

**STATE OF LOUISIANA**

**OFFICE OF  
STATE INSPECTOR GENERAL**



**ORLEANS LEVEE DISTRICT**

**Date Released:**

**April 3, 2006**

**File No. 1-06-0009**

**STATE OF LOUISIANA**

**OFFICE OF**  
**STATE INSPECTOR GENERAL**



**ORLEANS LEVEE DISTRICT**

**Sharon B. Robinson, CPA**  
**State Inspector General**

A stylized, handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.

**Approved by:**  
**Governor Kathleen Babineaux Blanco**

**March 24, 2006**

**File No. 1-06-0009**

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*State of Louisiana*  
DIVISION OF ADMINISTRATION

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KATHLEEN BABINEAUX BLANCO  
GOVERNOR

JERRY LUKE LEBLANC  
COMMISSIONER OF ADMINISTRATION

March 24, 2006

Honorable Kathleen Babineaux Blanco  
Governor of the State of Louisiana  
P.O. Box 94004  
Baton Rouge, LA 70804-9004

Re: Case No. 1-06-0009

Dear Governor Blanco:

This report addresses concerns raised about the operations of the Orleans Levee District (OLD). The report includes nine recommendations that, if implemented, could help improve the operations of the OLD.

We provided a draft of the report to the current President of the Board of Commissioners of the OLD as well as the former President. Their written responses are included as Appendix A.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sharon B. Robinson".

Sharon B. Robinson, CPA  
State Inspector General

SBR/DM

Enclosure

## **Executive Summary**

### **Audit Initiation**

On September 28, 2005, the Office of State Inspector General began investigating an allegation that Mr. James Huey, then President of the Board of Commissioners of the Orleans Levee District (OLD), directed Mr. Max Hearn, OLD Executive Director, to have an OLD check issued to Mr. Huey for salary retroactive to June 1996. Mr. Huey was electing to receive a monthly salary rather than a \$75 per diem. Mr. Huey also allegedly directed Mr. Hearn to advise the finance department to set up a regular monthly salary payment of \$1,000 to Mr. Huey. These directives by Mr. Huey were allegedly issued without required board of commissioners' approval.

Subsequent to the start of the investigation, our office became aware of the following areas of concern, which we also address in this report:

- Subrogation of OLD rights to Marine Recovery and Salvage, LLC. (MRS), a company partially owned by Mr. Scott Carmouche, son of OLD contract attorney Mr. George Carmouche.
- Leasing of OLD property to MRS and OLD office space lease from George Carmouche.
- OLD's engagement of special counsel without Attorney General approval.

### **Summary of Findings**

- Mr. Huey authorized his own salary of \$1,000 per month, in lieu of per diem, without obtaining board approval. Also, the salary request was not submitted to the commissioner of administration and the Joint Legislative Committee on the Budget for review, prior to implementation of the salary, as required by state law. The Attorney General has opined the salary was improperly granted.
- Mr. Huey directed the OLD staff to issue him a check for retroactive salary back to June 1996. The OLD issued the check to Mr. Huey totaling \$91,425 (gross) for the retroactive salary. The OLD reduced the retroactive pay total by the total per diem payments Mr. Huey received for the same period. The Attorney General has opined that the payment of retroactive salary to Mr. Huey is a prohibited donation (La. Const. Art. VII, Sec. 14).
- Mr. Huey, on behalf of the Board, authorized Marine Recovery and Salvage, LLC (MRS), to conduct a project of recovery and storage of vessels damaged during Hurricane Katrina located in the Orleans Marina and the South Shore Harbor. Mr. Huey did not obtain board authorization by resolution, therefore, did not have authority to act on behalf of the Board in this matter. In addition, this arrangement appears to have ethical ramifications.

- OLD's executive director entered into two lease arrangements without Board approval.
- The OLD has spent over \$3.2 million between September 2003 and September 2005 to engage attorneys as special counsel without obtaining approval from the Attorney General as required by LSA – R.S. 42:263.

## **Background**

The Board of Commissioners of the Orleans Levee District consists of eight members. Six commissioners are appointed by the governor, subject to Senate confirmation, and serve at the pleasure of the governor. Two commissioners are ex officio, the mayor of the City of New Orleans or his designee and one member appointed by the mayor from a list of three city councilmen selected by the members of the city council of New Orleans. Mr. James P. Huey was appointed president of the board in June 1996.

Since 1890, the OLD has had primary responsibility for the operation and maintenance of a flood protection system surrounding the City of New Orleans. In 1928, the Louisiana Legislature authorized the OLD to operate and maintain public parks, beaches, marinas, aviation fields, and other like facilities. Properties owned and operated by the OLD include, but are not limited to, the New Orleans Lakefront Airport, the Orleans Marina, and the South Shore Harbor Marina. OLD facilities sustained extensive damage from Hurricane Katrina.

State law requires the OLD to submit its annual fiscal year budget to the Board of Commissioners for review and approval, and the Joint Legislative Committee on the Budget for review. For fiscal year 2006, OLD has budgeted revenues of over \$53.7 million into its general operating and other funds. The budget also shows the OLD has 286 positions.

## **Scope and Methodology**

The scope of this investigation was limited to the following issues:

- Mr. Huey's salary,
- subrogation of salvage rights,
- leasing of office space from Mr. Carmouche,
- leasing Naval Reserve Station grounds to MRS, and
- the engagement of special counsel.

The investigation was primarily limited to OLD activities from June 2005 through November 2005 except the engagement of special counsel issue, which extends beyond these date parameters.

The procedures performed during this investigation consisted of (1) interviewing pertinent individuals associated with OLD; (2) interviewing Attorney General staff and others, as necessary (3) examining selected OLD records; and (4) reviewing pertinent laws, rules, and regulations. In addition, we requested an Attorney General's Opinion

regarding salary arrangements for Mr. Huey and advisory opinions from the Louisiana Board of Ethics on matters possibly having ethical ramifications.

On October 10, 2005, we interviewed Mr. Hearn and OLD contract attorneys, Mr. George Carmouche and Mr. Gerard Metzger. They told us Mr. Huey was unavailable due to medical reasons. Mr. Huey resigned from the board on October 26, 2005.



## **Improper Salary Authorization**

Mr. Huey authorized his own salary of \$1,000 per month, in lieu of per diem, without obtaining board approval. Also, the salary request was not submitted to the commissioner of administration and the Joint Legislative Committee on the Budget for review, prior to implementation of the salary, as required by state law. The Attorney General has opined the salary was improperly granted.

LSA-R.S. 38:308 authorizes any board of commissioners of any levee district in the state by a vote of two-thirds of the total membership of the board fix the per diem of its members. The per diem cannot exceed \$75 per day when members actually attend board meetings or perform duties authorized by the board. The per diem is payable up to 36 days per year. This statute also authorizes a president of any levee board to receive a salary, in lieu of the per diem, if the president "also acts as administrator for said board." The statute does not outline when a president is also an administrator, nor does the statute say what an administrator's duties are.

The OLD bylaws designate the executive director as administrator. Mr. Hearn serves as OLD's executive director at an annual salary of \$107,570. Mr. Hearn's duties are to direct and supervise the business activities of the district, including operation and maintenance of all OLD facilities.

The president's salary cannot exceed \$1,000 per month. The statute requires that any salary paid must be submitted for review to the commissioner of administration and the Joint Legislative Committee on the Budget prior to implementation of the salary.

According to Mr. Hearn, when Mr. Huey was first appointed president in June 1996, he and Mr. Huey discussed the potential salary authorized by LSA-R.S. 38:308. Mr. Hearn suggested Mr. Huey obtain a legal opinion regarding whether he qualified for the salary. At the time, Mr. Huey was employed in private industry and did not pursue the salary, to the best of Mr. Hearn's recollection.

In June 2005, Mr. Carmouche was asked to issue an opinion regarding LSA-R.S. 38:308. In an opinion letter dated June 23, 2005, Mr. Carmouche opined as follows:

"In conclusion it is my opinion that an election by the president of any levee district to draw a salary as provided by law can be made at anytime during the tenure of his office. Further, there is nothing in the statute to prohibit a payment retroactively and prospectively as long as the amount paid does not exceed \$1,000.00 dollars per month in the aggregate. Once the election is made a letter from the Orleans Levee District to the commissioner of administration and to the Joint Committee on the Budget indicating that due to the onerous demand on his time to administer the duties of his office the president has elected to receive the \$1,000.00 per month salary during the entire tenure of his presidency."

According to Mr. Hearn, he recommended Mr. Huey obtain a second opinion due to Mr. Carmouche's relationship to Mr. Huey (Mr. Carmouche and Mr. Huey's wife are cousins). Mr. Metzger, another contract attorney, was then requested to give an opinion on LSA-R.S. 38:308. In his opinion letter dated July 18, 2005, Mr. Metzger opined as follows:

"In conclusion it is my opinion that an election by the president of any levee board to draw a salary as provided by law can be made at the election of the president and at anytime during the tenure of his or her office. The only restrictions in the statute on the president's election to receive a salary in lieu of the per diem payment are the monthly amount of the salary and the condition that he or she acts as administrator for the board. The salary is payable upon a warrant issued by the president and duly attested by the secretary of the board. If an election by the president is made to receive a salary, a letter should be issued by the President of the Board to the Commissioner of Administration and the Joint Committee on the Budget notifying them of the election to receive the \$1,000.00 per month salary during the tenure of his or her presidency."

Mr. Huey did not request a formal opinion from the Attorney General or OLD's staff attorney on the salary arrangement.

Mr. Huey issued a letter dated July 8, 2005, advising Mr. Hearn he was electing to draw the salary as provided in the statute and issuing his warrant authorizing the payment of \$1,000 per month to be paid both retroactively and prospectively from the first date of his tenure as president, which was June 19, 1996. The letter directs Mr. Hearn to have the finance department prepare a check for payment of the monthly salary beginning with completion of the first 30 days of his tenure through June 19, 2005, and to have the finance department set up a regular monthly payment of \$1,000. Mr. Huey did not obtain board approval for the prospective or retroactive salary. The retroactive pay issue is addressed in the next section of this report entitled "Improper Retroactive Salary Payment".

The president of a levee district board receiving a salary is not unusual. A review of recent legislative auditor reports for the state's 20 levee districts shows the following:

- Ten of the twenty levee districts have presidents of the board who receive a salary in lieu of per diem. Nine of the ten (90%) salaried presidents receive the maximum salary allowed by law (\$1,000 per month). One president receives \$250 bi-weekly (or about \$542 monthly).
- At least six of the ten districts with salaried presidents also employ an executive director, executive secretary, or administrative manager. The OLD also employs an executive director. As mentioned earlier, the statute does not clearly state what makes a board president qualify as an administrator.

On October 17, 2005, the State Inspector General requested an Attorney General's Opinion regarding this matter. The Attorney General opined that the Board of Commissioners must approve the salary of a levee district president and that the

commissioner of administration and the Joint Legislative Committee on the Budget should review the salary prior to implementation of the salary. Thus, proper procedures were not followed regarding Mr. Huey's prospective salary.

Recommendation:

1. OLD should adopt policies and procedures to ensure any future requests to pay the president a salary are presented to the Board of Commissioners for approval and submitted to the commissioner of administration and the Joint Legislative Committee on the Budget for review prior to implementation of the salary.

Recommendation to the Governor:

The Governor may wish to seek to have LSA-R.S. 38:308 amended to clarify whether levee boards with salaried day-to-day executive directors or similar positions should also have a salaried board president. In addition, this statute should clarify what makes a levee board president qualify for a salary rather than a per diem.

In addition, this statute needs to clearly state whether the review required by the Commissioner of Administration and the Joint Legislative Committee on the Budget would constitute an approval or merely a notification.



## **Improper Retroactive Salary Payment**

Mr. Huey directed the OLD staff to issue him a check for the retroactive salary back to June 1996. The OLD issued the check to Mr. Huey totaling \$91,425 (gross) for the retroactive salary.

Article 7, Section 14(A) of the Louisiana Constitution prohibits funds, credit, property, or things of value of the state to be loaned, pledged, or donated to or for any person, association, or corporation, public or private.

In the same letter to Mr. Hearn, dated July 8, 2005, Mr. Huey directed Mr. Hearn to have an OLD check issued to Mr. Huey for retroactive salary back to June 1996. The letter states Mr. Huey issued a warrant authorizing the retroactive salary payment. The retroactive pay total was reduced by the total per diem payments Mr. Huey received for the same time period. In August 2005, OLD's finance department issued a check to Mr. Huey for \$91,425 less state and federal taxes resulting in a net payment of \$57,760.

On October 27, 2005, the Attorney General issued an opinion to the Inspector General regarding the propriety of the retroactive salary payment to Mr. Huey. The Attorney General opined [No. 05-0376] the retroactive pay violated Article 7, Section 14(A) of the Louisiana Constitution. According to the Attorney General's opinion, the OLD is not obligated to make this payment. In addition, the opinion states that the per diem Mr. Huey drew is his due compensation. Without a preexisting obligation (i.e., board approval), Mr. Huey was not entitled to the salary payment.

Subsequent to his October 26, 2005, resignation, Mr. Huey refunded the retroactive salary payment on November 14, 2005.

### **Recommendation:**

2. The executive director should always ensure that the Board of Commissioners have given approval for all expenditures not included in the OLD's approved budget.



## **Boat Salvage Operation Not Authorized by Board of Commissioners**

Mr. Huey, on behalf of the Board, authorized Marine Recovery and Salvage, LLC (MRS), to conduct a project of recovery and storage of vessels damaged during Hurricane Katrina located in the Orleans Marina and the South Shore Harbor. Mr. Huey did not obtain Board authorization by resolution as required by OLD's by-laws. Article V of the OLD by-laws entitled "Duties of the Officers", allows the president to act for the Board in emergency matters only when the right to act has been granted by resolution to the president by the Board (emphasis added). Therefore, he did not have authority to act on behalf of the Board in this matter. In addition, this arrangement appears to have ethical ramifications.

According to Mr. Carmouche, Michael Mayer, a boat repair shop owner from Slidell, approached him shortly after Hurricane Katrina and requested he be granted the right to salvage damaged boats in the Orleans Marina and the South Shore Harbor Marina. Mr. Carmouche said he advised Mr. Huey of Mr. Mayer's request and Mr. Huey agreed but voiced concern about Mr. Mayer's ability to manage the project. Mr. Carmouche said Mr. Huey told him to get Scott Carmouche, George Carmouche's son, involved in managing the project. According to Mr. Carmouche, his son previously worked as a policeman and has recently graduated from law school.

A timetable and summary of events appears on page 12.

On October 28, 2005, we requested an advisory opinion from the Louisiana State Board of Ethics regarding OLD authorizing its contract attorney's son to salvage and store damaged boats. No response has been received.

**Timetable and Summary of Events**

<b>DATES</b>	<b>ACTIVITIES</b>
August 29, 2005	Hurricane Katrina struck the New Orleans Area.
September 8, 2005	Marine Recovery and Salvage, LLC. (MRS) organizes and is partially owned by Scott Carmouche, George Carmouche's son.
September 9, 2005	OLD leases Naval Reserve Station grounds to MRS for storage of damaged vessels (\$500 per month).
September 12, 2005	OLD authorizes MRS to salvage, inventory, and store vessels damaged by Hurricane Katrina while docked in the Orleans Marina and the South Shore Harbor.
September 29, 2005	<p>MRS sub-contracts with Resolve Marine Group (Resolve), a Florida salvage company, to be the exclusive contractor of all salvage and other services related thereto.</p> <p>MRS arranges for and manages the storage of the vessels and is to be paid a percentage of the fees charged by Resolve.</p>
October 4, 2005	<p>Petition filed in the 19<sup>th</sup> Judicial District Court for damages, temporary restraining order, preliminary injunction and declaratory relief on behalf of Continental Insurance Company, Continental Casualty Company, The St. Paul Travelers Companies, Inc., and Boat Owners Association of the U.S.</p> <p>Temporary restraining order was issued by the court stopping the operations.</p>
October 6, 2005	Settlement agreement was reached between and among all parties regarding the salvaging operations.



In November 2005, a class action suit was filed in district court against all parties involved in the salvage operations, including the OLD. This litigation is on-going.

Recommendations:

3. The Board should establish policies and procedures to ensure the Board president performs his/her duties under proper authority.
4. The Board should consider amending the by-laws to allow the president certain discretion in emergencies. The by-laws should require that any emergency action taken by the president be presented to the Board for approval within a specified period.



## **Unauthorized Leases**

OLD's executive director entered into two lease arrangements without Board approval.

The OLD bylaws provide that the Board has exclusive power to acquire, purchase, sell, lease, transfer or encumber any real estate. These bylaws also provide that no attempted exercise of this power by any other than the Board shall be valid.

In connection with the MRS salvage and storage project, Mr. Hearn, representing the Board, signed a lease agreement in which the OLD leased its Naval Reserve Station grounds to MRS for storage of vessels salvaged from the OLD marinas. This lease was not authorized by the Board and appears to have ethical ramifications.

The lease agreement dated September 9, 2005, pertains to property located on Lakeshore Drive in New Orleans. The lease is for six months, from September 9, 2005 to February 9, 2006. MRS has an option to renew the lease for an additional term of 6 months at the same rental rate, \$500 per month.

The lease document is signed by Mr. Hearn, for the OLD, and Scott Carmouche, for MRS. According to the OLD's real estate consultant, his input was not requested prior to this lease agreement. He is currently attempting to determine if the \$500 per month rate is at market rates.

Scott Carmouche's father, George Carmouche, and Mr. Huey's wife are cousins which raises ethical questions regarding the arrangement.

Mr. Hearn also signed a lease agreement for 3,000 square feet of office space in Baton Rouge from George Carmouche.

According to Mr. Hearn and Mr. Carmouche, the OLD's New Orleans facilities were heavily damaged by Hurricane Katrina and the OLD needed office space to operate. Mr. Carmouche had office space available for lease on Perkins Road in Baton Rouge. On September 1, 2005, Mr. Hearn, representing the Board, signed the lease agreement. The term of the lease is from September 1, 2005 to February 28, 2006, with an option to renew for an additional six months. The lease rate is \$5,000 per month for 3,000 square feet of office space. This lease arrangement was not presented to the Board for approval until October 28, 2005, and appears to have ethical ramifications.

Mr. Carmouche's business relationship as an OLD contract attorney and his family relationship to Mr. Huey's wife raise ethical questions regarding this lease arrangement.

At the October 2005 Board of Commissioners meeting, the Board amended the lease to provide for a 30-day cancellation provision. The Board then ratified the lease. On October 28, 2005, we requested advisory opinions from the Louisiana State Board of Ethics regarding these lease arrangements.

Recommendations:

5. The OLD Board of Commissioners should review the lease agreement with MRS and ratify or revoke it.
6. Should the lease arrangement with MRS continue, the OLD Board of Commissioners should determine whether the lease rate is at market rental rates for this property.
7. The executive director should always ensure that the Board of Commissioners have given approval before signing any lease agreements.

## **Engagement of Special Counsel**

The OLD has engaged more than a dozen attorneys as special counsel without obtaining approval from the Attorney General as required by LSA-R.S. 42:263. Although the OLD employs a full time staff attorney, the OLD routinely retains special counsel to represent it in various matters. Between September 1, 2003 and September 30, 2005, the OLD received legal services from 16 law firms as special counsel at a cost of \$3,206,185. Attorney General records indicate the OLD received approval for only two of the law firms.

LSA-R.S. 42:263 (A) reads (in part) as follows:

“No parish governing authority, levee board ... shall retain or employ any special attorney or counsel to represent it in any special matter or pay any compensation for any legal services whatever unless a real necessity exists, made to appear by a resolution thereof stating fully the reasons for the action and the compensation to be paid. The resolution then shall be subject to the approval of the attorney general ...”

LSA-R.S. 42:264 provides penalties to attorneys who accept compensation without the Attorney General's approval. The statute reads (in part) as follows:

“Any attorney who knowingly accepts employment and compensation from ..., levee board, ..., not previously approved by the attorney general, must immediately upon notification thereof return a like dollar amount of funds to the public body which paid such prohibited compensation. Notwithstanding such requirement, the Attorney General may approve the employment and payment of compensation retroactively where the failure to comply with this Section was inadvertent and was in good faith, in which case no return of the fee amount shall be required.”

A schedule of engagements and payments to special counsel appears on page 19.

According to the Attorney General's Office, the OLD requested and received approval for special counsel on two occasions, once in 2000 and again in 2003. In addition, on February 6, 2002, Mr. Huey requested an Attorney General's opinion regarding a proposed fee arrangement in association with the engagement of Mr. Carmouche as special counsel for legal services concerning mineral lands in Plaquemines Parish. The opinion request included the board's resolution regarding the engagement of Mr. Carmouche.

On September 5, 2002, the Attorney General issued Opinion Number 02-0061 on the matter. In the opinion letter to Mr. Huey, the Attorney General advised that the OLD was required to obtain the approval of the Attorney General for the retention of special counsel and submit a resolution setting forth the real necessity for the retention of special counsel and the compensation to be paid. Mr. Huey was further advised that the resolution submitted as part of the opinion request did not comply with the

applicable statute. The Attorney General has no record showing the OLD submitted a second resolution complying with the applicable statute. Although the Attorney General did not approve this engagement, the OLD contracted Mr. Carmouche for legal services.

**Recommendations:**

8. The OLD should comply with LSA–R.S. 42:263. In addition, the Board should develop a policy requiring resolutions for all special counsel engagements be approved by the Attorney General prior to commencement of work.
9. The OLD should seek guidance from the Attorney General regarding previously hired special counsel without approval. The fact that the Attorney General advised Mr. Huey on September 5, 2002, that engagements with special counsel had to be approved, should weigh heavily on determining if the failure to comply with LSA–R.S. 42:263 (A) was inadvertent and in good faith.

**Schedule of OLD Special Counsel Engagements and Payments From  
September 1, 2003 through September 30, 2005**

<b>Law Firm</b>	<b>Date Hired</b>	<b>Purpose of Engagement</b>	<b>Amount Paid (September 1, 2003 to September 30, 2005)</b>
<b>George L. Carmouche, APLC</b>	1999	Bohemia Spillway litigation and services; legislative advice and services	\$1,043,146
<b>Gerard G. Metzger, APLC</b>	1997	General litigation and support services; Lakefront Airport leasing issues; collection of overdue accounts	627,561
<b>Frank A. Milanese, APLC</b>	1997	General litigation and support services; police matters; Seabrook Bridge vehicle accidents	610,136
<b>The Godfrey Firm *</b>	Mid-70's	Bond counsel; Lakefront Airport leasing issues	425,355
<b>Middleberg, Riddle &amp; Gianna</b>	1993	Batture property case against the Port of New Orleans; Lange & Williams Civil Service actions	175,428
<b>Shaw Pittman **</b>	2001	Lakefront Airport leasing issues (Washington, D.C. counsel)	94,923
<b>Bonin Law, LLC</b>	2002	Civil Service actions; Bruno and Namer cases; Lake Pontchartrain drowning case	93,148
<b>Wayne James &amp; Associates</b>	2003	Disadvantaged Business Enterprise	83,966
<b>Capella Law Firm</b>	2005	American Airports Lakefront, LLC case	23,256
<b>Miranda, Warwick, Milazzo, Girdano &amp; Hebbler, APLC</b>	2003	Vehicle accidents and personal injury cases	15,968
<b>Monique Morial</b>	2004	American Airports Lakefront, LLC case	7,101
<b>Jones Walker</b>	2005	Development of vacant Levee District properties	2,413
<b>Rodney Law Firm</b>	1996	Bruno case	1,828
<b>Bruce Miller</b>	2005	Tax advice	1,448
<b>Rodney, Bordenave, Boykin &amp; Ehret</b>	1996	Bruno case	305
<b>Deutsch, Kerrigan &amp; Stiles</b>	1997	Lange and Williams cases	194
<b>Total</b>			<b>\$3,206,185</b>

Source: Orleans Levee District

\* Approved by Attorney General in 2003

\*\* Approved by the Attorney General in 2000

## **APPENDIX A**

### **Responses**



**The Board of Commissioners  
of the Orleans Levee District**

6920 Franklin Avenue  
New Orleans, LA 70122  
(504) 286-3100

March 17, 2006

The Honorable Sharon B. Robinson  
Office of State Inspector General  
State of Louisiana  
P.O. Box 94095  
Baton Rouge, Louisiana 70804-9095

BY FAX AND HAND  
1-225-342-6761

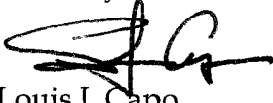
**RE: Management Response to Report dated February 16, 2006**

Dear Inspector General Robinson:

The attached is the response of the Orleans Levee District to the Inspector General's draft report dated February 15, 2006. Given our recent move back to facilities in New Orleans, the additional time granted by your office is most appreciated.

It is the District's intent to provide responses that are appropriate and pertinent to the issues raised. Should you require further information, please feel free to call.

Sincerely,



Louis J. Capo  
Director  
R.E., Recreation, Non-Flood  
LJC/csu

Enclosures (by mail)

Xc (w/encl)

Hon. Michael McCrossen, President  
The Honorable Allen H. Borne, Jr., Commissioner  
The Honorable Dan S. Foley, Commissioner  
The Honorable Eugene J. Green, Jr., Commissioner  
The Honorable Brenda G. Hatfield, Commissioner  
The Honorable Darrel J. Saizan, Jr., Commissioner  
The Honorable David Voelker, Commissioner  
The Honorable Cynthia Willard Lewis, Commissioner  
Wilma Heaton, Executive Assistant  
Cornelia Ullmann, Interim Counsel

Sincerely,



Stevan G. Spencer, P.E.  
Chief Engineer, Director  
Flood Protection

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- I. Katrina's Aftermath-The Facts
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- V. Boat Salvage Operation Not Ratified by the Board
- VI. Unauthorized Leases:  
MRS "lease" Agreement Voided  
Office space lease negotiated with FEMA and was FEMA approved

## ENCLOSURES

- 1. Minutes of the meeting of the OLB held on October 28, 2005
- 2. Copy of payment to Mr. Huey of retroactive salary
- 3. Copy of money order repaying retroactive salary
- 4. OLB Resolution No. 6-011806, dated 1.18.06 (engagement of attorneys)
- 5. OLB Resolution No. 7-011806, dated 1.18.06 (engagement of attorneys)
- 6. OLB Resolution No. 9-011806, dated 1.18.06 (engagement of attorneys)
- 7. Gary Benoit memo dated 2.22.02 (engagement of special counsel)
- 8. A.G. opinion No. 91-91 (levee districts, engagement of special counsel)
- 9. O.L.D. Attorney Fee Schedule (with reduced non-litigation rates)
- 10. BGR report-November 2001 "Legal Services Contracting at the Local Level"
- 11. Orleans Levee District-Single Audit Reports dated June 30, 2005.
- 12. Professional Services Policy of the O.L.D.
- 13. Letter dated 9.12.05 to MRS from O.L.D.
- 14. Letter dated 9.30.05 to MRS from O.L.D.
- 15. Lease of Naval Reserve Station property
- 16. Two Notices to tenants regarding salvage of vessels
- 17. OLB Resolution 4-102805, dated 10.28.05 (ratification of Baton Rouge office lease)

## KATRINA'S AFTERMATH-THE FACTS

The offices of the Orleans Levee District are located in that part of New Orleans that took on significant water from storm surge and levee breaches. The Airport Administration Building housed the Executive Offices, Engineering, Legal and Finance Departments, and suffered heavy damage. The first floor of this historic building flooded. The third floor of the building suffered roof damage. Electricity to allow repairs to begin was only restored to that building in February 2006.

Max Hearn, the Executive Director, the Chief Engineer, then President James Huey, and key personnel remained in New Orleans for more than a week after Katrina struck to secure the facilities, fulfill their duties, protect against looters, and most importantly, to perform hundreds of rescues of stranded citizens. Rescue operations by other emergency personnel left many displaced citizens on Lakefront airport runways as one of the few dry places in the New Orleans East area. At one point, as many as 2,000 citizens at one time were waiting at the Lakefront Airport to be airlifted out of New Orleans. Orleans Levee District Police slept in their patrol cars to safeguard the lakefront. It was an unprecedented effort by the employees of the Orleans Levee District to protect the lives and property of the citizens of New Orleans.

Shortly after the storm, temporary offices were set up in FEMA approved, rented offices in Baton Rouge. The rented space was promised to another tenant and the landlord was persuaded to rent the property to the Orleans Levee District instead. Staff, along with counsel and a FEMA representative sat and negotiated the lease, rate, and terms. It was FEMA's insistence that the term of the lease not be month to month, but rather for a six month period. In the early days, some staff slept at the office for lack of housing.

At the time, no state office space was available. Large and small corporations and law firms from New Orleans, Metairie, and Kenner were competing for housing, office space, telephone service, computer and communication services; not knowing when, or if, they could return. Some were permitted to return within weeks, others within months, and some will never return.

The first priority of the District was restoring the computer system for communications with emergency preparedness officials, employees, finances, payroll obligations to displaced employees, and data retrieval. There were still months of a dangerous hurricane season left (as Hurricane Rita would prove). Cell communications were stymied: poor service, and voluminous calls that overloaded strained, broken systems.

The next priority was to access the vast damage to the District's properties and plan and coordinate an enormous clean up and rebuilding effort. Staff was scattered and reported in slowly during those first few weeks. The first board meeting was held in Baton Rouge on September 22, 2005. The next meeting was held on October 28, 2005 in Harahan City Hall. The District thanks the City of Harahan and the East Jefferson Levee District for their assistance generously offered.

Staff moved from temporary facilities in Baton Rouge to the O.L.D. Franklin Avenue, New Orleans facility on February 28, 2006. Full telephone service and computer capability were recently restored to the Franklin Avenue facility, which now houses all O.L.D. administration and departments. Telephone service is limited to a few lines, but is expected to be fully operational shortly.

Damage to the physical assets of the Orleans Levee District is estimated at \$95 million. Insurance proceeds will not come close to covering the needed repairs and rehabilitation. South Shore Harbor, a major revenue source, was virtually destroyed. While the USACE is handling the majority of repairs to the federal levee system, there are miles of non-federal levees, shoreline, roadway, seawall, marinas, and the New Orleans Lakefront Airport that are in need of repair.

Orleans Parish's one gaming boat, the Belle of Orleans, damaged two piers and moved (without notice) to Mobile, Alabama for repairs. The owners of the Belle have ignored all contractual rental obligations since Katrina. That matter is currently in litigation both in Louisiana and Alabama. Millions of dollars in revenue from the Belle and other income producing properties to rebuild levees, tide gauges, seawalls and facilities have been lost. Ad valorem tax collections have been severely impaired. Tax income normally received in December and January are now expected to be received in June or July 2006 and estimated to be 65% less than normal collections.

The majority of staff and commissioners lived in New Orleans East, the Lakeview area, and St. Bernard parish. They were displaced from their homes for weeks. Many lost everything. Staff has been dedicated to restoring the Orleans Levee District through much adversity, uncertainty, and change. Their dedication and efforts these many months are to be commended. However, one reality is that the District has lost a number of employees in key areas, including maintenance of levees and closing flood gates. The O.L.D. Police Department has been trained as back up for flood protection activities.<sup>1</sup>

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<sup>1</sup> The minutes of the 10.28.05 Board meeting, which was attended by the Inspector General, is an historical, contemporaneous record of some of the issues in this report.

## RESPONSE TO SUMMARY OF FINDINGS

- LEVEE BOARD PRESIDENT'S SALARY: STATUTE AMBIGUOUS
- NO VIOLATION OF EXISTING LAW
- SALARY RECEIVED BY MR. HUEY ALREADY REIMBURSED

By letter dated July 8, 2005, former Board President James P. Huey advised the Executive Director of the Orleans Levee District ("O.L.D.") that he was electing to draw the salary payable to levee board presidents provided for under La. R.S. 38:308. Mr. Huey did not seek Board approval prior to making this election to receive the statutory salary in lieu of the per diem payment of \$75.00 for attendance at board meetings and performance of duties authorized by the board provided for under La. R.S. 38:308. Mr. Huey did not seek Board approval prior to making this election based upon two legal opinions obtained by the Executive Director, which opined that the statute did not require Board approval for the Board President's election to take a salary under the statute in lieu of any fixed per diem. One opinion opined that the salary could be retroactive.

The following are the relevant provisions of La. R.S. 38:308:

- A. ...in lieu of the per diem provision which is herein made, a president of any levee board or levee and drainage board may receive a salary if he also acts as administrator for said board. However, in no instance shall said salary exceed the sum of one thousand dollars per month. The per diem, salary, and expenses shall be paid out of the funds of the districts on the warrants of the presidents, duly attested by the secretary of the board.
- B. Any salary paid must be submitted for *review* to the commissioner of administration and the Joint Legislative Committee on the Budget.

As noted in the Inspector General's Draft Report dated February 15, 2006 ("The Report"), the statute does not outline when a levee board president is also the administrator of a board, nor does the statute state what an administrator's duties are. Further, the statute only states that the salary "paid" must be submitted for review (as opposed to "*approval of the salary to be paid*"). The statute is silent as to when the review must occur and whether any payment can be retroactive.

The By-laws of the Orleans Levee Board adopted in 1997 established the Office of Executive Director, and provide that the Executive Director shall be the "Board's Chief Executive Officer whose responsibility it shall be to execute the policies and projects of the Board as a prudent administrator." However, per his job description, the Executive Director reports directly to the President of the Board. Furthermore, the By-laws expressly provide that the President of the Board is the only officer charged with the responsibility to see that the resolutions of the Board are faithfully observed and executed by the District's staff. The President is also vested with all other executive powers as may be designated by virtue of the office of President of the Board. By letter dated on November 8, 2005, former President Huey provided a statement to the State Inspector General detailing the duties he performed during the 9½ years he served as President of the Orleans Levee Board.

On this issue, the Report states that "the salary request was not submitted to the Commissioner of Administration and the Joint Legislative Committee on the Budget for review as required by state law. La. R.S. 38:308 (B) provides that "[a]ny salary paid must be submitted for review to the Commissioner of Administration and the Joint Legislative Committee on Budget." Following payment of the salary, Mr. Huey did, in fact, write to the Commissioner of Administration and to the Joint Legislative Committee on the Budget submitting for their review the salary he had been paid by the Levee District. On November 14, 2005, Mr. Huey refunded the salary payment he received to the District. As a result, the submission became moot and thus was not addressed or considered by either the Commissioner of Administration or the Joint Legislative Committee.

As stated in The Report, Mr. Huey did not request a formal opinion from the Attorney General prior to electing to take the statutory salary or issuing the warrant for payment of the salary. The Report also states that Mr. Huey did not request a formal opinion from the O.L.D.'s staff attorney. First, there is no requirement for submission to the Attorney General's office. Secondly, O.L.D.'s senior legal counsel (staff attorney), was consulted *prior* to issuance of the warrant for payment and payment of the salary.

The Report recognizes that payment of the statutory salary to levee board presidents is not unusual. This statement was based upon a review of recent legislative auditor reports of the State's 20 levee districts, which showed that 10 of the 20 levee districts have presidents of boards who receive the statutory salary in lieu of a per diem; and, that 90% of salaried presidents receive the maximum salary allowed by law. The Report does not state what procedures have been followed in the 10 levee districts that have presidents of the board that receive salaries. It is noteworthy that at least six of the ten districts with salaried board presidents also employ an executive director, executive secretary, or administrative manager.

In Louisiana Attorney General Opinion No. 05-0376, requested by the State Inspector General in connection with her investigation of this particular matter, the Attorney General opined that the salary paid to the former President was improper since he was required to obtain prior approval from the Board before he could set his salary and issue a warrant to take the salary in lieu of the statutory per diem. The Attorney General's Opinion also stated that La. R.S. 38:308(B) required the Board to seek review of the salary from the Commissioner of Administration and the Joint Legislative Committee on the Budget before the salary was actually paid. Further, the AG Opinion went on to opine that the President could not receive a salary retroactively, absent a preexisting obligation to grant said salary, which the AG did not find to be the case in this instance.

As noted in this Opinion, the findings of prior Board approval of the salary and of prior review by the Commissioner of Administration and the Joint Committee on the Budget were based upon "tacit evidence in the Revised Statutes," "tacit evidence to this effect in the By-laws" of the Orleans Levee Board, and on what was "contemplated by La. R.S. 38:308(B)." La. Atty. Gen. Op. No. 05-0376, pgs. 3, 7. Accordingly, this Opinion was not based upon the express language of the statute, but instead upon an interpretation of the intent of this section of the revised statutes.

O.L.D. concurs with the IG's recommendation that the District should adopt policies and procedures to insure any future requests to pay the president a salary are presented to the Board of Commissioners for approval and submitted to the Commissioner of Administration and the Joint Legislative Committee on the Budget for review. Further, the Board should amend its By-laws to require that any payment of the statutory salary should be conditioned upon prior approval by the Orleans Levee Board. The By-Laws should be amended to provide that prior to the payment of the salary; the salary approved by the Board should be reviewed and approved by the Commissioner of Administration and the Joint Legislative Committee on the Budget prior to payment of the salary. The By-Laws should also be amended to expressly provide the payment of any salary shall only be prospective and that in no event will the salary be paid retroactively. These recommendations and amendments to the By-Laws will be made to the Board by staff at its next committee meeting scheduled for April 4, 2006 (Ethics and Policy Committee).

The District concurs with the IG's recommendation to the Governor that La. R.S. 38:308 should be amended to clarify the requirements for payment of a salary to a levee board president. The statutes should be amended in accordance with the recommendations of the Inspector General (1) to clarify whether levee boards with salaried day-to-day executive directors or similar positions should also have a salaried board president, and (2) to clarify what makes a levee board president qualify for a salary rather than per diem compensation.

Furthermore, the statute as currently written is ambiguous in other respects and should be amended as follows: (1) to expressly state that prior board approval of the payment of a salary and the amount of the salary to be paid be specified by board resolution; (2) that prior approval (not merely "review") by the Commissioner of Administration and the Joint Legislative Committee on the Budget of the salary to be paid are conditions precedent to payment of a salary to a board president by a levee district; (3) to provide that in no event shall any salary be paid retroactively; (4) and to provide that the statutory salary shall only be prospective in nature. 2

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2 Act No. 1 of the First Extraordinary Session 2006, substantively changes the existing levee board system in Southeast Louisiana. This Act abolishes the Orleans Levee Board effective January 1, 2007 and establishes two levee boards that will succeed to the functions of the Orleans Board - the Southeast Louisiana Flood Protection Authority-East and Louisiana Flood Protection Authority-West Bank. As provided under new Section 330.1(L), in lieu of the compensation provided in La. R.S. 38:308, the members of the board will receive a per diem equal to the rate allowable for per diem deduction under Section 162 of Title 26 of the U. S. Code for its official domicile during their attendance on that body, and shall also be paid a mileage allowance equal to the rate established as the standard mileage rate for business travel for purposes of Section 162. Therefore, under this Amendment it does not appear that the salary payable to a president under Section 308 will apply to the successor boards of the Orleans Levee Board. However, the recommendations of both the IG and O.L.D. remain applicable and helpful to the numerous remaining levee boards.



## ENGAGEMENT OF OUTSIDE SPECIAL COUNSEL

- BOARD ACTED CONSISTENTLY UNDER ADVICE OF SEVERAL FORMER COUNSEL
- ATTORNEYS PAID AT OR BELOW THE ATTORNEY GENERAL'S SCHEDULED RATES
- RATES OVER AG'S SCHEDULE WERE SUBMITTED FOR APPROVAL
- RESOLUTIONS AND POLICY ALREADY IN PLACE TO SUBMIT ENGAGEMENTS

The procedure followed by the O.L.D. to engage Special Counsel for the past 10 years was based upon the advice of the former Senior Legal Counsel of the Orleans Levee District, Gary G. Benoit. Mr. Benoit was a full time civil service staff employee with many years of service to the Levee District, and under the tutelage of experienced general counsel for a number of years. It was the opinion of Mr. Benoit that the provisions of La. R.S. 42:261, et seq. did not apply to the Orleans Levee District, among other reasons, since these statutes provide that the District Attorneys of the judicial districts were ex-officio the regular counsel for every state board or commission domiciled therein, other than the Parish of Orleans, which is the domicile of the Orleans Levee Board. (See attached memo dated February 22, 2002)

In that memorandum, Mr. Benoit opined that the Orleans Levee Board had authority to employ Special Counsel on the basis of La. R.S. 38:305 (A) "Each levee board...may employ one or more attorneys to represent it and to offer advice and assistance of a legal nature...."

Further, Mr. Benoit relied upon AG Opinion No. 91-91, which stated that previous opinions of the AG's office have uniformly held that La. R.S. 38:305, which was specifically enacted to empower levee boards to employ counsel, supersedes any conflicting provisions of the more general statutes, La. R.S. 16:2(A) and La. R.S. 42:261, and Attorney General's Opinions 89-249-83-322, 80-232 and 80-1580. Therefore, it was the opinion of the Board's counsel that pursuant to La. R.S. 38:305, O.L.D. was free to employ counsel of its own choice and employment of counsel did not require the approval of the Attorney General pursuant to the provisions of 42:261 et seq.

In May of 2005, pursuant to a request by the Legal Committee of the Board, a draft of new policies and procedures for engagement of Special Counsel was drafted by staff. Drafts were reviewed by the Legal Committee and further recommendations made when Katrina intervened. A final revision was submitted in October 2005 and recommended for approval.

The revised policies set forth in this draft were consistent with previous advice provided to the District by Mr. Benoit (as well as other former general counsel and the longstanding practices of the District) that the provisions of La. R.S. 42:261, et seq. were not applicable to the engagement of Special Counsel by the Orleans Levee District. This draft of new policies for engagement of counsel provided that all assignments of legal work to special (i.e. "outside") counsel were to come through the District's Legal Department and were to be assigned after consultation with the Chairman of the OLB Legal Committee, the Executive Director, and staff counsel. Again, the draft submitted did not include any requirement for Board or Attorney General's approval.

In November of 2001, the Bureau of Governmental Research (ABGR) issued a report on Legal Services Contracting at the Local Level. This report was based on a study conducted by The Public Law Center (ATPLC), the Public Affairs Research Council of Louisiana (APAR), and the BGR of the procedures followed by and applicable legal requirements for local governmental entities for the engagement of outside legal services. TPLC examined the legal authority and requirements for legal services contracting, PAR examined contracting by state agencies, and BGR focused on local contracting.

In connection with this study BGR examined the contracting practices of the Orleans Levee District for engagement of special counsel. Mr. Benoit was interviewed and assisted in providing all information requested on the contracting procedures of the Orleans Levee District, including legal bills and other information requested by BGR.

The BGR report discussed in detail the legal requirements set forth in La. R.S. 42:261, et seq. The report also referenced the requirement of Attorney General approval of Special Counsel under Section 263. The BGR report expressly noted that these statutes did not apply to Orleans Parish. The BGR Report thoroughly discussed the provisions of La. R.S. 42:261, et seq. and made a number of recommendations to address some of the problems uncovered in the course of the survey of local entities. BGR's report did not identify the contracting procedure utilized by the Orleans Levee District to engage Special Counsel as a problem area or a violation of state law.

Between 1996 and 2003 the Office of the Legislative Auditor of the State of Louisiana audited the financial statements of the Orleans Levee District annually, which included reviewing compliance with certain provisions of state laws and regulations. These audits included reviews of professional service contracts entered into by the District, which included contracts with Special Counsel. None of these audit reports found any non-compliance with state law by the Orleans Levee District in the procedure utilized for the engagement of Special Counsel. In a memorandum dated November 9, 1999, then Legislative Auditor Daniel G. Kyle commented that all prior issues with professional service contracts had been resolved. In view of the improvements made by the District in compliance matters, the Legislative Auditor's

office advised the Orleans Levee Board in 2004 that it was no longer required to have its audits conducted by the Office of the Legislative Auditor and that the Board could select an independent accounting firm to conduct the annual audits. In 2004 and 2005 the annual audits were conducted by Postlethwaite & Netterville (A Professional Accounting Corporation). This firm also performed tests on the O.L.D.'s compliance with state laws and regulations. Again, the results of these tests did not identify any instances of non-compliance regarding professional service contracts by the Orleans Levee District. (BGR and Audits available)

In September of 1998 the Board adopted a Professional Services Policy, which was revised in March of 2001. This policy covered the engagement of Special Counsel for legal services. The policy adopted by the Board did not provide for compliance with the requirements of La. R.S. 42:261, et seq. The Board was never advised in either audit reports or by its staff counsel (Mr. Benoit) that failure to comply with these statutes constituted a violation of law. (attached)

According to the IG Report, the O.L.D. requested and received approval for special counsel on two occasions, once in 2000 and again in 2003. The District does not concur with that conclusion. The Board did not request approval of these engagements of special counsel, but only requested approval of the fee arrangements and fee rates for these attorneys. The Orleans Levee District's Billing Guidelines and Rates for special counsel were in compliance with the Attorney General's billing guidelines and published rates. (see attached). Whenever counsel was to be engaged under a fee arrangement or hourly rate different from the AG's guidelines or rates, the Board would request approval of such a fee arrangement from the AG. Based on the advice of its senior staff counsel, the District did not need to obtain approval of engagements of special counsel from the AG's Office because the District was consistently advised by Mr. Benoit that it was unnecessary.

Attorney General Opinion No. 02-0061 was issued on September 5, 2002. It was initiated by O.L.D. to obtain an opinion regarding a request for a specific fee arrangement for special counsel, and was not a request for approval of the engagement of special counsel. Nevertheless, in this opinion, the AG opined that the District was required to obtain the approval of the Attorney General for the retention of special counsel pursuant to La. R.S. 42:261, et seq. The opinion further opined that the District was required to submit a Resolution setting forth the necessity of the retention of special counsel and the compensation to be paid. This opinion concluded that there was no statutory prohibition to the proposed fee arrangement, and that the fee arrangement had been reviewed by the First Assistant Attorney General, who advised that he would approve the fee arrangement upon submission of the appropriate resolution required by La. R.S. 42:261. It is noteworthy that the resolution submitted for the requested opinion was not in compliance with the formalities set forth in La. R.S. 42:263 since it did not request approval for the engagement of special counsel. Again,

this was consistent with the procedure for engagement of special counsel followed by the Board on the advice of staff counsel, Mr. Benoit.

Following receipt of this opinion in September of 2002, the Board did not adopt the requested resolution and submit same to the AG's Office for approval of engagement of this particular special counsel. Consistent with Mr. Benoit's advice to the Board that AG approval was not required, the Board engaged special counsel on the basis of the fee arrangement that the AG Opinion indicated would be approved. The Board was not advised by Mr. Benoit that this Opinion mandated compliance with La. R.S. 42:261. Further, even after receiving this opinion, the Board continued to engage counsel in the same manner it had done over the previous 10 years, pursuant to the advice of Mr. Benoit. Further, there is no evidence in the files of the O.L.D. Legal Department reflecting that any notification of this opinion was given to any of the special counsel then engaged by the Orleans Levee District. Given the ambiguous, inconsistent statutory scheme, the years of consistent advice of counsel and the lack of notice to any of the special counsel of alleged incorrect procedure for their hiring, neither O.L.D., its Board, or the individual special counsel could reasonably be found to be in bad faith related to these engagements.<sup>3</sup>

Accordingly, the Orleans Levee District does not concur with the recommendation that the September 2002 AG's opinion should weigh heavily in determining if the failure to comply with La. R.S. 42:263(A) was inadvertent and in good faith by either the Board or its special counsel. The Board was entitled to rely upon the opinion of its senior staff counsel; the procedure employed for engagement of special counsel was a requirement for such engagements and was proper and lawful. O.L.D.'s special counsel were not responsible for the manner in which they were engaged by the District, were required to comply with the District's procedures to be engaged as special counsel, and the reliance on those procedures was reasonable. As reflected in the Resolutions adopted by the Board prior to the issuance of the IG's report, it is the Board's opinion that the omission to abide by the provisions of these statutes was inadvertent and in good faith,. O.L.D.'s actions were based upon the legal opinion of staff counsel of many years, the consistent practice of the District for many years; and the advice of several past staff and general counsel.

In December of 2005, the Legal Committee of the Orleans Levee District was advised that the State Inspector General's Office had taken the position that engagements of special legal counsel by the Board required compliance with La. R.S. 42:261, et seq. After research and discussion, at its next meeting, the Board adopted a resolution expressing its desire to voluntarily adopt a policy that all future engagements of special counsel would be in compliance with the requirements of these statutes.

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<sup>3</sup> The OLB president immediately prior to former President Huey was Robert Harvey, Esq., an experienced, knowledgeable attorney with many years service to the Orleans Levee District. The January 2006 resolutions were submitted to the AG's office and await approval.

Further, the Board adopted three resolutions: to adopt the statutory scheme as regular practice, to ratify and request approval by the AG's office of all current contracts, and to ratify and request approval by the AG's office of all previous contracts entered into with special counsel for the Orleans Levee District for ten year period. On January 27, 2006 the Board delivered these resolutions to the Attorney General's Office and requested approval in accordance with La. R.S. 42:264. (See Resolution Nos. 6-011806, 7-011806 and 9-011806.)

All subsequent engagements, including those entered into in December 2005 and prior to the formal adoption of the policy by the Board, have been submitted to the Attorney General's office for approval, after resolution by the Board.

In view of the recommendation in the IG Report, it should be noted that the constitutional validity of the provisions of La. R.S. 42:261-264 was called into question by the Louisiana Supreme Court in 1981. *State of Louisiana v. Petrovich*, 396 So.2d 1318 (La. 1981.) At the time of the *Petrovich* case, the statute contained criminal penalties for violations by board members. La. R.S. 42:264. 4 In this case, the defendants contended that the entire statutory scheme was vague, obscure and internally inconsistent, and violative of the guaranty of equal protection under the Federal and State Constitutions. The Louisiana Supreme Court held in this case that "due to the infirmities inherent in La. R.S. 42:263 and 42:264, the instant prosecution of defendants thereunder denies them their constitutional right to equal protection of the laws. The Supreme Court reasoned that by omitting some public bodies enumerated in La. R.S. 42:263 from the penal statute of La. R.S. 42:264, the Legislature created an unreasonable, arbitrary and irrational classification of similarly situated public entities.

At the time of this case, the governing boards of six levee districts were legislatively exempted from complying with the procedures set forth in La. R.S. 42:263(A) These same statutes, as presently written, still exempt a number of governing boards of Levee Districts from complying with this section.

The Supreme Court found La. R.S. 42:264 unconstitutional as violative of the guaranty of equal protection in violation of the Federal and State Constitutions. In view of this finding, the Court found it unnecessary to reach the constitutionality of the remainder of the statutory scheme set forth in Sections 261 through 263.

The Supreme Court also commented that "the entire statutory scheme of La. R.S. 42:261-264 is wrought with internal inconsistencies created by legislative exemptions of many state and local public bodies from the statutes' parameters." Moreover, the Court suggested that the legislature re-examine these statutes with the view of removing any constitutional infirmities that may exist.

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4 As amended by Acts 1981, No. 924 sec. 1

Although the Legislature did amend La. R.S. 42:264 to remove the criminal penalty provision in this section, the Legislature did not address and remedy the constitutional infirmity exempting certain boards from complying with the procedures in La R.S. 42:263. Therefore, the constitutional validity of the “entire statutory scheme of La. R.S. 42:261-264” remains in question.

## BOAT SALVAGE OPERATIONS NOT RATIFIED BY THE BOARD

O.L.D. generally concurs with the dates in the timeline. (IG Report, pg. 12)

What the timeline does not reveal is the amount of destruction and devastation that the marinas, piers, boats, harbor master's building, boathouses, and waterways suffered.

Hundreds of boats were strewn on top of each other, on top of piers, parking lots, etc. Vessels were partially or fully submerged, with the possibility of gasoline, diesel and other floating and sunken debris. Waterways were blocked. The entire area was awash and difficult to secure to prevent further damage to both O.L.D. property and to the property of lessees and tenants from further storms, thieves, as well as those well intentioned boat owners who might attempt to recover their property collectively worth millions of dollars. There were reports that boats were being commandeered by rescuers, as well as taken by others, and O.L.D. rightfully felt it had to secure the area as quickly as possible.

Both former president Jim Huey and Executive Director at the time, Max Hearn, remained in New Orleans with staff for over a week to take charge of an overwhelming number of challenges in New Orleans immediately after Katrina, as well as in Baton Rouge shortly thereafter. Communications were limited. Access to and from the area was patrolled by law enforcement. Emergency orders and curfews were issued by the Mayor of New Orleans. It was clear that a plan of action was needed to deal with the devastation, in anticipation of people's safety and their concerns for their property, as well as understanding that the 2006 hurricane season was far from over. 5

Mr. Huey's stress from the burden he shouldered was evident. The commissioners were scattered and dealing with their losses of homes and businesses. Some commissioners, such as Ms. Willard-Lewis of New Orleans East, had additional responsibilities (she is on the New Orleans City Council, District E). While the Board understands that Mr. Huey's actions might have been necessary, the Board was not in the position to participate in the MRS arrangement, and did not ratify it.

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5 The Orleans Levee District is statutorily charged with levee and flood protection, as well as a wide variety of assets: marinas, lakefront property, airport, green space, beaches, parks, roads, bridges, etc. All these must be prioritized as they all act as a buffer between New Orleans and the effects of rising water from Lake Pontchartrain, as well as access for people living in the area by roads, bridge, water and air.

Within a short time after Mr. Hearn's and Mr. Huey's arrival to Baton Rouge, O.L.D. worked out a tentative plan to deal with the marinas. It was clear that the task of supervising and physically removing and hauling hundreds and hundreds of boats was beyond the capability of O.L.D. staff. A marine recovery contractor would be needed and the boats moved to an area where they could be dealt with by owners and insurers. The most feasible, secure area was the former Naval Reserve Station, which is fenced in and can be locked. It is also in an area in proximity to the marinas. A simple letter lease for the property was drafted, as it was less than 10 days since the storm had struck. Again by letter agreement, Mr. Huey authorized MRS to salvage, inventory, and store vessels from Orleans Marina and South Shore Harbor. (see attached)

Mr. Michael Mayer, owner of Mayer Yacht Services, an insured and qualified boat repairer and long time tenant of O.L.D., approached Mr. Huey regarding the salvage operation, both in person and in writing. Mr. Huey responded to Mr. Mayer's initiated contact.

Mr. Mayer advised that MRS interviewed several salvage companies and eventually came to an agreement with Resolve Marine Group ("Resolve") to assist in salvage operations. Note: Mr. Mayer firmly disputes that MRS's rights were exclusive. Neither of the written agreements with MRS and O.L.D. state the salvage rights were exclusive (see attached.) O.L.D. does not agree with the IG's Report's statement in the Timetable and Summary of Events that the rights given to MRS were exclusive.

On October 21, 2005, O.L.D. published procedures (mail, website, and at the marinas) for boat owners and insurers to obtain their property. Another mailing and posting was done on December 23, 2005. (see attached; also at [www.ortleaslelee.com](http://www.ortleaslelee.com) )

O.L.D. concurs that an agreement was quickly reached in the 19<sup>th</sup> JDC litigation. The related federal class action suit is currently in litigation. A motion to dismiss O.L.D. is currently under consideration by the trial judge. Plaintiffs' counsel in that matter admitted in open court in a March 2006 hearing that the Board did not ratify the agreement and focused on the actions of Mr. Huey, essentially exonerating the Board itself of wrongdoing.

As for the recommendation that the Board should establish policies and procedures to ensure the Board president performs his/her duties under proper authority; under the emergency circumstances that existed at the time, the Board was not in the position to participate in the MRS arrangement and did not ratify it. The Board met as soon as feasible, upon locating its commissioners who were scattered due to the mandatory evacuation of New Orleans. The MRS matter was addressed in order of priority among numerous emergencies that existed. The agreement with MRS was not ratified. Mr. Mayer was present at that October 28, 2005 board meeting and was put on notice of the Board's position.



Thereafter, the former Naval Reserve Station was dealt with as emergencies and priorities allowed. When it was learned that lease payments were still being made to O.L.D., the payments were refunded to Mr. Mayer. The control of the Naval Reserve Station was returned to O.L.D. by agreement with Mr. Mayer. 6

O.L.D. concurs and will recommend to the Board to consider same at the next meeting of the Ethics and Policy Committee amending the by-laws as suggested.

O.L.D. concurs that the familial relationship on its face raises the question of an ethical violation. To date, O.L.D. has not been advised by either the IG's office or the Louisiana State Board of Ethics of an opinion as requested by the IG's office.

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6 The District's focus has been on the June 1<sup>st</sup> target date of restoring flood protection prior to the next hurricane season. This task alone has been all consuming. The next focus was to restore its facilities, electricity, and telephones to be able to operate from New Orleans. It was only in February 2006 that all O.L.D. offices returned to New Orleans. The two administration buildings still have roof repairs to be done.

## UNAUTHORIZED LEASES:

- MRS "LEASE" AGREEMENT VOID
- OFFICE SPACE LEASE NEGOTIATED WITH FEMA AND IS FEMA APPROVED, INCLUDING REIMBURSEMENT

The discussion above addresses the exigent circumstances under which the Orleans Levee District found itself displaced from its facilities and under the extraordinary circumstances as a result of Hurricane Katrina. That discussion will not be repeated here, but is incorporated by reference. It is a situation that any levee board in the state could find itself in.

The Board has reviewed the lease agreement of the Naval Reserve Station between O.L.D. and MRS. It did not ratify the lease, refunded all rental payments made, and secured access to the property. As such, the second recommendation requires no comment. The facility was not damaged by MRS.

It is undisputed that O.L.D. absolutely required office space to function. Its main administration building was surrounded by water, flooded on the first floor and had roof damage to the third floor. It had no electricity, no telephone, and no running water. Cell phone usage was limited and sporadic. The Harbor Master's building was destroyed. As of the writing of this response, the Harbor Master's office still functions from a trailer with generators. The Franklin Avenue facility suffered roof damage. Reliable telephone communication sufficient to sustain O.L.D.'s operations was only restored in February 2006 through close coordination with BellSouth and private contractors.

The recommendation for office space came from FEMA and GCR Associates, a consultant engaged by O.L.D. to assist in, among other things, maximizing the relationship with FEMA to provide O.L.D. with assistance. No available office space was available in the Lakefront area. Temporary buildings of sufficient size were anticipated not to be immediately available, hence the conclusion by the FEMA representative to find a short term lease for office space. The lease for office space ultimately chosen was negotiated with a FEMA representative's involvement, for the minimum time designated by FEMA. Originally, the arrangement Mr. Huey sought was a month to month lease. It was at FEMA's insistence that the lease be for a minimum of six months in order to qualify for reimbursement. It was under these circumstances, and understanding that the City of New Orleans was under a

mandatory evacuation and most of the district's 240+ employees (at that time) were unable to return to their homes and would have had no place to live, that the lease was signed.

The Board concurs that the Executive Director should ensure that the Board gives approval of any lease agreements. The Board notes the emergency circumstances existing at that time, along with the brief duration of the lease, which terms was reviewed and negotiated by and with FEMA officials, with a view to obtain reimbursement by FEMA of the lease payments, and made considering the availability of office space in both the New Orleans and Baton Rouge areas. It is respectfully submitted that the Board's ratification of the lease was not onerous, unfair or unreasonable, and completely appropriate under the circumstances. (see attached OLB Resolution ratifying the Baton Rouge office lease.)

James P. Huey  
7300 Lakeshore Drive  
New Orleans, LA 70124  
(504) 256-3414  
March 15, 2006

**VIA FACSIMILE ONLY**  
**(225) 342-6761**

Sharon B. Robinson, CPA  
State Inspector General  
Office of State Inspector General  
P.O. Box 94095  
224 Florida Street Suite 303  
Baton Rouge, LA 70804-9095

**Re: Case No. 1-06-0009**

Dear Ms. Robinson:

I appreciate the opportunity to respond to your draft audit report regarding the Orleans Levee District. I have reviewed the report and will address the decisions I made and the actions I took as President of the Orleans Levee Board and respond to the issues being investigated by your office. I understand that the Levee District and its legal counsel will respond to any legal issues addressed in your report.

I would like to note that this is the first time I have had input into the issues addressed in this report. Unfortunately, I was ill the day of the first meeting with your staff. I was told that follow up meetings would occur and that I would have the opportunity at that time to address any questions or concerns. The next I heard was that the draft report would be sent to me for my review and response. My response is as follows:

#### **A. PERSONAL BACKGROUND**

I was appointed to serve on the Board of Commissioners of the Orleans Levee Board by three different Governors. I was first appointed in February of 1992 by Governor Edwards and then reappointed by Governor Foster in 1996. I was elected president on June 18<sup>th</sup> 1996. Governor Blanco reappointed me in 2004, and the new Board elected my President at that time. I resigned from the Board in October 2005. My total tenure lasted for over 13 years of which I served as President for over 9 years.

I was the first President in the History of the Orleans Levee Board to inherit a budget deficit of over \$6 Million Dollars along with numerous other problems and controversies. I am proud of the fact during my administration the budget improved from a \$6 Million

Dollar deficit to a \$21 Million Dollar surplus. This translates into a \$27 Million Dollar positive improvement in the financial position of the Orleans Levee District during my Presidency. Prior to my resignation in October 2005 the Orleans Levee District had a higher Bond rating then both the State of Louisiana and the City of New Orleans.

In addition, during my Presidency the Board worked with the Legislative Auditor and numerous other agencies in eliminating the previous problems and controversies that existed prior to me becoming President. During my last seven years as President the Orleans Levee District received excellent annual audit reports from the State Legislative Auditor.

I am proud of these accomplishments and do not intend to let these issues, being investigated by your office, overshadow these facts. All of my decisions and actions were done in the best interest of the Orleans Levee District and under extreme circumstances. I do not want my reputation unnecessarily tarnished. This is all I have to take with me after 13 years of serving on the Board of Commissioners of the Orleans Levee District.

#### **B. PERSONAL SUMMARY OF EVENTS AND ACTIONS TAKEN – POST KATRINA**

I would like to point out that my decisions and actions were a direct result of my efforts to assist the Orleans Levee District immediately after an unprecedented catastrophe and the extenuating circumstances I was facing. During the first few weeks after Katrina our community was in turmoil, communications were virtually non-existent, and damage due to flooding was catastrophic.

Because of the flooding that was occurring, our personnel were surrounded by water and were trapped in our Franklin Ave. Operations Center, which houses the majority of the Districts flood control equipment and field personnel. There were 60 to 80 Levee District employees in this facility. They were continuing to assist the Corp of Engineers in their attempt to close the breaches that occurred in the Levees and to help rescue people who were seeking out high ground along the Lakefront and UNO. Over 2000 people were rescued and evacuated from the Lakefront Airport during the first week after the storm.

I remained in contact with the Managing Director Max Hearn and Chief Engineer Steve Spencer as often as I could via cell phone. I informed them that I was evacuating to Baton Rouge to establish an evacuation and recovery plan. I was the only Commissioner in contact with the District. Communications became continuously worse and I could not contact any other Commissioner at this time.

I learned that the Levee District's Administrative offices, located at the Lakefront Airport, were destroyed along with many of our other facilities. It was imperative that I find office space and housing for the Levee District staff and personnel that were trapped in the Franklin Ave. Facility as soon as possible. You must understand that we were still in the middle of a very active hurricane season!

Virtually all communications were disrupted due to the flooding. I was successful on a very limited basis to contact the Managing Director Max Hearn on his cell phone, and only for very brief periods of time. It was decided that I would fly in via helicopter to the Franklin Ave. facility and meet with our staff to formulate an evacuation and recovery plan. I did this the very first week after the storm.

After my meeting at the Franklin Ave. Facility, we decided that our personnel needed to be evacuated to Baton Rouge as soon as possible. They had been there through the storm and many had no idea how their families were, etc. It was determined that I would go back to Baton Rouge and formulate a plan to evacuate our staff and find office space and housing for those who had no place to go.

Upon my return to Baton Rouge, I immediately contacted Senator Heitmier's Office. They put me in touch with the Governor's Office. No one could offer any help or assistance at that time. They informed me that they had no office space for the Levee District and that no housing was available. I realized that I would have to do it without any assistance from the Governor's Office.

At this time I still had not heard from any other Commissioner, and had no help other than from George Carmouche and his family. I determined that we needed to turn over the Franklin Ave. Facility to the National Guard for their rescue and recovery operations and evacuate our personnel. The National Guard was extremely interested in this and desperately needed the facility. I spent two days working out the details of the turning this facility over to them. This facility had 500,000 sq. ft. under roof, and had virtually all of the equipment needed by them.

After desperately trying to find housing and office space for the Levee District personnel to no avail, I asked Mr. Carmouche to lease his office space to the Levee District, even though he had already promised another firm they could lease it. This arrangement was discussed with FEMA and our Real Estate Consultant, Mr. Albert Pappalardo. Everyone felt this was the best and only alternative at this time. Baton Rouge's population had virtually doubled overnight and we could find no other office space available. In addition, this office had the infrastructure already in place to install the computer equipment required to get the Levee District's operating systems up and running immediately. Mr. Rick Loggins, OLD's IT Director, was already on his way to Baton Rouge with the equipment he had salvaged.

There is a lot more to the events and happenings that were taking place during this period, but I believe that this explanation provides an adequate overview of the situation and the circumstances I was facing during this time.

Without any contact from most of the other Commissioners and no way to have a Board meeting, I felt that I had a fiduciary responsibility to make the decisions and take the actions necessary to get the Orleans Levee District back in operations, especially since we were still in the middle of the most active Hurricane season in history and we had just experienced the most catastrophic disaster in our country's history. I would also like to point out that under normal circumstances some of the decisions I made would not have been made. I also want to point out that all of these decisions were made solely in the best interest of the Orleans Levee District.

### **C. SUMMARY OF FINDINGS**

In this section I will cover the findings that I personally want to respond to. I understand that the Orleans Levee District and its staff will respond to other issues they deem necessary and will have their legal counsel address legal issues.

#### **1. Mr. Huey's Salary –**

I would like to state that I followed all guidelines, procedures and law as advised. Legal counsel involved in this matter will respond to the legal aspects of this issue, but I want to point out a couple of procedural issues addressed and not addressed in this report.

The report states that the letters advising the Commissioner of Administration and Joint Legislative Committee on the Budget were never sent as required. This is incorrect. My Assistant, Ms. Wilma Heaton, both mailed and hand delivered these letters as required. She and/or the Levee District can provide this information.

The report does not mention the existing legal opinions regarding my salary issue. This was the basis for the two independent opinions provided the Levee District that concurred that the taking of this salary was legal and appropriate.

In addition, I requested that Mr. Carmouche meet with Attorney General Foti to discuss this issue, which was done. I was informed that all was proper. Nothing in the report mentions this.

In spite of my understanding that everything was done appropriately and according to the law, I returned the salary in expectation that this issue would not continue to create a cloud over me and the Levee District.

I do agree that clearer and more precise language should be implemented, but do not feel that I did anything improper or unlawful as this report suggest.

#### **2. Marine Recovery LLC. Mr. Huey did not have authority to act on behalf of the Board in Authorizing Marine recovery to conduct a recovery of vessels and storage of vessels damaged during Hurricane Katrina.**

I agree technically that this is correct. But, under the circumstances, this was a safety and liability issue that had to be addressed immediately. I had no way of having a Board Meeting at this time.

I was informed that Boats were being stolen and looting of the marinas was occurring. I was receiving calls on my cell phone from marina tenants and insurance companies inquiring about their boats, etc. I was swamped and had no help.

Mr. Michael Meyer, a Lessee of the Orleans Levee District, approached me. He said he was in a position to assist at no cost to the Orleans Levee District, and that he could handle the coordination of these efforts. All he needed was authorization to access the Marinas. I simply asked staff to provide him with a letter to accomplish this.

I authorized this under the conditions that it would not cost the District anything, MRS would hold the Levee District harmless and that only entities with the appropriate experience, insurance and certifications would be allowed to access the Marinas.

Again this was an action taken under extreme circumstances, and it took the burden off of dealing with this issue when I was dealing with so many other more important issues.

I do agree that the Board should provide the president with the appropriate powers to deal with these types of issues in the future, but I do not feel that I should be accused of anything inappropriate due to the circumstances.

Moreover, the results of my decision to take this action have proven that this was the correct action to take under these circumstances. As a result of this action, the District's Marinas were put back into operation when no other marinas in the area were operating. In addition, this did not cost the District any money.

I do believe that the Board should have either ratified this decision taken some other action. Why they did not, I don't know. I had resigned by this time.

### **3. Leasing office space to Mr. Carmouche**

After being informed by the Governor's office that they had no office space for the Orleans Levee District and no housing for employees, I felt I had no other choice but to ask Mr. Carmouche to rent this space to the District. The evacuees that were arriving were already there and had nowhere to go.

Rick Loggins, IT Director for the District, had arrived with truckloads of equipment with nowhere to store it, etc. This situation was discussed with FEMA, our Real Estate Consultant, Mr. Pappalardo, and the available staff that had arrived. All agreed that this was the only option we had under the circumstances.



This lease was discussed, modified and ratified by the Board at the second Board meeting after Katrina. I do not know what else could have been done in this case. The District continued this lease for over seven months after the storm. They could not find anywhere else to go.

It has been inferred that because Mr. Carmouche is my wife's cousin that some ethical issues might exist. I would like to point out that it is my understanding that a cousin is not considered a relative under the law and Mr. Carmouche is not my cousin anyway. It is unfortunate that some people and our media would make this an issue. But, as mentioned throughout this response, all decisions made and actions taken were in the interest of the Orleans Levee District and our effort to recover operations and service the community as soon as possible.

#### **4. Leasing Naval Reserve Station Grounds to MRS.**

Counsel and our Real Estate Consultant suggested this. Their concern was that if this was not done, it could be considered a prohibited donation. Further, we felt that if the vessels were in our marinas, we needed to provide a place to store them.

After my resignation the Board was to address this and other marina matters. They chose not to, and I do not know why.

#### **5. The Engagement of Special Counsel.**

The Orleans Levee District and its counsel will address this issue. I just want to state that this is the way counsel was engaged during my entire tenure on the Board. This is the way our in-house counsel, Mr. Gary G. Benoit, said it should be done, and the Board deferred to Mr. Benoit's advice.

The only time Attorney General approval was requested was when a fee arrangement deviated from the Attorney General fee schedule and guidelines. I met many times over the years with the Attorney General's office and we had complete legislative audit reports every year. I was never informed that anything was inappropriate with the way counsel was engaged.

### **CONCLUSION**

I would like to point out that with the exception of the salary and attorney engagement issues that the issues addressed in this report were the direct result of the catastrophic events caused by Hurricane Katrina in Southeast Louisiana. During the first four to six weeks after the storm I had only minimal communications with Commissioners and only two Commissioners were even located in Louisiana. It was only after the Orleans Levee District was up and running that a couple of the Commissioners, who never offered any help, advice or assistance in the weeks after the storm, decided to second guess and cause more problems and disruptions. They would contact the media directly and would not

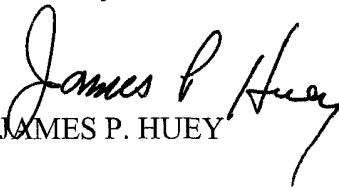
communicate with other Commissioners. I understand that this is still occurring. The Governor's Office should review this also.

If I had not taken the actions I took in the wake of the Hurricane Katrina, the Orleans Levee District would not have been in a position to respond to Hurricane Rita at the end of September.

If the Governor's Office had offered any assistance at all I would not be in this position today defending these actions and myself. I received no support at all. Once the media attacks started everyone ran for cover and denied any knowledge. This disturbs me greatly.

I appreciate the task you and your office have in finding out if any wrongdoing has occurred and/or laws not followed. I am confident that after all facts are considered and information reviewed that you will conclude that all the actions taken by me and the staff of the Orleans Levee District were in the best interest of the District and its efforts to recover as quickly as possible.

Sincerely,

  
JAMES P. HUEY

## **APPENDIX B**

### **Additional IG Comment**

In response to the report section titled "Boat Salvage Operation Not Authorized by Board of Commissioners", the Orleans Levee District notes that "Mr. Mayer firmly disputes that MRS's rights were exclusive." In addition, the response states "O.L.D. does not agree with the IG's Report's statement in the Timetable and Summary of Events that the rights given to MRS were exclusive."

On page 12 of our report, the Timetable and Summary of Events points out that on September 29, 2005, MRS sub-contracts with Resolve Marine Group (Resolve), a Florida salvage company, to be the exclusive contractor of all salvage and other services related thereto. The report does not say MRS's rights were exclusive.

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A copy of this report has been made available for public inspection at the Office of State Inspector General and is posted on the Office of State Inspector General's Web site at [www.doa.louisiana.gov/oig/inspector.htm](http://www.doa.louisiana.gov/oig/inspector.htm). Reference should be made to Case No. 1-06-0009. If you need any assistance relative to this report, please contact Bruce J. Janet, CPA, State Audit Director at 225/342-4262.