

**MINUTES OF THE  
SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITY – EAST  
SPECIAL BOARD MEETING  
WEDNESDAY, MAY 2, 2007**

A Special Board Meeting of the Southeast Louisiana Flood Protection Authority - East was held on Wednesday, May 2, 2007, in the Second Floor Hall of the Lake Vista Community Center, 6500 Spanish Fort Boulevard, New Orleans, Louisiana, after due legal notice of the meeting was sent to each member and the news media and posted.

The meeting was called to order at 9:52 a.m. by President Jackson, who then led in the pledge of allegiance. The roll was called and a quorum of the Board was present.

Present:

Thomas L. Jackson, President  
Abril B. Sutherland, Vice President  
John M. Barry, Secretary  
Timothy P. Doody, Treasurer  
David P. Barnes, Jr.  
Stradford A. Goins  
George Losonsky, Ph.D.  
Larry A. McKee  
Louis E. Wittie

Absent:

Ricardo S. Pineda  
Sara Lee St. Vincent

**OPENING COMMENTS:**

President Jackson advised that the residents who were present who wished to express their concerns relative to 17<sup>th</sup> Street Canal land issues were requested to select several representatives to address the Board, and with two-thirds approval of the Board an item would be placed on the agenda.

**RESOLUTION #05-02-07-001 – AGENDA**

A motion was offered by Mr. Doody, seconded by Mr. Barry, and unanimously adopted, to approve the agenda with the following amendments: adding Item VII.2.a. for the discussion of Legislative matters and Item VI.1. for the discussion of 17<sup>th</sup> Street Canal concerns.

On the motion of Mr. Doody,

Seconded by Mr. Barry, the following resolution was offered:

“A resolution to approve and accept the agenda, as amended, for the Special Board Meeting of May 2, 2007.”

The foregoing was submitted to a vote, the vote thereon was as follows:

YEAS: Mr. Barnes, Mr. Barry, Mr. Doody, Mr. Goins, Mr. Losonsky,  
Mr. McKee, and Mr. Wittie

NAYS: None  
ABSENT: Mr. Pineda  
Motion carried.

**PUBLIC COMMENTS: 17<sup>th</sup> Street Canal Concerns:**

Mr. Robert Kaplan, Bellaire Drive resident in Lakewood South, distributed a map produced by the U.S. Army Corps of Engineers (USACE) of the 17th Street Canal on which the USACE had drawn two lines; one indicating property lines and another indicating where the USACE thought its servitude ended based on elevations and a 1966 survey. The levee runs a certain width down most of its three mile length; however, the width dramatically increases and in some sections doubles in the area of Lakewood South, which impacts about 30 property owners. He felt the servitude, if extended to the line as drawn plus 6-ft. as required by State, is highly questionable legally, and at issue is where does the water control structure or levee slope end and where is it drainage slope or just dirt. The USACE requested authorization from the Board for surveys; however, he felt a survey would not address the legal issue of where does the levee toe end. Mr. Kaplan requested that Lakewood South be differentiated from the remainder of the 17<sup>th</sup> Street Canal, and if a right-of-entry is granted, that it not be granted for Lakewood South until the right studies are done, input is received from residents, and a real determination is made as to where the levee toe ended.

President Jackson commented on the Board's commitment to flood protection; however, he felt the public's property rights should not be trampled on and that every property owner is due consideration in terms of what the USACE needs to do on his/her property and the impact on the safety of the community.

President Jackson asked, as long as public safety was not being jeopardized, could the tree removal in this particular section be delayed in order to do surveys and a geotechnical evaluation to determine the real necessity of this levee spread. Mr. Tom Sully, USACE representative, advised he was not prepared to address this issue; however, he would bring this request to Col. Bedey.

Mr. Stevan Spencer, Orleans Levee District (O.L.D.) Director of Hurricane and Flood Protection, explained a right-of-entry request was received last Friday from the USACE only for surveys from the protected side floodwall-face to the levee toe itself. The USACE was defining the levee toe from a 1966 aerial.

President Jackson pointed out a proper geotechnical analysis cannot be done until the survey is performed. He asked that the USACE not take any other action in this disputed area until the determination is made as to what is technically necessary, and encouraged property owners to allow right-of-entry to the survey crews for the survey. He thanked the property owners for their approach, and stressed if the Board is going to be able to help, it will need to be able to assure the public that changes in the levee section will not jeopardize public safety.

Mr. Kaplan agreed, adding he appreciated the crystallizing of the issue into one of flood control versus property owners' rights. The property owners just want the levee to be as broad as necessary and for property, trees, fences, etc., not to be taken unnecessarily. Their concern was that a right-of-entry was being granted not only to survey, but for the USACE to both survey and in its discretion take down trees, fences and other structures.

**RESOLUTION #05-02-07-005 –USACE ACTIVITY ON THE 17<sup>TH</sup> STREET CANAL IN LAKEWOOD SOUTH AREA**

On the motion of Mr. McKee,

Seconded by Mr. Losonsky, the following resolution was offered:

WHEREAS, the concerns of several residents who live in the area of Lakewood South were brought before the Southeast Louisiana Flood Protection Authority-East, and the pending activities along the 17<sup>th</sup> Street Canal were discussed.

RESOLVED, That the U.S. Army Corps of Engineers withhold any activity on tree removal from the Lakewood South area that is defined as an approximately six block area on the east bank protected side of the 17<sup>th</sup> Street Canal.

The foregoing was submitted to a vote, the vote thereon was as follows:

YEAS: Mr. Barnes, Mr. Barry, Mr. Doody, Mr. Goins, Mr. Losonsky, Mr. McKee, and Mr. Wittie

NAYS: None

ABSENT: Mr. Pineda

Motion carried.

Mr. Alan Hennessy commented he had discovered that the hydraulic study for the canal has been completed and is in the Department of Justice, and that this study has not been given to the SLFPA-E and other appropriate entities.

Ms. Amy Sins explained she is a resident on the Lakeview side of Bellaire Drive closer to the levee break and the property owners in this section are facing a different challenge. The USACE has been giving differing numbers to these residents as to how much property will be taken from the levee toe; however, they have heard as much as 50 to 55 feet of their property will be seized, which she pointed out is one-third of her property. Approximately 18 months ago, prior to rebuilding, she contacted the USACE and was told her property would not be needed. After rebuilding she is now concerned the USACE will use the power of this Authority to seize her property without purchase. She added, the residents in this area would have to continue paying property taxes, maintain liability insurance and provide grass maintenance on property they would be unable to use. She further explained the liability posed by people on tours coming onto the property to view the area of the levee break.

President Jackson agreed relative to property rights and advised a Legislative bill is being filed concerning payment for property that is taken.

Mr. Stevan Spencer advised Congressman Jindal is actively looking into this situation and his office has been in discussions with O.L.D. staff relative to these concerns.

The Board concurred a report would be presented at the next Board meeting relative to this issue.

**RESOLUTION #05-02-07-002 – ORLEANS LEVEE DISTRICT NON-FLOOD ASSETS SLFPA-E EAST/WEST AUTHORITY OVER ORLEANS LEVEE DISTRICT**

Mr. McKee recognized Commissioner of Administration Jerry Luke LeBlanc and Deputy Commissioner Jean Vandal, stating their presence at this meeting accentuated the importance of this issue, and he hoped the progressive movement toward achieving an equitable division of these assets would continue. He explained this process began in November, 2006, when Mr. Louis Capo, O.L.D. Director of Non-Flood Assets, sent a letter to the Division of Administration (DOA) suggesting certain divisions, and the process shifted to the SLFPA-E Board when it was seated in January, 2007. He commented on the process involved in learning about the flood and non-flood assets, adoption of a resolution in March, 2007, the meetings with Commissioner LeBlanc and Deputy Commissioner Vandal, and the drafting of a draft Memorandum of Understanding (MOU) which will be attached to the resolution being offered.

Mr. McKee paraphrased the resolution, emphasizing the impact of the non-flood assets on the flood side, since those assets could theoretically generate excess revenues that would flow back to the flood side and enhance flood protection efforts. The DOA projected a \$1.1 million shortfall for Fiscal Year 2007-2008, and next fiscal year's deficit, if any, is uncertain. He felt the \$2.5 million advance to the DOA seemed in order and would help bring the Airport and South Shore Harbor back on line. The O.L.D. is currently under the jurisdiction of two authorities (SLFPA-E and SLFPA-W), and in order to operate more effectively and efficiently, this resolution requests the Legislature consider placing it under a single authority.

Deputy Commissioner Vandal thanked Messrs. McKee, Barry and Doody for their efforts. Commissioner LeBlanc commented the resolution as presented was the most appropriate way to proceed, representing the interest of both the flood and non-flood sides and allowing the SLFPA-E to execute its primary mission of flood protection.

Mr. David Bindewald, SLFPA-W President, was requested to comment or ask questions on this issue.

In response to Mr. Bindewald's question relative to the definition of non-flood properties, Mr. McKee explained the division of the physical properties began with the November 26, 2006 letter. After evaluation, the SLFPA-E felt those physical facilities or assets listed had no impact on flood protection, with the exception of the seawall which was subsequently placed under flood assets. There were no non-flood assets on the Mississippi River West Bank; however, it was pointed out that the Algiers Pedestrian Promenade was not listed as either a flood or non-flood asset.

Regarding cash flow after 2008, Mr. Doody explained, using very conservative figures, including bond debt payment, he did cash flow projections thru 2011 and it is positive. Mr. Barry pointed out after the initial transfer to provide operating cash, there will be no further money going from the flood to the non-flood side.

Mr. Capo added, the shortfall for the fiscal year commencing July 1<sup>st</sup> is \$1.1 million, which may increase due to additional costs for police. All properties should be up and running in two years and producing revenues. Reconstructed slips at South Shore Harbor will be leased as they become available.

Mr. Bindewald stated he had no trouble with the resolution, except the last item requesting the separation of east and west.

Mr. Doody pointed out the draft Memorandum of Understanding (MOU) provided will serve as the basis for the final MOU, and that refinement is still needed. President

Jackson suggested those individuals working on the MOU allow the sharing the specialty services by employees.

Mr. McKee then read the modified language of the RESOLVED portion of the resolution.

On the motion of Mr. Barry,

Seconded by Mr. Doody, the following resolution was offered:

**WHEREAS**, the Southeast Louisiana Flood Protection Authority – East (“SLFPA-E”) was created with the primary purpose of providing flood and hurricane protection for the region designated as their area of responsibility, and

**WHEREAS**, consistent with and in furtherance of its previous Resolution No. 03-15-07-021, the assets of the Orleans Levee District (“O.L.D.”) not directly related to providing adequate drainage, flood control or water resources development pertaining to tidewater flooding, hurricane protection, or saltwater intrusion, (by joint agreement of the Division of Administration (“DOA”) and the SLFPA-E) will be designated as Non-Flood Assets of the O.L.D., and

**WHEREAS**, the efficient management of the Non-Flood Assets of the O.L.D. is beneficial and in the best interest of the O.L.D., and

**WHEREAS**, the SLFPA-E desires to enter into a memorandum of understanding with the DOA concerning management of the Non-Flood Assets of the O.L.D., a copy of which is attached and made a part hereof, and

**WHEREAS**, such Non-Flood Assets of the O.L.D., if managed efficiently, are expected to become a source of funding to the O.L.D. and such funding will assist both the O.L.D. and the SLFPA-E in accomplishing their joint mission of providing flood and hurricane protection to the region, and

**WHEREAS**, based upon representations made by the DOA, the SLFPA-E has been advised that a one time payment of \$2.5 million to the DOA is needed in its role as manager of the Non-Flood Assets of the O.L.D., particularly to re-establish the operational capabilities at several of the facilities damaged during the 2005 Storm Season, and

**WHEREAS**, the vast majority of the area under the jurisdiction of the O.L.D. for the purposes of flood and hurricane protection, as well as the Non-Flood Assets, exists on the East Bank of the Mississippi River, and

**WHEREAS**, the O.L.D. cannot function efficiently while answering to multiple managing authorities, and

**WHEREAS**, Act 1 of the 2006 Special Session specifies that the ownership of all assets of the O.L.D. shall remain with the O.L.D., and further that any property

acquired or improvements constructed with funds of a levee district shall belong to the levee district, and

**WHEREAS**, Act 1 of the 2006 Special Session further specifies that no action taken shall do any of the following: impair the obligation of any outstanding bonded indebtedness or of any other contract of the O.L.D., impair the ability of the O.L.D. to satisfy any legal action or claim pending against the O.L.D.;

**THEREFORE BE IT RESOLVED** that the SLFPA-E:

-accept the attached memorandum of understanding as an agreement in principle and continue to formulate the specific details and documentation that will result in the signing of a permanent memorandum of understanding with the DOA, consistent with and in furtherance of its previous Resolution No. 03-15-07-021, including defining and delegating responsibility for litigation and various other obligations of the O.L.D.;

-transfer to the DOA a one time payment of \$2.5 million to assist in their reestablishment of operations at the facilities under their management and control for the benefit of the O.L.D. in furtherance of flood protection;

-request that the Louisiana Legislature consider legislation that provides that the O.L.D. report to the SLFPA-E only to allow for the effective functioning of the O.L.D. in furtherance of flood protection in the jurisdictions of both SLFPA-E and SLFPA-West, including responsibility for litigation and various other obligations of the O.L.D..

The foregoing was submitted to a vote, the vote thereon was as follows:

YEAS: Mr. Barnes, Mr. Barry, Mr. Doody, Mr. Goins, Mr. Losonsky,  
Mr. McKee, and Mr. Wittie

NAYS: None

ABSENT: Mr. Pineda

Motion carried.

President Jackson called for a brief recess at 11:10 a.m. The Board reconvened at 11:28 a.m.

Colonel Bedey, Commander of the USACE Hurricane Protection Office, arrived at the meeting and the Board returned to the discussion of the 17<sup>th</sup> Street Canal levee situation in Lakewood South. President Jackson explained he had requested the USACE hold up on any activity in this area, except surveys, until it could be determined whether the wide spread and flat slope of the levee is necessary for protection or could other measures be taken.

Col. Bedey responded that he had been apprised by the media of what went on before his arrival today. He agreed the USACE and the SFLPA-E needed to approach this situation in a united manner, and that surveys should be done to validate the property lines associated with the right-of-way so there a common understanding and a

starting point to identify those isolated cases where there is potentially the need to go outside of existing right-of-way, and then collectively as a team determine the best solution towards insuring the integrity of the canal walls. He indicated he could not address the issue of compensation, which was not under his responsibility; however, he pointed out it is necessary, first, to validate the existing right-of-way, then sort out whether there is a need to expand the right-of-way and examine how this can be done consistent with law and, to the extent possible, insure individuals' rights. He added, the USACE would come back to the SFLPA-E with the technical or geotechnical reasons for the levee toe being drawn where it was drawn.

Mr. Doody mentioned the USACE was ready to go to bid on the Caernaveron to Verrett Levee Project and approval was received on the temporary pumps through FEMA for the Lake Borgne Basin Levee District.

Col. Bedey was requested to comment on the Inner Harbor Navigation Canal (IHNC) innovative solutions workshop that had resulted from the initial partnering conference. A component of the workshop was to look specifically at interim solutions. He explained these meetings lead to three potential courses of actions: 1) raising existing levees and floodwalls to previously authorized levels; 2) placement of a temporary navigable structure in the canal near Paris Road; and 3) closure of the MRGO and placement of a levee across the marsh. The team dismissed the first potential solution as not being feasible because it could not optimistically be accomplished until 2009, and dismissed the third potential solution because the USACE does not currently have the authority to close the MRGO, in addition to it not being feasible from a time perspective. The workshop validated from a conceptual perspective the potential to place a temporary navigable structure in the canal near the Michoud Slip, which would provide a level of protection to elevation 15 and could possibly be done before the start of the 2008 hurricane season. A fourth potential option was added to examine the possibility of using Hesco baskets to raise specific identified low points, and he commented on the potential increase of risk for stability failure with this fourth option. As of today, the MRGO is authorized for deep draft navigation and the USACE must plan accordingly; however, the USACE is cognizant about what is going on such that it has the flexibility in how it moves forward to allow for a potential change in the authorization or de-authorization of the MRGO.

Col. Bedey commented on the focus on the permanent solution, however, the USACE's intent is to take action where it can take action relative to interim protection, and in situations where the USACE is not taking action because of issues such as stability, it will so advise the SLFPA-E.

Col. Bedey discussed the canal wall analysis and hydraulic studies which will play into both long term and interim measures that may be needed, along with the factors guiding the canal safe water elevations. He offered to make himself or one of his two principal deputies available to informally update the Board at its meetings.

Ms. Losonsky inquired about the risk evaluation that was done to prioritize projects. Col. Bedey explained the results of the risk and reliability report is currently being vetted through a multitude of entities. The prioritization of work will continue to be an on-going effort.

President Jackson called for a break for lunch at 12:30 p.m. The Board reconvened at 1:20 p.m., and the meeting was called back to order.

## **DISCUSSION OF LEGISLATIVE MATTERS:**

Mr. Barry suggested the Board may wish to develop a process for dealing with legislation and have a point person who could quickly respond with information as needed. Ms. Sutherland further suggested the Board determine its position on proposed legislation in order to provide a consistent message.

In order to respond to Legislative inquiries and provide information timely, President Jackson, Vice President Sutherland, Secretary Barry and Mr. Losonsky were designated as leading contacts; however, it was suggested that all Commissioners use their individual contacts.

Legislation filed thus far impacting the Board was discussed.

The Board expressed concern about HB 413, a dual bill that in part proposes property tax revenues from the Orleans Levee District be paid to the Authority with jurisdiction on the side of the river from which they are collected, and in part changes the voting status on the West Board. The Board discussed liability issues involved and various approaches to the legislation. The Board concurred that it support proposing an amendment for singular control by the East Authority of the Orleans Levee District and West Authority having jurisdiction over Orleans Parish on the West Bank.

The Board discussed HB 555, which authorizes the State to pay the judgment in the case of N-Y Associates vs. O.L.D.

HB 628 clarifies ownership of the non-flood assets by the O.L.D. The Board discussed and supported using this legislation as a vehicle to require permission of the East Authority before any non-flood assets are disposed of.

The Board opposed the portion of SB 296 that would take away the ability of a levee district, USACE or the State to remove obstacles at the owner's expense from a levee servitude if the owner does not remove such obstacles after 30 days' notice, the impact being that there would be no remedy should an owner not remove an obstacle. The second part of the bill deals with fair market value of a loss and makes payment mandatory.

The Board opposed SB 317 which allows the DOA to unilaterally designate an asset owned by the O.L.D. as a non-flood asset; however, it was pointed out that the Board and DOA have progressed a long way in resolving this issue.

The Board discussed and opposed SB 318 as written, which creates the Greater New Orleans Economic Development Authority.

A recommendation was made to request the inclusion of key levee district flood personnel in legislation that has been filed designating first responders. This would also assist in obtaining grant funding.

## **RESOLUTION #05-02-07-003 – QUALIFICATION BASED SELECTION PROCESS FOR PROFESSIONAL SERVICES**

Ms. Sutherland pointed out two minor changes made since the draft distributed to the Board at its April 19<sup>th</sup> meeting (i.e., page 2, C. 1. first line added "proposed fees", and page 4, last sentence added "All selection and contracting provisions are subject to applicable federal, state, and local requirements.") This policy is to be a part of and included in a policy and procedures manual.



There was no discussion on or changes to Sections 1 and 2.

Section 3 was discussed and the Board concurred with the following modifications that were offered:

- Clarifying the end of the last paragraph under Section 3.A. (Time) to state “for Board approval to advertise, except for projects that fall under paragraph C.3.”;
- Modifying the language under 3.B. (Selection) to provide for a short list of three firms, and for the appointment of the Selection Committee by the President.
- Changing the language of C.3. for work \$5,000 or less to provide that that the District Executive Director obtain the prior approval of the Regional Executive Director, and for work under \$1,000 at the discretion of the District Director.
- Clarification of D.2.b. to provide a minimum of five years experience.
- Delete D.3. (Previous Work on Similar Projects) from the policy. The Board concurred with including language similar to DOTD’s provisions concerning the disqualification and appeals process in the contract form.
- Clarifying item F to provide notification of responding firms after successful negotiation with the first firm.
- Modify item G (Contracting Procedures) to provide that the District Executive Director and Regional Executive Director negotiate the fee to be approved by the Board, and the Board authorize the President or other signatory to sign the agreement with the consultant.
- Under item C paragraph 1. (For Work Which Exceeds) change \$10,000 to \$20,000 (which will be advertised). Modify paragraph 2. to provide that for work under \$20,000 the Executive Director will obtain three qualified firms (without need for advertising) for submittal to the Selection Committee.

President Jackson recommended using SF 330, a federal qualifications based selection form, for architects/engineers. Mr. Barry suggested the Bureau of Governmental Research may be a resource for forms.

On the motion of Mr. Doody,

Seconded by Mr. Goins, the following resolution was offered:

“A resolution to approve and adopt the Qualification Based Selection Process for Professional Services, as amended, modified and changed, for professional services for the Southeast Louisiana Flood Protection Authority – East.”

The foregoing was submitted to a vote, the vote thereon was as follows:

YEAS: Mr. Barnes, Mr. Barry, Mr. Doody, Mr. Goins, Mr. Losonsky,  
Mr. McKee, and Mr. Wittie

NAYS: None

ABSENT: Mr. Pineda  
Motion carried.

**RESOLUTION #05-02-07-004 –  
SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITY – EAST BY-LAWS**

The Board reviewed and discussed the proposed Bylaws, and concurred with the following modifications that were offered:

- Article I (Definitions) (1), delete the word “all”.
- Article II §1 (Composition), add the word “staff”.
- Article III §2 (Jurisdiction), include portion of St. Charles and St. John the Baptist Parishes lying east of the Mississippi River for regional projects.
- Article III §7 delete Sections A (Mandatory powers and duties), B (Discretionary powers and duties) and C (Prohibitions), since the Board’s powers and duties and prohibitions are provided in the La Revised Statutes.
- Article III §8 (Remuneration) modify to state that in addition to per diem, travel expenses shall be paid in accordance with Louisiana PPM 49 (or other appropriate description/document).
- Article III §9. A (1) use another term in lieu of the word “poll”; modify language to read that the regular monthly meeting will be held on the third Thursday of every month, except the month of November in which the meeting will be held on the second Thursday; and delete “The regular meeting may be held on another day of the month as determined by a two-third vote of the total voting membership of the Board.”
- Article III §9. A. (2) (a) relative to the call of Special meetings, add “Secretary”.
- Article III §9.B (Open Meetings), delete third paragraph.
- Article III §9.C (Agenda), delete last paragraph regarding adoption of a preliminary agenda.
- Article III §10 (Quorum) modify to read that a majority of the Board members shall constitute a quorum to do business.
- Article III §13.B, modify last line to state, “provided that the majority of voting members present so agree.”
- Article IV §4 (Duties of Vice President), delete (2) to act as hearing officer and (4) to serve as Chair of Legal Committee.

- Article V §6 (Quorum), change composition of quorum to two committee members.
- Article VI §1. A. (Administrative Assistant), in the first paragraph change “shall” hire to “may” hire, and to provide that the responsibilities shall include but may not be limited to those listed.
- Article VII §2 (Official Journal), change “Times Picayune” to “determined by the Board”.
- Article VII, delete §5 Tax Ordinance, §6 Annual Budget, and §8 Idle Funds.
- Article VIII (Operations and Maintenance Manual), change “shall” to “may” adopt.
- Article IX (Policy and Procedures Manual), change “shall” to “may” adopt.
- Article X A (Amendment of Bylaws), change wording “entire Board” to “voting members”.
- Article XII (Effective Date of Bylaws) paragraph A, leave first sentence only.

A motion offered by Mr. Barry, seconded by Mr. Doody, to redraft the Bylaws to prohibit a non-voting member from serving as President failed.

On the motion of Mr. Doody,

Seconded by Mr. Goins, the following resolution was offered:

“A resolution to approve and adopt the By-Laws for the operations of the Southeast Louisiana Flood Protection Authority – East and its member districts.”

The foregoing was submitted to a vote, the vote thereon was as follows:

YEAS: Mr. Barnes, Mr. Barry, Mr. Doody, Mr. Goins, Mr. Losonsky,  
Mr. McKee, and Mr. Wittie

NAYS: None

ABSENT: Mr. Pineda

Motion carried.

There was no further business, therefore, the meeting was adjourned at 4:45 p.m.