

September 17, 2012

The regular monthly meeting of the Board of Commissioner of the Bayou Lafourche Fresh Water District was held on Monday, September 17, 2012 at 5:00 p.m. at the Water District office, 1016 St. Mary Street, Thibodaux, LA

Present were: Hugh Caffery, Chairman	Larry Dugas
Gene Harrell, Vice-Chairman	Jake Giardina
Gregory Nolan, Secretary/Treasurer	Francis Richard
Windell Curole	Ron Animashaun, entered at 5:30 p.m.

Absent: None

Also present were: Barry Marionneaux, Attorney; Matt Ledet, T. Baker Smith; Ed Harlan Stevie Smith, All South Consulting Engineers; Alma Robichaux, BTNEP Joel Tillery, CH2MHill; Stacy Sagona; Nick Porto; Bruno Deleo; Robert Mire Robert Thibodaux; Bob Blair; Jerry Waguespack; Bernie Mistretta

Chairman Hugh Caffery announced that the Executive Session has been deferred because the State is not ready to discuss the issues regarding the litigations.

Mr. Barry Marionneaux, attorney, advised that he will meet with Cliff Bingham tomorrow because the State will not approve the drafts of any of the Phase 2 documents. We are still waiting on their lawyers to give Michael Somne some guidance.

Mr. Marionneaux stated that the Intergovernmental Agreement is the foundation agreement. The legal eyes for the State need to review it, and hopefully they will approve it or make some minor modifications.

Mr. Marionneaux stated that there are some restrictions statutorily that you cannot step forward and indemnify the owner, which is Bayou Lafourche Fresh Water District, for the negligence of a third person. You can no longer do that in Louisiana. The State is drafting the documents and every document they draft says that they are not responsible, and that this body will be responsible for the project. Phase 1 was the opposite. Phase 1 stated that they are responsible, and they indemnified the Bayou Lafourche Fresh Water District.

Vice-Chairman Gene Harrell asked Mr. Marionneaux if what he is saying is that future lawsuits from Phase 2 are that the District will be the ones primarily responsible and not the State. Mr. Marionneaux answered yes the District will be the lead defendant in any lawsuit. Mr. Marionneaux stated that this is why we need to make sure that we have a good engineering firm that will take the lead and make the engineering decisions up front relative to the project, the dredging, and bank stabilization. Chairman Caffery stressed that we would need to be a little more deliberate in the measurement of the banks stability before we go and dredge, and Mr. Marionneaux stated that is

correct. Mr. Windell Curole stated that they have a large umbrella for all activities but of course every project you go into there is risk. You have to get good geo tech work.

Moved by Commissioner Windell Curole, seconded by Commissioner Jake Giardina and unanimously approved to amend the agenda by two-thirds vote to move Item 13(b) Resolution on hiring Tom McFarland for UPRR negotiations, up next for discussion.

Chairman Caffery stated that Mr. Marionneaux and he had discussed the railroad issue, and the big question is they probably have the right to go over the bayou, but not have the right to restrict the bayou's flow.

Mr. Marionneaux informed the Board that Tom McFarland, a Chicago attorney, has inside track on the railroad. He will only be working at the direction of this commission. It will take a long time to get him authorized by the Attorney General of the State of Louisiana. Mr. Marionneaux recommended passing resolution, and let him start the process of getting him approved by the AG's office.

Chairman Caffery recommended that Mr. McFarland quietly find out who Mr. Brandon Kasper is, what his authority is, and who has authority over making negotiated settlements with this Donaldsonville railroad crossing. Mr. Marionneaux advised that based on his conversation with Mr. McFarland he is the type of guy with personal connections.

Moved by Commissioner Jake Giardina, seconded by Commissioner Windell Curole and unanimously approved to adopt a Resolution authorizing attorney, Thomas F. McFarland, a Chicago attorney, to represent the Bayou Lafourche Fresh Water District and provide legal services and representation relative to the issues concerning Union-Pacific Railroad Bridge in Donaldsonville, Louisiana. (RESOLUTION ATTACHED)

Mr. Marionneaux advised that based on what they know right now there is nothing recorded anywhere on any type of authority for the railroad to impede the bayou, and even to put the culverts in.

Mr. Chaisson reported that he asked Mr. Brandon Kasper for any kind of historical data they have on the railroad crossing, when it was built, and any permits and right-of-ways. He asked him for engineering drawings so we can figure out where the current ones are.

Vice-Chairman Gene Harrell stated that he is not against passing this resolution from the standpoint of getting the paperwork started. He would be hesitate to start throwing rocks at them until we find out if this guy is going to be able to work with us as he indicated at the meeting Thursday. He was new on his job, and most probably doesn't yet know the historical things he will have to deal with but he did indicate that the man he is replacing had said to him that he was open to working with the State. That is not the answers we got from CH2MHill engineers and the State people.

Mr. Marionneaux stated that they have a meeting scheduled for Thursday with the Attorney General's office with two lawyers who are familiar with the State ownership of waterbottoms. We are going to give them a copy of the file that Archie had given to him regarding the property right we have at the discharge pipes. Either the State will move forward and establish the boundary, or we will need an act of legislation to give the property to this Board.

Mr. Marionneaux advised that we do not have a standing on a temporary restraining order as of now on Mr. Bradford. He e-mailed Archie to find out whether or not Mr. Bradford's action had in any way impeded the statutory authority and jurisdiction of this Board. Even though he is encroaching, it had not impeded the duties of this Board relative to getting fresh water to the bayou.

Moved by Commissioner Jake Giardina, seconded by Commissioner Francis Richard and unanimously approved to return to the regular agenda order.

Moved by Commissioner Larry Dugas, seconded by Commissioner Jake Giardina to dispense with the reading of the minutes, and approve the minutes of August 20, 2012. Motion carried unanimously.

Moved by Commissioner Jake Giardina, seconded by Commissioner Larry Dugas to approve the accounts payable for August. Motion carried unanimously.

Mr. Chaisson showed a graph of the monitoring of the water levels and pumps that ran during Hurricane Isaac. He showed the different water levels starting August 26th through the end of the hurricane. They shut down at 10:00 a.m. on August 29th when the rain started. They had nine plus inches of rain on August 29th and into August 30th there was an additional three inches of rain that brought it up to 10.8 ft. On Sept. 2 they started the first pump at 8.7 ft. and second pump started on Sept. 2nd, and third pump started on Sept. 3rd.

Mr. Chaisson stated that Mr. Nolan called him and said that they had a fish kill around Supreme on September 1st. Mr. Chaisson advised that the water plants were having some dissolved oxygen problems but all of them were managing and putting out good water.

Commissioner Jake Giardina advised that whenever we have another storm condition don't let it go below the 9.5 ft. Start your fresh water in the bayou much earlier and keep it. We could have probably gotten by with better water for quite a bit longer.

Commissioner Giardina suggested that perhaps a department at Nicholls could study this because we are getting the turn up from the bottom. They would have to jump on it almost right at the time of the storm and follow it from then on.

Chairman Caffery stated that he received a call from Marty Triche of Assumption Parish asking him to make sure we have all four pumps running. Chairman Caffery told him we had flooding in Donaldsonville, and we are monitoring real closely. Mr. Triche said he was worried about the black

water hitting the water plant in Assumption. Chairman Caffery advised that fifteen minutes later Tommy Martinez from Ascension Parish saying whatever you do don't turn on all those pumps. He said the irony of that shows we are in the middle of that because our job is to get fresh to the people.

Commissioner Windell Curole stated that the whole concept is we anticipate a lot of rain so we take the first action, and sometimes the rain doesn't come. He asked if we can catch up very quickly, and Mr. Chaisson answered we can catch up quickly.

Commissioner Larry Dugas discussed the fact that you had a level distance of about a foot on the north side of the railroad tracks compared to the south side of the railroad tracks. You only have one culvert that is spitting out water right now. We need to have those culverts cleaned out.

Commissioner Giardina advised that there is a real simple way to test the dissolved oxygen level. He told Archie to get CHEMET test tubes. Mr. Chaisson stated that a dye study was done in the 1990's on the flow, and he suggested that we contact Nicholls to see if they could do a dye study for flow.

Chairman Caffery stated that Ron Animashaun wants to know how we go about cleaning out those culverts. Commissioner Giardina stated that we have to determine if we have sedimentation in the culverts. Chairman Caffery advised that we first need to have the culverts inspected.

Mr. Marionneaux stated that the statute is clear in regard to the District's duty, responsibility, and power to put fresh water into Bayou Lafourche. If the problem with the culvert is impeding it, then we are talking about an injunction.

Mr. Marionneaux recommended sending a certified letter to Mr. Brandon Kasper with the Union-Pacific Railroad and explain our statutory duties, and tell them we have to inspect the culverts to find out whether these culverts are impeding the flow of fresh water. Chairman Caffery advised that we can include in the letter that we have calculated and observed that we have a flow restriction. The Board agreed to send a letter to Mr. Kasper.

Chairman Caffery reported that he spoke to Rep. Karen St. Germain, and she told him that if we could get Ascension Parish to pass a resolution at their council meeting that it is a serious issue for flooding on Hwy 308, and that a flood control structure needs to be addressed to be placed on the Hwy. 308 side. She will help us put an application into Capital Outlay by November 1st. She is the chairman of the committee so we have a good chance of getting some Capital Outlay funds to do that. Assumption Parish already passed a resolution. Mr. Chaisson stated that he will get a copy of the resolution that Assumption Parish passed.

Chairman Caffery advised that Commissioner Windell Curole has a great idea for some equipment that could improve removing the hydrilla. Commissioner Curole stated that Steve Landry came up with a concept and developed a couple of 48" dragon teeth with a hydraulic system that spins

and cuts through the hydrilla and it is called an aquatic plant navigator, and Commissioner Curole advised that he is trying to line up a demonstration on it.

Mr. Chaisson reported that the guy with the Corps of Engineers that placed the hydrilla flies in the bayou will be here October 4th to do an inspection. The flies seem to be working.

Mr. Chaisson advised that a tugboat hit one of the dolphins alarm system in the river. The dolphins protect the water intakes. We are trying to track the tugboat that hit the dolphin. A discussion was held regarding checking the amount of damage to the dolphin and report to the Board.

Mr. Chaisson reported that they worked four days removing nine medium size and two large size trees. Mr. Chaisson advised that he filed an application with FEMA, and they will reimburse us with 75/25. We are completing the paperwork for force labor. Chairman Caffery advised that our consideration was whether to try to expedite this by hiring a contractor to remove the trees.

Moved by Vice-Chairman Gene Harrell, seconded by Commissioner Larry Dugas and unanimously approved to declare an emergency for the trees that were blown down due to Hurricane Issac, and obtain quotes from contractors to remove them

Mr. Chaisson informed the Board that the Notice of Special Election will be published in the legal section of the newspaper in the three parishes. Mr. Chaisson recommended using other forms of getting the word out about the election in December. This will be discussed further at the October meeting.

PUMP STATION:

River Stage: Beginning August: 1.96; Ending Month: 4.12

Pump Operation: No. Days Siphon: 0; No. Days Pumping: 31

Station Maintenance: Ace Gaffey out for annual overhead crane inspection. Prepared Station for storm. No damage to station or equipment. General maintenance, yard work.

Moved by Commissioner Jake Giardina, seconded by Commissioner Larry Dugas to approve the finance report. Motion carried unanimously.

Moved by Vice-Chairman Gene Harrell, seconded by Commissioner Francis Richard and unanimously approved to grant the 4% performance adjustments effective October 1, 2012 to all employees with the exception of two employees.

Mr. Ed Harlan stated that he feels it is the District's fault that we had the fish kill in Bayou Lafourche. He advised that we sprayed the water hyacinth and let them drop to the bottom, and the harvesters are cutting the hydrilla and letting it go back in the water.

Mr. Bernie Mistretta informed the Board of the problems at his house because of the dredging project. His driveway has dropped three inches, he has a crack going through the center of his house, and about a month ago he noticed all the doors on the second floor he can't close them. Mr. Mistretta stated that he called the State for them to come and look at it, and hasn't heard back from them. He said the State was there about three months ago and they photographed his driveway and would come back and see if it dropped anymore. They also took pictures of the inside of the house of the marble floor that is cracked. He hasn't heard back from them and wants to know what is going on.

Vice-Chairman Harrell stated that Larry Dugas and he visited Bernie's house with Earl Paddock, Shannon, Tom Cancienne, and Archie. The State took pictures and promised Mr. Mistretta that they would monitor the things.

Vice-Chairman Harrell advised that when they met with the railroad guy last Thursday Earl Paddock was there, and Larry Dugas and he both conveyed Bernie's concerns to him again. Mr. Paddock has not returned calls to Mr. Mistretta yet.

Vice-Chairman Harrell advised that they also had discussions before about the Rodrigue's property. It is getting very close to where his pool will be in danger before very long.

Mr. Deleo advised that the State was supposed to inspect when they dug. It was supposed to be a 2 ½ to 1 slope, and he said believe me they were not even close when it was done.

Ms. Stacy Sagona stated that from day one with this project the citizens of Donaldsonville always said that they were worried about problems that were going to happen to their land, to their home, and everything. They kept telling them wait until the project is over. She stated that she thinks as a Board the purpose is to get water but is also to protect whatever you do with our property. You should make the State go to everyone's home every three months and show proof that they are there monitoring, and come back and give a report on how they are monitoring our property.

Ms. Sagona said that Mr. Mistretta has a gorgeous home that he worked hard for. He has made numerous calls and the State doesn't even pick up the phone to return his calls to let them know if there is progress or not. That is common courtesy.

Moved by Commissioner Jake Giardina, seconded by Commissioner Larry Dugas and unanimously approved the meeting adjourned at 7:00 p.m.

Hugh Caffery, Chairman

Gregory Nolan, Secretary/Treasurer

It was moved by Commissioner Jake Giardina, seconded by Commissioner Windell Curole that the following Resolution be adopted:

RESOLUTION

A Resolution authorizing attorney, Thomas F. McFarland, a Chicago attorney, to represent the Bayou Lafourche Fresh Water District (BLFWD) and provide legal services in connection with claims against Union-Pacific Railroad (a Chicago based company) arising out of its ownership of a bridge located at the Bayou Lafourche crossing in Donaldsonville, Louisiana (the "Bridge") which is causing two district problems for the BLFWD.

WHEREAS, the Bridge is restricting the flow of Bayou Lafourche which is interfering with the BLFWD's ability provide potable water to the parishes along Bayou Lafourche south of Donaldsonville, Louisiana.

WHEREAS the Bridge, along with its culverts in Bayou Lafourche, are also causing flooding events to occur on La. Hwys. 1 and 308.

WHEREAS, the BLFWD requires legal advice and counsel relative to these two issues created by the Bridge.

WHEREAS, Thomas F. McFarland, attorney at law, agrees to be bound by the Maximum Hourly Fee Schedule, as determined by the Attorney General for the State of Louisiana to be effective as of January 14, 2008, set forth below:

HOURLY RATE	EXPERIENCE LEVEL
\$175.00	Attorneys having experience of ten years or more in the practice of law.
\$150.00	Attorneys having experience of five to ten years in the practice of law.
\$125.00	Attorneys having experience of three to five years in the practice of law.
\$100.00	Attorneys having experience of less than three years in the practice of law.
\$45.00	Paralegal services.
\$25.00	Law clerk services.

NOW THEREFORE, BE IT RESOLVED that the BLFWD authorizes attorney Thomas F. McFarland, Attorney at Law, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, to represent the BLFWD and provide legal services and representation relative to the issues concerning Union-Pacific railroad bridge in Donaldsonville, Louisiana, as specified herein.

BE IT FURTHER RESOLVED, that the BLFWD will hire Thomas F. McFarland, Attorney at Law, to represent BLFWD and provide legal services as set forth herein as long as needed as determined by the Board of Commissioners of BLFWD. The Board will have control over the terms of the services.

WHEREUPON, the motion was put to a vote and the vote thereon was as follows:

YEAS: Gene Harrell, Gregory Nolan, Windell Curole, Larry Dugas,
Hugh Caffery, Jake Giardina, Francis Richard

NAYS: None

ABSENT AND NOT VOTING: Ron Animashaun

ABSTAINED: None

And the Resolution was declared adopted on this 17th day of September, 2012.

I, Gregory Nolan, Secretary/Treasurer, do hereby certify that the foregoing is a true and correct copy of a Resolution adopted by the Bayou Lafourche Fresh Water District, at a meeting held on the 17th day of September, 2012, at which meeting a quorum was present and voted, and that said Resolution is now in full force and effect.

WITNESS MY OFFICIAL SIGNATURE this 17th day of September, 2012.

/s/ Hugh F. Caffery
Hugh F. Caffery, Chairman

/s/ Gregory Nolan
Gregory Nolan, Secretary/Treasurer

