

**MINUTES OF
SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITY-EAST
LEGAL COMMITTEE MEETING
HELD ON JULY 10, 2014**

PRESENT: Lambert J. "Joe" Hassinger, Jr., Chair
Stephen Estopinal, Committee Member

The Legal Committee of the Southeast Louisiana Flood Protection Authority-East (SLFPA-E or Authority) met on July 10, 2014, in Meeting Room 201, Orleans Levee District Franklin Administrative Complex, 6920 Franklin Avenue, New Orleans, Louisiana. Mr. Hassinger called the meeting to order at 8:40 a.m.

Opening Comments: None.

Adoption of Agenda: The agenda was adopted by the Committee.

Approval of Minutes: The Committee approved the minutes of the Legal Committee meeting held on May 15, 2014.

Public Comments:

Roy Arrigo explained that in his recent review of surveys and documents for properties along the 17th Street Canal he discovered that there are a number of properties where the levee toe buffer zones were purchased from the property owners. Two of the property owners were Robert Lupo and Mr. Terranova. He commented that the property in these documents do not appear any different than his or his neighbors' properties where the levee toe buffer zones were taken without compensation. He asked that the Legal Committee inquire of its counsel how was it ascertained that the property rights needed to be purchased on these properties, but not on the other properties. He explained that when the properties at the breach area were purchased, it was done in two stages. Correspondence from the U.S. Army Corps of Engineers (USACE) Real Estate Division stated that the purchase was done as part of the project for the emergency repair of the floodwall. However, the document showing the land needed for the project did not include the Lupo and Terranova properties. The USACE paid for and transferred the property to the Orleans Levee District. He asked the reason the local authorities did not indicate to the USACE that it already had the property rights on the subsequently purchased properties. He added that the properties were purchased with 100 percent Federal monies and that it seemed that as soon as the Federal monies ran out and the local authorities had to pick up 30 percent of the cost, an alternative method was sought to acquire buffer zones.

Craig Berthold commented that the St. Julien Doctrine requires that an agency express interest in a property, obtain the consent of the property owner and then construct a project on the property. He asked when was the levee along the 17th Street Canal constructed by the levee district. The mounds were built by the railroad in the 1800's. He asked how did the levee district express an interest in the property and when and how was the consent of the property owners obtained. The servitude was never

recorded. He asked that the Legal Committee look into this situation and provide some answers.

Old Business:

A. Discussion of the advertisement and issuance of a Request for Qualifications (RFQ) for general legal services on an as needed basis in various legal fields for the SLFPA-E and the levee districts under its jurisdiction.

Mr. Estopinal inquired about the procedures that would be required to hire an attorney as a full time employee of the SLFPA-E. He pointed out that an attorney who is an employee would be able to develop institutional knowledge and memory and could potentially save the SLFPA-E money. Robert Lacour, SLFPA-E General Counsel, explained that employees can be hired on a classified or unclassified basis under Civil Service. Robert Turner, SLFPA-E Regional Director, advised that the SLFPA-E had no available unclassified slots. Wilma Heaton, SLFPA-E Director of Governmental Affairs, suggested that staff be allowed to investigate the establishment of a position with Civil Service and report back to the Committee regarding the options available. Civil Service may allow an exception for the creation of an additional unclassified position. She noted that the Orleans Levee District prior to Hurricane Katrina at one time had a classified Civil Service position for an attorney and at another times had an attorney under contract that worked full time in-house. The SLFPA-E could still retain outside counsel to assist with specific issues. Mr. Lacour pointed out that most of the pending litigation, with the exception of the Bohemia Spillway litigation, involves Hurricane Katrina issues.

The Committee deferred the advertisement and issuance of a RFQ for general legal services and directed staff to investigate the establishment of a Civil Service position for an attorney and report back to the Committee.

New Business:

A. Approval of the legal invoices listed on the spreadsheet dated July 10, 2014.

The Committee approved the invoices listed on the spreadsheet dated July 10, 2014.

B. Discussion of pending litigation by levee districts.

Mr. Hassinger explained that he was seeking baseline information on the currently pending litigation for the SLFPA-E and levee districts. Mr. Lacour briefly reviewed the currently pending litigation:

McCrainie Sistrunk Anzelmo Hardy McDaniel & Welch, LLC

Orleans Levee District (O.L.D.)

17th Street Canal Coalition, et al v. O.L.D. and SLFPA-E, CDC, Parish of Orleans, No. 2008-6979, Division "L-6"; consolidated with Terry and Nina Lonatro, et al v. O.L.D. and SLFPA-E, CDC, Parish of Orleans, No. 20 11-0097, Division "N-8" – Servitude issue

West End Tennis and Fitness Club, Inc., et al. v. Board of Commissioners of the O.L.D., et al., CDC, Parish of Orleans, No. 2006-13668, Division "G" – A settlement has been negotiated for the property taken for the construction of the 17th Street Canal Interim Control Structure and Pumps.

A&A Mechanical, LLC v. JC Patin Group, LLC. and the Hanover Insurance Company, CDC, Parish of Orleans, No. 2012-6284, Division "H-12" - Safehouse Litigation

Kay Bailey Miller v. Merrill Prater, et al, CDC, Parish of Orleans, No. 2013-4743, Division "L-6" – Automobile accident (assigned to attorney by insurance carrier)

Shantell Sims, on behalf of Her Minor Child, Vadel Sims v. SLFPA-E, et al, CDC, Parish of Orleans, No. 2013-10974, Division "F"; consolidated with *Henry Sims and Ronisha Holmes v. SLFPA-E, et al*, CDC, Parish of Orleans, No. 2013-11569, Division "L" – Automobile accident (assigned to attorney by insurance carrier)

East Jefferson Levee District (EJLD)

Sid-Mar's Restaurant and Lounge, Inc., et al v. State of Louisiana, et al, 24th JDC, Parish of Jefferson, No. 632-032, Division "K" – Property ownership – The Court of Appeals affirmed the EJLD's ownership of Lot 3; however, Sid-Mar's and the State are appealing to the Supreme Court relative to their issues.

Parish of Jefferson v. Davie Shoring et al, 24th JDC, Parish of Jefferson, No. 698-424, Division "M" – Davie Shoring moved a house across a levee to place on a barge without a permit and damaged the levee. A judgment was rendered in the EJLD's favor.

EJLD v. Ponchatoula Properties, Sedonia Herbert wife of/and Mitchell Herbert, 24th JDC, Parish of Jefferson, No. 738-409, Division "G" – Expropriation of property for the construction of the EJLD consolidated facilities.

EJLD v. Treva Barrier Sanders, wife of/and Leroy Sanders, Beatrice Louise Davis Romani, individually and o/b/o Joseph J. Romant, City of Kenner, and the Parish of Jefferson, 24th JDC, Parish of Jefferson, No. 738-4 10, Division "F" - Expropriation of property for the construction of the EJLD consolidated facilities.

Gabriel Properties, LLC and The Succession of Marie G. Krantz v. The Board of Commissioners of the EJLD, 24th JDC, Parish of Jefferson, No. 626-181, Division "P"; and *Yacht Homes of Gabriel, LLC, et al v. EJLD, et al*, 24th JDC, Parish of Jefferson, No. 688-793, Division "F" - Two issues are pending: 1) Location of a drainage pipeline - The EJLD has obtained a bid for the removal of the pipeline; however, the levee district is awaiting permission from the USACE to proceed. 2) Property ownership – Land was expropriated in 1947 for the construction of the lakefront levee; however, a quitclaim was not obtained.

Lake Borgne Basin Levee District (LBBLD)

Borgnemouth Realty Company, Ltd. v. Parish of St. Bernard, et al, 34th JDC, Parish of

St. Bernard, No. 112-833, Division "E" – Compensation for property commandeered after Hurricane Katrina to obtain clay for levee construction

Alfreday Melerine Pizani and Avis Melerine Juan v. St. Bernard Parish and the LBBLD, 34th JDC, Parish of St. Bernard, No. 109-548, Division "E" - Compensation for property commandeered after Hurricane Katrina to obtain clay for levee construction

Olivier Plantation, LLC, Park Investments, LTD, and Morning Park. Inc. v. Parish of St. Bernard and LBBLD, 34th JDC, Parish of St. Bernard, No. 109-272 - Compensation for property commandeered after Hurricane Katrina to obtain clay for levee construction

Paul Tabray

LBBLD versus Anthony A. Fernandez, Jr. and Roselyn Claudia Fernandez, 34TH JDC Parish of St. Bernard, No. 112-811 Division "C" – Expropriation for the MRGO Closure Structure – Additional compensation sought for business losses

The Kullman Firm

EJLD v. R.G. Detillier, Court of Appeal, First Circuit, State of Louisiana, No. 2014-CA-0634 – Employment issue

Gordon-Arata (Bohemia Spillway litigation)

Board of Commissioners of the SLFPA-E on Behalf of the O.L.D. v. LA Department of Natural Resources, No. 563586, 19th Judicial District for the Parish of East Baton Rouge, State of Louisiana, Section 25

In re: Plaquemines Land Company, through its Successors in interest, Carolyn C. Leblanc, Nathan Carmadelle, Gustave W. Carmadell, Jr., Laurence C. Chantrey, Margaret C. Guidry, Trustees of the Arlene and Joseph Meraux Charitable Foundation, and Anne Pearson Potts v. Board of Commissioners of the O.L.D., No. 55-774, 25th Judicial District for the Parish of Plaquemines, State of Louisiana, Division "B".

In re: Plaquemines Land Company, through its Successors in interest, Carolyn C. Leblanc, Nathan Carmadelle, Gustave W. Carmadell, Jr., Laurence C. Chantrey, Margaret C. Guidry, Trustees of the Arlene and Joseph Meraux Charitable Foundation, and Anne Pearson Potts v. Board of Commissioners of the O.L.D., No. 61-051, 25TH Judicial District for the Parish of Plaquemines, State of Louisiana, Division "A".

Mr. Lacour further advised that the Kullman Firm consults with the levee districts concerning employment issues, the McCranie, Sistrunk firm renders opinions as requested, and Mark Hanna handles various matters for the LBBLD. The EJLD obtains a monthly summary from the McCranie, Sistrunk firm on litigation status. Levee districts can request reports on litigation status.

There was no further business; therefore, the meeting was adjourned at 9:18 a.m.