

MINUTES OF
SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITY-EAST
OPERATIONS COMMITTEE MEETING
HELD ON APRIL 9, 2008

PRESENT: Larry McKee, Chair - SLFPAE
Timothy Doody, SLFPAE
Louis Wittie, SLFPAE
Jerry Colletti, U.S. Army Corps of Engineers (USACE)
Stephen Tassin (representing Larry Ardoin), LA DOTD
Stevan Spencer, O.L.D. Executive Director
Fran Campbell, EJLD Executive Director
Jason McCrossen, LBBLD Executive Director

The Operations Committee met on April 9, 2008 in the Second Floor Hall of the Lake Vista Community Center, 6500 Spanish Fort Blvd., New Orleans, LA. Chairman McKee called the meeting to order at 1:38 p.m.

Opening Comments:

Mr. McKee directed his opening comments towards the goal for the levee districts under SLFPA-E's jurisdiction. SLFPA-E recognizes its single mission of flood protection with all of the functions under the Authority directed towards this mission. Prior to the seating of this board, the levee districts had separate boards with different ways of doing things. His plea to the leadership of these levee districts is that they begin to look like the same district, doing things the same way. Flood waters recognize no boundaries; therefore, the levee districts should recognize no boundaries and take on a culture of diligently working together and becoming homogenous as a flood protection group.

Adoption of Agenda:

The agenda was amended to include Item VIII.A – an announcement by the Chair. A motion was offered by Mr. Wittie, seconded by Mr. Doody, to adopt the agenda as amended.

Public Comments:

Ms. Amy Sins, a resident on Bellaire Drive, explained the Authority should consider private property rights when allowing a government agency access onto private property, and in this case property lines according to the property title vs. what is being shared with the Authority by the U.S. Army Corps of Engineers (USACE). A big challenge dealt with the fences and consequences of fence removal (e.g., criminal access to properties, security and liabilities issues dealing with swimming pools). If fences are moved into the private property and the area outside the fence is not purchased, the property owner will still have to pay property taxes and maintains liability on property that he/she cannot secure.

Mr. Terry Lenatro, a resident on Bellaire Drive, explained he obtained a permit on October 6, 2005, and actively began work on his home. At that time he talked to people at the USACE as well as the City of New Orleans and was assured nothing was to happen with the levee,

and proceeded to restore his home, build a \$3,800 fence and restore a \$17,000 gazebo. He added, the plan keeps evolving and changing and the last plan brought to his attention was that property six feet from the levee toe can be taken and any fences or improvements removed. He asked exactly what is the plan.

Mr. Allen Hennesy, a resident on Bellaire Drive, commented that agenda item VII.1 is about discussion of the USACE wanting a hearing on the right to tear down fences and trees, and his objection was that the property owners had a right to a fair hearing. He thought the property owners need at least thirty days to obtain engineering opinions and look at what the USACE wants to do, and then have a fair hearing before the Board. Mr. Hennesy added, he is a lawyer and if people are pushed to a point where they are told there will be a hearing in nine days and then permission will be given, then a lot of money will be wasted on law suits that could be spent on levees. Although the USACE has been talking about this, the options have changed so much that it has been impossible for anyone to get an analysis or engineering process until the property owners know what the USACE wants to do. He stated that in about a week from now the property owners may know what they need to prepare.

Mrs. Carol Byram, a resident on Bellaire Drive, explained the property owners have volumes of information to dispute the USACE. She commented on the issues faced by SLFPA-E and the incredible job of attempting to oversee the work of the USACE. She did not think the Board would not allow the USACE to go onto private property and cut down trees unless it could prove it was absolutely necessary, and indicated she had plenty of proof to show it is not necessary. Her concern was that this process was moving so fast now that the property owners would not have a chance to present their case showing it is not absolutely necessary. In addition, she thought the property owners have been lulled into a sense of security because the Board said the USACE would have to prove its case. She stressed the importance of the trees that remain on her property that provide security and protection from sunlight.

Mr. McKee advised Mrs. Byram provided some information before the meeting which he shared with members of the Committee.

Ms. Peggy Sanchez, a resident on Bellaire Drive, stated she concurred with Mr. Hennesy's comments.

Mr. Roy Arrigo, a resident on Bellaire Drive, commented a statement was made earlier that SLFPA-E's sole mission is flood protection, but that mission must be fulfilled within the law. The Constitution states that government cannot take private property without just compensation. He asked that the Board fulfill its mission within the law and look out for property owners' rights. He questioned this need with the defense of the temporary gates and thought the need for this levee will diminish with the construction of the new structure, adding this is a severe violation of property owners' rights for this short period of time. He asked that the USACE not be granted a right-of-way.

Mr. George Byram, a resident on Bellaire Drive, asked that before trees and fences are removed that consideration be given to the fact that this is a overbuilt levee with the toe buried six to eight feet underground.

Mr. Warren Nolan, a resident on Bellaire Drive, stated the various USACE representatives, whether intentional or not, have never spoken the truth with the property owners on issues such as the location of the levee toe, levee sections and the design parameters. He commented on the issue of the rear property line as determined by the USACE. His understanding was the USACE would go to the Board at its next meeting to request right-of-entry to begin the tree and fence removal; however, the USACE has not gone to the property owners as individuals with their proof and allowed questions. He requested the Board delay granting right-of-entry until the USACE can show proof to the Board and the property owners, and allow the property owners to be heard and prove their case.

There were no additional speakers; therefore, Mr. McKee moved the discussion of Agenda Item XII.1 as the next order of business.

1. Discussion of U.S. Army Corps of Engineers request for right-of-entry for tree and fence removal activities and related surveys in the “fattened levee area” of the 17th Street Canal (5310 Bellaire to 6772 Bellaire). (Orleans Levee District)

O.L.D. Executive Director Stevan Spencer advised the USACE by letter dated April 4, 2008, requested right-of-entry to access 44 properties from 5310 Bellaire to 6772 Bellaire to remove trees and fences within six-feet of the levee toe. Property owners are requesting this right-of-entry be postponed until they receive some answers; however, the USACE is requesting approval of this right-of-entry by April 30th. Additional survey work is also requested in the USACE letter. He advised the USACE representative who would be attempting to meet with property owners next week to discuss the expected impact was present at the meeting.

Mr. McKee reminded everyone that the members of the Authority took office in January, 2007, and were exposed to this problem about a year ago when it was provided detailed maps by the USACE on rights-of-way lines. He thought action should be taken to bring this matter to finality and asked for a status from the USACE.

Mr. Mike Stout, part of the USACE tree removal team, advised the USACE has been working these issues along the 17th Street Canal, and in particular the southern reach referred to as the “fattened levee”, for well over a year. The USACE by letter dated April 4th requested right-of-entry by April 30th in order to get a contractor on the job and the trees removed by the start of the hurricane season. This target is consistent with what was told to property owners when meeting with them in January of this year because the USACE believes these trees are a risk to the hurricane protection system. These trees clearly violate USACE guidance on protecting levees and removal of these risks to the system are within the scope of the agreements entered into after Katrina with the Orleans Levee District (O.L.D.) and East Jefferson Levee District (EJLD). Removal of these risks was done elsewhere; i.e., the Orleans and Jefferson Parish Lakefront levee, the Orleans and London Avenue Canals, and other locations of the system. The Orleans and Jefferson Parish sides of the 17th Street Canal are the last remaining piece of the tree removal program. He acknowledged it must seem rushed to property owners. A survey is underway at this time marking the various points in individual yards; therefore, the USACE would be able to meet next week with property owner, as they request, in order to discuss the particular issues concerning their property. Everything is in motion to get a contractor started by May 1st and get trees and stumps removed and levees repaired by the start of the hurricane season.

Mr. McKee asked whether the USACE had a completed plan. Mr. Stout responded that the USACE does have one and a set of drawings were provided to Mr. Spencer a few minutes ago. He acknowledged things were only coming together in the last week or so and explained part of the difficulty in getting this done was that the engineers who have been working on the design section along this reach also have a lot of other responsibilities. He showed one of the seven graphics representing the 44 properties in the fattened levee section that illustrated the line showing the historic levee toe based on 1948 and 1966 surveys, a second line showing the design section plus six feet, which was based on analyses and survey data reviewed, and a third line, which resulted from a meeting held in January where a comment was made that in a portion of the reach there is levee section on the floodside of the floodwall and after additional analysis the levee section was shifted towards the canal in some parts of the reach. The USACE now has a design levee toe plus six feet that is in this particular graphic about six feet further towards the canal than in January. The USACE is proposing that this line be used for the removal of trees and fences. Unfortunately, in most cases this line goes into and affects the fences and trees along the back property line from a few feet to six feet. This is the levee section required for the current water conditions on the canal taking into account the interim control structure at the mouth of the canal and the high water conditions that could occur during a storm when the gates are closed and the pumps are operating.

Mr. McKee asked whether the line indicated (the blue line) was final and could not be changed. Mr. Stout responded when the USACE met with property owners in January, they listened and a good point was made about the levee section on the floodside of the floodwall and an adjustment was made. However, there is nowhere else the USACE could go at this point to further reduce the impact. The design section is what is required for the existing conditions. The blue line is being staked in the field today.

Mr. Doody asked whether the USACE had an answer to the security issues and the question about whether the trees on that levee section are harmful.

Mr. Stout explained the USACE recognized the removal of fences is a significant problem to property owners and have worked this issue to a point where it knows it does not have a solution. The USACE has worked with O.L.D. staff, attorneys for the USACE and the State, but could find no authority to provide a replacement fence, even though as a team they very much wanted to do so for security concerns as well as a project benefit in that it would clearly identify the area that needs to be clear of obstructions. The State law is clear about removal of obstructions, but provides no provisions for replacing anything that is removed. The USACE guidance on vegetation at levees and floodwalls allows for trees and shrubbery in overbuilt levee sections as long as a root free zone above the design levee section is protected, which is the basis for determination of the theoretical or design section plus six feet to insure the three foot root free zone is respected. Roots of a mature tree are a minimum of three feet deep—this three feet plus the three foot root free zone would equal the six feet. If anything, the USACE may not be conservative enough in protecting the levees; however, it was felt this was the most reasonable compromise considering the concerns of property owners and the need to secure the levees.

Mr. McKee suggested another entity may wish to challenge the USACE's attorneys regarding the replacement of fences. He thought that because the SFLPA-E has been actively engaged in this issue for a year, it appeared some action was needed to bring this matter to the full Board in order to proceed. He suggested the Committee recommend to the Board that it grant the USACE right-of-entry to proceed with the work and explained the Committee had no power to approve or disapprove the USACE's request, but only to bring a suggestion to the Board. He reiterated the purpose of the SLFPA-E is to protect citizens from flooding.

Mr. Doody offered a motion, seconded by Mr. Wittie, that this request be brought to the Board at its next Board meeting to make a decision to take action.

Mr. McKee thanked everyone for their comments and invited the public to attend the April 17th Board meeting.

Old Business:

1. Discussion of Vehicle Policy.

Mr. Wittie distributed the take home vehicle policy, which he explained was prepared as a start for discussion. He advised the purpose is to establish a uniform policy and proceeded to read the proposed policy.

The Committee discussed incorporating a minimum charge for those individuals within ten miles of the workplace and Mr. Wittie concurred with making such a revision to the fee schedule.

Mr. Doody offered a motion, which was seconded by Mr. Wittie, to modify the policy and send a finalized policy to the Board.

2. Discussion of tractor cages.

It was noted O.L.D. tractors are equipped with rear cages; LBBLD tractors currently in service are equipped with cabs or cages; and the EJLD has six tractors that do not have cages. Mr. McKee asked that those tractors without cages be appropriately equipped.

Mr. McKee offered a motion that a goal be established for all tractors to be equipped with cages that meet safety standards.

3. Discussion of Cooperative Endeavor Agreement between SLFPAE and USACE.

Mr. Colletti advised the USACE would welcome a Cooperative Endeavor Agreement (CEA); however, it could not initiate the meetings to establish a CEA, but could participate. He also pointed out he would like to be a part of the process, but would probably not be the principal.

Mr. McKee stated he would like to have Regional Director Robert Turner take charge of getting this done and the SLFPA-E would initiate this process.

4. Discussion of revised Scope of Work for Drainage Study.

Mr. McKee related the selection process used that ultimately came up with the selection of DMJM Harris. He further explained two meetings were held with DMJM Harris to discuss the intentions of the drainage study after which DMJM Harris drafted a scope of work. Another meeting was held during which suggestions were offered. DMJM Harris undertook these revisions with Bob Turner and the resulting proposed scope was presented to the Committee.

Mr. McKee commented the first item of Phase I of the proposed scope is the task of identifying all of the existing physical facilities, which is a worthwhile task and will provide the Authority and other entities with a map giving details of what they have and how they can or cannot cross parish lines. The second item is to "Identify Physical and Operating Opportunities", with emphasis placed on the physical improvements needed to provide opportunities. He explained the order of these items was contrary to initial discussions that the study would identify opportunities and then define the improvements necessary to implement those opportunities. Therefore, these two items needed to be reversed—what needs to be known first is whether there are any opportunities to coordinate the drainage facilities, and if there are no opportunities, then there is no real reason to identify physical improvements, because nothing would be accomplished.

Mr. McKee advised his recommendation to the Authority is that his comments on the proposed scope of work be considered and coordinated with Bob Turner, that either the latest USACE or DOTD audit be used to assure the proposed hourly and overhead rates fit within rates considered to be uniform across the area and a final cost projection be prepared, and that once these things are done that this be turned over to the Department of Natural Resources for funding.

Mr. McKee noted for the public that Item 1.e. identifies concepts for secondary protection (polders), including a review of current plans for secondary protection prepared by other agencies and citizens groups.

New Business:

2. Discussion of purchase of additional 700-800 MHz radios for flood and non-flood personnel. (Orleans Levee District)

Mr. Spencer explained the O.L.D. currently has 11 interoperable radios that are incorporated into the new Regional Communications State System. The Non-Flood Division has requested that an additional 25 radios be purchased in order that each Police Officer could be equipped with a radio and that the cost be split between the Flood and Non-Flood Division. The cost to the Flood Division would be approximately \$32,000 and is not in the budget; however, funding should be found.

Mr. McKee stated he would prefer that this matter be brought directly to the Board without Committee recommendation.

Old Business:

5. Discussion of Turf Establishment and Maintenance Specifications.

Mr. Steve Finnegan, representing the USACE, explained he is heading the turf establishment program. The USACE is looking at revising its hydro-seeding specification to a turf

establishment and maintenance specification, which would be an end product spec in lieu of the previous production spec. The turf establishment and maintenance spec is currently in District review and comments from Mr. Wittie and others are being incorporated for a final draft. In conjunction with this specification, the USACE is doing several test plots and he described the various grass studies being conducted. At the end of this process, a levee grass establishment and maintenance report will be developed and furnished to the levee districts. Contractors would be held on board during the time grass is established and a provision is included in the spec for checking the final completion percentage prior to turning areas over to the levee districts. The USACE's intent is to have a good grass product that is established and then turn an area over to the levee district in a way that it can be maintained.

Mr. McKee stated he was impressed with the changes that have taken place since this issue was first raised and thought this was headed in the right direction. He advised he sent a copy of the specifications to the Natural Resources Soil Conservation Service with the U.S. Department of Agriculture.

Mr. Colletti noted the discussion of levee rills would be a part of an upcoming partnering meeting.

Levee District Reports: (copy appended to minutes)

East Jefferson Levee District:

EJLD Executive Director Fran Campbell reviewed the EJLD Status Report.

Monitoring and coordination of permitting activities and the cooperation of local government entities that issue construction permits was briefly discussed.

Orleans Levee District:

O.L.D. Executive Director Steven Spencer reviewed the O.L.D. Status Report and O.L.D. Monthly Activities Report. He noted the USACE has awarded the GIWW closure structure project to Shaw Environmental and Infrastructure, Inc.

Lake Borgne Basin Levee District:

LBBLD Executive Director Jason McCrossen reviewed the LBBLD Status Report.

Announcement

Mr. McKee thanked the members of the Committee for doing an outstanding job. He advised for personal and private reasons he was not certain he could continue as Chair of the Committee; however, he would continue to attend meetings if he is able to do so. He had discussed this with Mr. Doody and Mr. Wittie, and it was decided Mr. Wittie would Chair the Operation Committee beginning in May. He added, he has enjoyed the job and hoped it was productive.

There was no further business, therefore the meeting was adjourned at 3:56 p.m.