

**NON-FLOOD PROTECTION ASSET MANAGEMENT AUTHORITY
LEGAL COMMITTEE MEETING MINUTES
MAY 2, 2013 – 3:30 P.M.**

The Legal Committee meeting of the Non-Flood Protection Asset Management Authority was held on Thursday, May 2, 2013 at 3:30 p.m., in the Lake Vista Community Center, 2nd Floor, 6500 Spanish Fort Blvd., New Orleans, Louisiana after due legal notice of the meeting was sent to each Board member, the news media, and a copy of the call was posted.

Commissioner Ernst called the meeting to order at 3:55 p.m. and led in the Pledge of Allegiance. The roll was called and a quorum was present.

PRESENT

Chairman Greg Ernst
Commissioner Wilma Heaton
Commissioner Joe Hassinger
Commissioner Nyka Scott
Commissioner Michael Stack

FURTHERMORE PRESENT

Chairman Robert E. Smith Lupo
Commissioner Darryl Saizan

STAFF

Louis Capo - Executive Director
Sharon Martiny - Non-Flood

ALSO PRESENT

Albert Pappalardo – Real Estate Consultant
Gerard Metzger – Legal Counsel
Wesley Mills – DEI
John Holtgreve – DEI
Steve Nelson – Stuart Consulting Group
Ray Landeche - Lakeshore

APPROVAL OF AGENDA

Commissioner Hassinger offered a motion to adopt the agenda, seconded by Commissioner Scott and unanimously adopted.

APPROVAL OF PRIOR MINUTES

Commissioner Stack offered a motion to approve the minutes of the Legal Committee meeting of March 7, 2013, seconded by Commissioner Heaton and unanimously adopted.

NEW BUSINESS

1) Discussion regarding status of Claim filed against BP for damages sustained as the result of the Deepwater Horizon Oil Spill

Mr. Metzger advised that the lawsuit against BP was filed on April 19, 2013, which was one day before prescription of the claim. The named responsible parties are identified by the Coast Guard and the President of the United States. The Authority is seeking economic damages only as there was no physical damage to property of the Non-Flood Division of the Orleans Levee District. Waivers of Service were issued two days after the lawsuit was filed. The defendants have until the end of the month to get the Waivers back or service will be issued.

Mr. Metzger advised that the damages being sought economic damages are compensable without physical damage to the property. Judge Barbier has issued two opinions on the issue. The Presentment of Claim made by the Orleans Levee District through the Southeast Louisiana Flood Authority – East has to be ratified by this Authority. That was recommended by Mr. Leger, who represents several governmental entities in this lawsuit. Mr. Leger advised if this Authority does not ratify the Presentment of Claim the BP lawyers will try to throw this Authority's suit out. This Committee could adopt a resolution recommending ratification of the Presentment of Claim.

Chairman Ernst addressed Mr. Metzger's fee arrangement and noted that a contingency fee was suggested. Commissioner Hassinger noted there could be potential problems with a contingency fee and advised that the AG may not approve the contingency fee agreement. Neither the State nor any State Agency can enter into a contingency fee contract with a lawyer. Chairman Ernst noted Mr. Metzger's modification is not a real contingency agreement. The fee agreement is the lesser of Mr. Metzger's billable time or the contingency fee. The fee was designed to protect the Authority.

Commissioner Scott offered a motion to ratify the Presentment of Claim filed by SLFPA-E, seconded by Commissioner Stack and abstained by Commissioner Hassinger.

2) Discussion regarding status of Senate Bill No. 173 currently pending in legislature

Mr. Capo informed that the total amount loaned to Lakefront Airport between July 1, 2006 and June 30, 2013 is approximately \$5 million on the operating side. FEMA funds in the amount of \$6.3 million have been transferred in from non-airport property for a total of \$11.3 million from Non-Flood operations and Non-Flood FEMA projects. Commissioner Heaton noted these were not funds generated on the Airport, the \$11.3 million has been loaned to the Airport. Chairman Ernst noted that this figure was needed as there have been discussions regarding concerns that if Lakefront Airport was transferred to another management authority there would have to be recognition of the debt this Authority incurred over the years. This is a substantial debt and has impeded the Authority's ability to manage other obligations.

Mr. Capo advised the \$11 million was a loan to the Airport. In order for the Authority to collect on the debt the Airport will have to earn revenues over and above the expenses. Chairman Ernst noted if management of the Airport was transferred this Authority would lose the ability to receive that investment back. Chairman Lupo advised that this issue would be brought for discussion to our legislator, Senator Morrell, who put this bill forward. Chairman Ernst added that after the issue is discussed with the full Board, it may be decided to request the bill be reconsidered. There is also the issue regarding the Non-Flood Authority staff moving into the Terminal Building upon completion, thereby opening up space currently used by staff. The move would enable other tenants to move into the Community Center to generate new revenues.

Chairman Saizan noted that Board and Committee meetings could also be held in the Terminal Building. This Authority has time, effort and resources that were put into getting the Terminal Building completed and the momentum should not be disturbed. Senator Morrell's intentions were

good in terms of putting the bill forward to protect the Authority from somebody taking this asset.

Commissioner Hassinger noted that the Senator's work with this Authority is appreciated and he has been a great supporter over the years and his motivation was appropriate and positive. Over the last several years the Authority has stressed how it is essential that all Non-Flood assets are kept together. This Board should not do away with a primary asset that constitutes part of the Non-Flood assets. Over the last several years the Airport Committee and this Board have done a great job bringing the Airport back on line with repeated successes and positive developments. The process has been transparent, efficient and effective and a new Authority of 13 people cannot do the job any better. The formation of a new Board would set back the Non-Flood Authority and it would be detrimental to the Airport by slowing the momentum that is currently in effect.

The \$11 million should be returned to the Authority for other Non-Flood assets. Although it is unlikely this Authority will see that money, the formation of a new Board will diminish the slight hope of this Authority getting that money back which is not fair to the other assets. If a new Board is formed it prevents this Authority from successfully and effectively managing the Non-Flood assets long term. The FAA has been expressing concerns regarding these issues in a letter that was issued. It is important this Board know the status of the Bill before any action is taken. This Authority was advised that the Bill is a placeholder, but the Bill has been passed through the Committee, Senate and is currently in the House. A special full Board meeting has been requested so all Board members can discuss the Bill, understand what is happening and voice their concerns. It is not appropriate this Bill move forward. There is no reason to change the structure as there is too much risk and no good to come of it.

Commissioner Heaton suggested these concerns be put in a motion and communicated to the Senators and Representatives in case the Bill should be heard at a Senate Committee. The concerns of this Authority should be addressed and could be part of the testimony if the Bill is heard. A motion could be passed stating the Authority would like these concerns addressed in the piece of legislation. The Authority will then be on record and the issue can move to the full Board for consideration. Chairman Ernst noted opposition to the Bill and suggested a motion be made that this Committee is opposed to the Bill in its present form and enumerate what the concerns are.

Commissioner Hassinger offered a motion that the Board express to the appropriate legislator its opposition to the Bill. The reasons for opposition include the successful long term management of the Non-Flood assets by this Board, the importance of keeping all non-flood assets together and change in management would disturb the momentum at this critical juncture. This Board has effectively operated the Airport in a transparent, effective and efficient way and creation of a new Board would not improve that, but would be detrimental to the operations of other Non-Flood assets. Creation of a new board would make it unlikely that the loan to the Airport would ever be repaid resulting in an impediment to other Non-Flood assets.

Chairman Lupo noted that changes were made to the Bill this afternoon. The FAA is pleased with the way this document and the legislation is going and is convinced that this Bill would not interrupt any grants.

Commissioner Hassinger made a motion to recommend to the full Board that the Board express to the appropriate legislator opposition to the Bill as written for several reasons, seconded by Commissioner Scott and unanimously adopted.

Commissioner Ernst noted for the record that prior to last year when Senator Murray had his bill, which was unanimously opposed, in 2010 Senator Morrell had the same bill that is brought today. Prior to the specter that another entity is trying to take the Airport, Senator Morrell was trying to transfer the Airport in 2010.

Commissioner Hassinger noted that if the Authority were to get rid of the Airport and the Marinas, who would pay to cut the grass? Where would the money come from to maintain Lakeshore Drive, the parks in E. Lakeshore and the parks in Lake Vista? If this Authority prepared a plan to dispose of the assets in a way that makes and are run efficiently and effectively, that would be good. The Authority should not be left with only two properties and no money to maintain those two properties. That is not what this Authority is supposed to be accomplishing.

Commissioner Hoffman noted that this Authority has the millage that comes into effect in 2016, but the legislation does not address the millage. Commissioner Hassinger advised that the millage is with the Authority today, but as properties go so does the millage. Those discussions demonstrates the need for a Special Board meeting prior to the regular scheduled Board meeting so each Board member could discuss the various reasons why the Bill is bad. If a proponent thinks the Bill is a good idea that member can justify the reason.

Commissioner Hassinger offered a motion to oppose the adoption of Senate Bill No. 173, seconded by Commissioner Heaton and unanimously adopted.

Commissioner Hassinger offered a motion that the Board have a Special Board Meeting for further discussion of the Bill. Commissioner Heaton suggested a special meeting be scheduled that would also address the agenda items from the May 16, 2013 Board meeting and the regular Board meeting could be cancelled.

Mr. Metzger advised that under the By-Laws for a Special Board Meeting, the Chairman may call a special meeting or three members must submit in writing the request to the Executive Director to call a Special Board Meeting. Chairman Lupo informed that he would call a Special Board Meeting for Monday, May 6, 2013 at 6:30 p.m.

ANNOUNCE NEXT MEETING

Chairman Ernst informed that the next Legal Committee meeting is scheduled for Thursday, June 6, 2013 at 3:30 p.m.

ADJOURN

Commissioner Hassinger offered a motion to adjourn, seconded by Commissioner Heaton and unanimously adopted.

The meeting adjourned at 5:03 p.m.