servitudes also exist on property necessary for the building of levees and other water control structures on the alignment approved by the U.S. Army Corps of Engineers...” He discussed the appropriation of property in lieu of doing a quick-take. A resolution can be adopted for an appropriation. Certified letters would be sent to each property owner. The resolution can be published and recorded in the conveyance records of the parish where the land is located. The statute provides for compensation within one year of the appropriation; therefore, the appraisal can be performed after the appropriation. Appropriation would alleviate attorney fees. The West Jefferson Levee District has used appropriation and attorneys for the U.S. Army Corps of Engineers did not foresee

a problem. He recommended that the Authority consider using this procedure. He cautioned that the Authority would only receive a servitude; however, the servitude would last as long as the property is used for levee purposes. He advised that if the Authority appropriates land and the appropriation gets bogged down, then the Authority can do a quick-take.

The Committee discussed the need to speed up processes in order to complete the 100 year level of protection by 2011. An item will be placed on the Board's agenda to discuss Article 665 of the Civil Code and appropriation.

D. Discussion of a recent change in the public bid law.

Gerry Gillen advised that the Legislature recently passed legislation that raised the limit on the advertising of public works contracts from \$100,000 to \$150,000. He suggested that the Authority may wish to address its policy.

The Committee requested that a recommendation be brought back to the Committee.

There was no further business; therefore, the meeting was adjourned at 12:45 p.m.