

**MINUTES OF THE  
SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITY – EAST  
SPECIAL BOARD MEETING  
THURSDAY, DECEMBER 5, 2013**

The Special Board Meeting of the Southeast Louisiana Flood Protection Authority - East (Authority or SLFPA-E) was held on Thursday, December 5, 2013, at the Orleans Levee District Franklin Administrative Complex, 6920 Franklin Avenue, Meeting Room 221, New Orleans, Louisiana, after due legal notice of the meeting was sent to each Board member and the news media and posted.

Mr. Doody called the meeting to order at 2:35 p.m. and led in the pledge of allegiance.

The roll was called by Secretary Wittie:

**PRESENT:**

Timothy P. Doody, President  
Louis E. Wittie, Secretary  
Stephen Estopinal, Treasurer  
Jefferson M. Angers  
Lambert J. Hassinger, Jr.  
Kelly J. McHugh  
G. Paul Kemp  
Richard A. Luettich, Jr.  
Wilton P. Tilly, III

**ABSENT:**

None

**OPENING COMMENTS:**

Mr. Doody advised that the Special Board Meeting was called to consider the motion listed on the agenda relative to the reaffirmation of the lawsuit against 97 oil, gas and pipeline companies. No Executive Session would be held unless a Board member called for an Executive Session to consider the item listed on the agenda.

**ADOPTION OF AGENDA:**

A motion was offered by Mr. Wittie and seconded by Mr. Luettich to adopt the agenda.

Mr. Hassinger asked the reason for calling a Special Board Meeting when the motion to be considered was deferred from the November Board Meeting to the next regular monthly Board Meeting. Mr. Doody responded that the members of the public who attended the November Board Meeting were confused regarding the Board's intentions relative to the litigation filed against 97 oil, gas and pipeline companies; therefore, a Special Board Meeting was called rather than waiting until the December Board

Meeting. Mr. Angers commented that it seemed more than extraneous and a waste of taxpayers' money to assemble the Commissioners and to expend all of the costs associated with a Special Board Meeting to discuss a motion that the Board discussed two weeks earlier and planned to discuss again in two weeks. Mr. Luettich stated that he requested that a Special Board Meeting be called and that the reason for requesting the meeting is that the Board did not discuss the motion at the November Board Meeting. The motion was simply tabled. He stated that it is an important issue for the citizens of the Greater New Orleans area and that he felt it was sufficiently important for him to ask that a Special Board Meeting be called.

The Board voted unanimously in favor of adopting the agenda.

### **PUBLIC COMMENTS:**

Darryl Malek-Wiley, representing the Sierra Club, commented that the Sierra Club feels strongly that the Board has taken the first step of many steps to come to finally hold the oil, gas and pipeline companies accountable for the damages that they have caused to coastal Louisiana. He stated that they understand the political pressure being brought upon the Board to rethink its decision and that the Sierra Club will continue its support of the Board in this litigation. He added that the oil and gas companies have had too much say in Louisiana politics and that it is time for it to stop.

LT. General Russel L. Honoré, US Army (Ret), advised that he was representing the Green Army, a group concerned with the protection of Louisiana's water, seafood, air and land. He commended the efforts started by the Board to close the canals left by the oil and gas industry. He commented that the citizens of Louisiana appreciate the oil and gas industry; however, the industry does not have the legal or moral right to destroy wetlands. The Green Army asks that the oil and gas industry repair the damages resulting from its operations and cap the wells that are currently leaking oil into the Gulf. He hoped that as a result of the Board's action that the industry will close the canals, under the Board's supervision, and recap the leaking abandoned wells. He urged the members of the Board to stand together to protect Louisiana's waters and wetlands.

Raleigh Hoke, Communications Director for the Gulf Restoration Network, a non-profit organization focused on the health of the Gulf, commended the Board on behalf of the Network's membership for its leadership and reiterated the Network's support of the Board's actions to hold the oil and gas companies accountable. He added that the citizens of Louisiana through flood insurance and tax dollars should not be held accountable for paying the bill for the damages resulting from oil and gas industry operations. The industry's liability should be determined in a court of law and not by politics.

John Barry, President of Restore Louisiana Now, a non-profit organization that he stated will support the Authority politically in the legislature, responded to a recent comment that the Board is binding future Boards. He stated that many actions taken by any board bind future boards (e.g., decisions on building a levee system). He added

that the Board was unanimous in its decision and felt that it was doing the right thing, and that a majority of the Board members still feel that way. The fact that future boards may be bound by a decision is in the normal course of events. He commented that the idea that an industry feels that it is above the law and can use the political process and the legislature to intervene in the legal process and in a lawsuit that has been filed is deeply foreign to everything in the jurisprudence inherited in this country and the State of Louisiana.

Sandy Rosenthal, founder of levees.org and executive board member of Restore Louisiana Now, thanked the Board for its public service. She commented that if the Governor had a good and noble reason to oppose the lawsuit, a clear, concise and meaningful explanation would have been crafted for his opposition to the lawsuit and data would have been provided in support of the explanation. No such explanation has been provided. Instead the Governor has provided a litany of hollow arguments, none of which can be proven or disproven. She added that an explanation was not provided because it does not exist. She and the members of levees.org urged the Board to vote to reaffirm approval of the lawsuit and to allow the experts and scientists to determine in a court of law the damages to coastal Louisiana by the oil and gas industry and how the industry should repair the damage.

Robert Desmarais, representing the First Unitarian Universalist Church, commented that he is asking that the oil industry clean up after itself. The corporations now think that the only bottom line is profit and are not considering peoples' lives. He commented on stories heard in the aftermath of the BP oil spill of people losing their lives, health and livelihoods, and on the loss of land, not only due to canals in the marshlands, but also through subsidence due to the extraction of the liquids and vapors under the land. He stated that unregulated corporations are weapons of mass destruction and that the governments have been complicit. He urged the Board to continue with the lawsuit.

Anne Rolfes, a member of the Louisiana Bucket Brigade and the Green Army, commented that in addition to the destruction of the coast due to the canals, the organizations are concerned about the destruction that is taking place through on-going pollution. She added that a team of co-workers pour through reports every day from the National Response Center (the Federal entity charged with collecting reports from industry and others about spills in the Gulf and onshore). Thousands of accidents take place every year in the Gulf waters contributing the degradation of the coast. She urged that the Board not only continue its lawsuit, but include some of the other ways in which the oil industry has degraded the coast. She added that the lawsuit is positive for Louisiana's economy. Backfilling the canals and restoring the coasts would mean thousands of jobs in Louisiana.

**RESOLUTION NO. 12-05-13-01 -- AFFIRMATION OF RESOLUTION NO. 08-15-13-04**

Mr. Estopinal offered a motion to take from the table the motion to affirm the Authority's lawsuit. The motion was seconded by Mr. Kemp and adopted with the following vote:

Mr. Estopinal, Mr. Kemp, Mr. Luettich, Mr. Tilly and Mr. Wittie voting yea, and Mr. Angers, Mr. Hassinger and Mr. McHugh voting nay.

Mr. Hassinger explained that the proposed resolution before the Board reaffirms a resolution adopted in August and authorizes the continued prosecution of the lawsuit. The August resolution affirms a previous resolution adopted in June and ratifies the decision to file the lawsuit. The June resolution authorizes retaining outside counsel to file the lawsuit. He asked the impact on the lawsuit if the Board takes no action on the proposed resolution. Mr. Luettich responded that the current membership of the Board is different than it was when the previous resolutions were adopted. The Board by tabling the motion last month sent a very equivocal message and this is an opportunity for the Board to publicly make clear what it wants to do. Robert Lacour, SLFPA-E General Counsel, clarified that action by the Board on the proposed resolution would not impact the lawsuit. The previous resolutions would stand. Mr. Luettich commented that the Board can take one of three pathways: 1) approve the proposed resolution giving the Board's legal team a vote of confidence and sending a strong message to the public that this is what the Board wants to do, 2) decide that this is not the right course of action and that it is time to settle up with the legal team and stop the lawsuit, and 3) undermine the entire effort with the hope that it crumbles internally. He noted that he did not begrudge any of the Board members from selecting one of the first two pathways; however, the Board needed to get off the third pathway. The Board at its last meeting voted to send the contract to the Legislative Auditor for evaluation before allowing its attorneys to respond to its questions and refused to reaffirm the lawsuit. He added that the opinion from the Legislative Auditor should be taken into advisement; however, the Board needed to revisit the issue and demonstrate which pathway it is on.

Mr. Hassinger reiterated that the proposed resolution reaffirms the contract and authorizes the continued prosecution of the suit. The Board voted to request the Legislative Auditor to review the contract and advise whether it is appropriate. However, the Board would now be voting to reaffirm the contract prior to receiving an advisement from the Legislative Auditor.

Mr. McHugh inquired about the Board's policy concerning the issuance of Requests for Qualifications (RFQ). Mr. Lacour explained that the statutes do not require the Board to obtain bids or issue RFQ's for professional services. However, the Board adopted a policy concerning the issuance of RFQ's and the process contained in the policy has been used since the Board's inception in retaining most of its professional services. Mr. Angers distributed copies of the SLFPA-E's "Qualification Based Selection Process for Professional Services" adopted on May 2, 2007. He asked whether this instance was the only time since the Board's inception that the policy was not followed.

Mr. Estopinal advised that a qualifications search was done. This is a very specific area of the law and there is a very narrow group of individuals with the required expertise. He clarified that he was not involved in this search; however, other officers of the Board were involved in the search. He stated that many firms were researched and that there

were perfectly legitimate reasons for not issuing a formal RFQ. Mr. Doody noted the difficulty in finding a law firm for the lawsuit.

Mr. Hassinger pointed out that the Board's policy for retaining professional services was not followed (i.e., the appointment of a selection committee and the accompany selection process) in retaining the law firm.

Mr. Angers asked the result of the discussion of the lawsuit at the Association of Levee Boards of Louisiana's (ALBL) annual meeting held yesterday. Mr. Doody advised that the Association of Levee Boards of Louisiana adopted a resolution by a vote of 16 to 1 in favor of not supporting the action of the SLFPA-E. The ALBL also advised that a committee would be set up to seek a common path forward.

Mr. Angers concurred with Mr. Luettich on the potential pathways that the Board could take. He pointed out, however, that by not taking action today the Board is not in any way halting any proceedings or giving a vote of no confidence. The Board adopting, affirming and reaffirming an action gives a sense of indecision. He stated that the Board made a decision that not all of its members agree with; however, the affirming and reaffirming of decisions is not efficient use of taxpayer dollars and the Commissioners' time.

Mr. McHugh asked whether the Board's not following its established policy jeopardized the contract. Mr. Doody responded that he did not think that it did.

On the motion of Mr. Estopinal,  
Seconded by Mr. Wittie, the following resolution was offered:

**WHEREAS**, Resolution No. 08-15-13-04 affirmed Resolution No. 06-06-13-04, which in turn authorized the President or Vice President of the Southeast Louisiana Flood Protection Authority-East ("SLFPA-E") to engage Jones, Swanson, Huddell & Garrison, LLC, on behalf of itself and the levee districts within its jurisdiction regarding claims for damages due to land loss and erosion; and

**WHEREAS**, Resolution No. 08-15-13-04 also affirmed the engagement of Jones, Swanson, Huddell & Garrison, LLC pursuant to Resolution No. 06-06-13-04, and ratified the filing, in keeping with that engagement, of the lawsuit filed originally in Civil District Court for Orleans Parish as Case No. 13-6911 and removed to the federal District Court for the Eastern District of Louisiana as Case No. 13-5410, naming as plaintiffs the Board of Commissioners of SLFPA-E, individually and as the board governing the Orleans Levee District, the Lake Borgne Basin Levee District, and the East Jefferson Levee District, and naming as defendants Tennessee Gas Pipeline Company, LLC, *et al.* ("the lawsuit"); and

**WHEREAS**, Resolution No. 08-15-13-04 also authorized the continued prosecution of the lawsuit; and

**WHEREAS**, Resolution No. 08-15-13-04 was passed with Mr. Barry, Mr. Estopinal, Mr. Kemp, Mr. Luettich, Mr. Tilly, Mr. Pineda, and Mr. Wittie voting in favor, no Board members voting against, Mr. Barnes absent, and Mr. Doody recused; and

**WHEREAS**, Mr. Barry, Mr. Barnes, and Mr. Pineda ceased to be members of the Board on October 17, 2013, replaced by Mr. Hassinger, Mr. McHugh, and Mr. Angers;

**BE IT HEREBY RESOLVED**, that SLFPA-E reaffirms Resolution No. 08-15-13-04; and

**BE IT HEREBY FURTHER RESOLVED**, that SLFPA-E authorizes the continued prosecution of the lawsuit.

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

YEAS: Mr. Estopinal, Mr. Kemp, Mr. Luettich, Mr. Tilly and Mr. Wittie

NAYS: Mr. Angers, Mr. Hassinger and Mr. McHugh

ABSENT: None

Mr. Hassinger clarified that inasmuch as the motion addresses the contract and reaffirmation of the contract that he voted nay. In light of the fact that he was advised today that the Board's action had no effect on the litigation (taking action has no effect and not taking action has no effect), his vote is nay.

Mr. Doody advised that the next regular monthly Board meeting will be held on December 19, 2013 and hosted by the Lake Borgne Basin Levee District.

There was no further business; therefore, the meeting was adjourned.