MINUTES OF SPECIAL BOARD MEETING

OF

THE BOARD OF COMMISSIONERS

OF THE ORLEANS LEVEE DISTRICT

MARCH 19, 1993

THE BOARD OF COMMISSIONERS

OF THE ORLEANS LEVEE DISTRICT

MARCH 19, 1993

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Roll Call by Secretary Lansden 1

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MOTIONS:

*To terminate contracts: a) Coordination Contracts, b) Orleans Avenue Canal, c) Highway 90/11 Road Raising, d) Citrus Lakefront Encroachments e) All Lakefront Levee Crossings except Canal Boulevard, f) Engineering Agreement for professional services for South Shore Harbor Phase I and Phase II and the Hurricane Flood Protection and Capital Improvement Projects of November 18, 1987, less and except that part that provides for coordination services through the conclusion of South Shore Harbor Phase I and Phase II, g) Field Yard Administration and Operations Building, h) New Orleans Lakefront Airport Retaining Wall with Design Engineering, Inc. and authorizes the President and/or the Director, the Chief Engineer and General Counsel to take any and all action required to implement the above. 5

To terminate all existing contracts with the firm of Design Engineering, Inc., for cause. 88

To proceed with the advertisement for the Rail Street Levee crossing project, which includes a temporary road to allow for entrance to Rail Street, and that the President and/or Acting Chief Engineer be authorized to sign any and all documents to carry out the above. 88

To increase the project funding for artistic treatment for the London Avenue Canal High Level Plan to $36,450, and to authorize the President and/or Acting Chief Engineer to sign any and all documents to accomplish the above. 88

To authorize Design Consortium to proceed with final plans and specifications for the streetscape of Lakeshore Drive in accordance with their status schedule and that funding for this project be authorized from SLIP funds with a construction budget of $1,900,000, and that the President and/or Acting Chief Engineer be authorized to sign any and all documents to carry out the above. 88

To increase the cost for the rebuilding of Lakeshore Drive Phase I-A from $1,700,000 to $2,140,000 to provide for 276 additional parking spaces, funding to be obtained from SLIP funds, and that the President and/or Acting Chief Engineer be authorized to sign any and all documents to carry out the above. 88

THE BOARD OF COMMISSIONERS

OF THE ORLEANS LEVEE DISTRICT

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To accept the present plans and specifications for the road construction of South Shore Harbor Boulevard as completion of the final design phase of the design contract; to engage a consultant to design a roadway and to prepare plans and specifications to construct a roadway to meet the needs of a gaming boat within the required time frames; and to authorize the President, Chairman of the Engineering Committee, OLB Director and Acting Chief Engineer to select the consultant and that the President and/or Acting Chief Engineer be authorized to sign any and all documents to accomplish the above. 88

ADJOURNMENT 89

*Denotes approval

THE BOARD OF COMMISSIONERS
OF THE ORLEANS LEVEE DISTRICT

MINUTES OF SPECIAL BOARD MEETING

MARCH 19, 1993

The Special Board Meeting of the Board of Commissioners of the Orleans Levee District was held on Friday, March 19, 1993, at 4:30 p.m., in Room 228, Administration Building, New Orleans Lakefront Airport, after due legal notice of the meeting was sent to each Board member, the news media, and a copy of the call was posted.

The meeting was called to order by President Harvey.

President Harvey led the group in the pledge of allegiance to the flag.

Secretary Lansden called the roll and stated that a quorum was present.

PRESENT:

The Honorable Robert G. Harvey, Sr., President
The Honorable Patricia W. Harris, Vice President
The Honorable Lambert C. Boissiere, Jr., Commissioner
The Honorable James P. Huey, Commissioner
The Honorable Robert C. Ramelli, Commissioner
The Honorable Roy J. Rodney, Jr., Commissioner
The Honorable Richard D. Sackett, Commissioner
The Honorable Darrel J. Saizan, Jr., Commissioner

ALSO PRESENT:

J. Michael Johnson, Design Engineering, Inc.
Edmond Pepper, Pepper & Associates
Bill Allerton, Capitol Communications
Ron Guidry, Coastal Engineering
O'Neil Malbrough, Coastal Engineering
Ehrhardt, Montgomery, Stive, Ehrhardt
Reda Youssef, Pepper & Associates
Joy Mabry, Lakefront Airport
John HoHgreve, Design Engineering, Inc.
Walter Baudier, Design Engineering, Inc.
Karen Boudrie, Channel 8 News
Juan C. Nogueira, Design Engineering, Inc.
Alice Baudier, Design Engineering, Inc.
M. Nicoladis, N-Y Associates
Dennis A. Snyder, Design Engineering, Inc.
Mr. Wagahoff, U.S. Army Corps of Engineers
Mr. Diffley, U.S. Army Corps of Engineers
Carl R. Guggenheimer, U.S. Army Corps of Engineers
Terral Broussard, U.S. Army Corps of Engineers
Robert A. Hutchins, Light House Harbor
Nick Corridas, Lakefront Airport

THE BOARD OF COMMISSIONERS
OF THE ORLEANS LEVEE DISTRICT

MINUTES OF SPECIAL BOARD MEETING

MARCH 19, 1993

OLB STAFF AND CONSULTANTS

H. B. Lansden, OLB Director
Richard J. McGinity, General Counsel
Frank Mineo, Acting Chief Engineer
R. W. Taylor, Lakefront Airport
Leon F. Cornay, Orleans Levee District
Jim Bourgeois, South Shore Harbor
Gerry Gillen, Engineering
C. A. Wethern, Jr., Engineering
Harry D. Collins, Engineering
Theodore W. Lange, Finance
A. S. Pappalardo, Papplardo Consultants, Inc.
Jerome Pepper, Pepper & Associates
Deborah Barnes, Engineering
Pat Salathe, Engineering
Glenda Boudreaux, OLB Director's Office
Audrey Carr-Jackson, OLB Director's Office

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I. OPENING REMARKS AND PRESENTATIONS BY PRESIDENT OR COMMISSIONERS:

None.

II. MOTIONS:

A. *To terminate contracts: a) Coordination Contracts, b) Orleans Avenue Canal, c) Highway 90/11 Road Raising, d) Citrus Lakefront Encroachments e) All Lakefront Levee Crossings except Canal Boulevard, f) Engineering Agreement for professional services for South Shore Harbor Phase I and Phase II and the Hurricane Flood Protection and Capital Improvement Projects of November 18, 1987, less and except that part that provides for coordination services through the conclusion of South Shore Harbor Phase I and Phase II, g) Field Yard Administration and Operations Building, h) New Orleans Lakefront Airport Retaining Wall with Design Engineering, Inc. and authorizes the President and/or the Director, the Chief Engineer and General Counsel to take any and all action required to implement the above.

President Harvey stated, "This meeting is a special meeting to deal with recent letters the Board had received from the U.S. Army Corps of Engineers and the Board's relationship to some of its consulting engineers."

He added, each commissioner had something to say and he stated the Board received communications from Design Engineering's attorney regarding potential suit. He asked for any statements that Colonel Michael Diffley, with the U.S. Army Corps of Engineers wanted to make and then he would allow the commissioners to speak with him regarding the content of his letters. He added, there had been an earlier request to go into executive session after Colonel Diffley addressed the commissioners.

Colonel Michael Diffley, District Director, U.S. Army Corps of Engineers, stated he appreciated the opportunity to talk with the Board. He added, he's in the process of trying to do the right thing and he knew the members of the Board are charged with doing the right thing also. He further added, he was there to try to answer any questions the Board may have had. He apologized for being unavailable for earlier meetings, because he was out of town. Colonel Diffley stated the Corps is committed to working with the Board to get on with the project.

President Harvey stated Colonel Diffley was available for questions.

Commissioner Rodney stated he knew Colonel Diffley had spent a lot of time with the issue over the last few weeks. He stated in Colonel Diffley's most recent letter, he asked the Board to turn over its design work in progress on the Orleans outfall canal. Commissioner Rodney asked Colonel Diffley had he received that information. Commissioner Rodney stated he was aware of a subsequent letter written by Colonel Diffley stating he had not received that information and asked the Board to provide the information by March 22, 1993.

Colonel Diffley stated, to the best of his understanding, the Corps had not received the information. He stated there were members of his staff with him, and he

checked with them to verify that the information had not been received.

Commissioner Rodney asked Colonel Diffley had he received any information concerning any design work or any work that may have been done on the Orleans Canal since his last communication dated March 11, 1993, in which he asked to have the information by March 22, 1993.

Colonel Diffley replied, no. He added, the Corps received no products, but received correspondence that indicated there were products available; but he hadn't seen any products.

Commissioner Rodney stated he understood from the Board's consulting engineers one of the difficulties in providing the information by March 22, 1993 had been the delay in copying the information. He asked Colonel Diffley had a request been made to him to extend the March 22, 1993 deadline to allow time for the making of copies.

Colonel Diffley stated no request had been made to him directly.

Commissioner Rodney stated he also understood as a preliminary matter, the Board's engineering staff asked some of its engineering consultants to provide any work they had on the Orleans Canal to the Board in order that they might be able to review them before turning over whatever information the Board had to the Corps of Engineers.

Mr. Frank Mineo, Acting Chief Engineer, Orleans Levee Board, stated as of the time he entered the Board Room, no, sir.

Commissioner Rodney stated when he met with Colonel Diffley in Colonel Diffley's office, he made a promise that he would get him that information; both for the reason of not delaying the project and also for the reason to understand where the Board was, its entire contribution to the project as a whole. He stated he just wanted

Colonel Diffley to know he had requested of the Board's staff and all others he knew concerning to get that information to the Board and also to Colonel Diffley. Commissioner Rodney further stated he hoped by the date Colonel Diffley requested the information, he would have it.

Colonel Diffley stated he hoped so too, because that would keep the project from being delayed any further.

Commissioner Boissiere stated earlier correspondence from the Corps indicated there were some deficiencies with Design Engineering, Inc. He stated the possibility of $5.5 million dollars being in jeopardy for funding of levee protection for Orleans Parish. He asked, is that money in jeopardy?

Colonel Diffley stated that was an expression of the extent of the delays on the project. He stated the delays appropriated for the project are multi-year monies, if they were lost because they were not spent in 1993 is not the case. He further added, the construction scheduled called for the award of those contracts in FY '93, by pushing that back in FY '94 is just an expression of the amount of money, and the amount of work that was delayed to '94 which is in itself a serious situation.

Commissioner Boissiere stated we have had other delays (he thought) in other matters. He added, the recording of this procedure is causing some problems of his concern as an elected official. He stated it's important that his constituents feel comfortable, safe and secure. He further stated the letter in the way it was interpreted led everyone to believe that the Board was in jeopardy of losing $5.5 million dollars, and therefore flood protection for the city was at risk. He stated he understood what Colonel Diffley had to say, it really wasn't that way and the money may be transferred from one funding period to another funding period; but the safety and security of the City is

still in a comfortable position.

Colonel Diffley stated he thought it was a fair expression of the concern for the safety and security of the City. He added, there is a large investment out there that deals with the entire protection project, about $600 million dollars and there are holes in that project the Corps is trying to work to clear up. He stated the longer construction is delayed, the greater the window of vulnerability. He added, the expression, however you want to term it in terms of money that has slipped from 1993 to 1994, or however you want to do it, is the greater concern than the loss of funding.

Commissioner Boissiere asked Colonel Diffley how long of a delay was he talking about in the correspondence, the initial correspondence?

Colonel Diffley stated in that particular one, for the particular project IID he's talking about a 180 days or six months that the Corps had experience just over the last eight months, and that's what precipitated the action on his part. He further stated in that case, if you project that out over a lifetime of the project, you're talking intolerable delays.

Commissioner Boissiere asked Colonel Diffley when did he arrive at the conclusion that that was a matter that deserved some urgency? He stated he remembered in the latter part of 1992 the Corps commented on the fine work Design Engineering was doing.

Colonel Diffley stated the Corps went through a test case in the Summer of '92 and they looked at the request made by the Board to do work-in-kind. He further added, in that case, the milestones were met by the Board's consultant during that period; and in July the Corps made a decision to go ahead with maximum work-in-kind provided by the Board. He stated after that period the delays started

to accumulate. Colonel Diffley expressed there were delays ahead of that, but the Corps had adjusted the schedule and it was from that point of the delays that the Corps is counting as the 180 days. He stated the Corps really started to voice loudly the concerns in the November meeting and the lack of responsiveness continued from that period on both in terms of the quality of products being delivered to the Corps and the responsiveness of the Board's consultant.

Commissioner Boissiere asked if Colonel Diffley thought the delays were from July to November, and then November to January?

Colonel Diffley stated the delays were more serious than that. He added, there were delays ahead of that, but they really started the clock at that time.

Commissioner Boissiere asked, if Colonel Diffley felt the delays were all on the part of the Design Engineering, Inc. operation?

Colonel Diffley responded, the 180 days that he quoted, yes.

Commissioner Boissiere asked, were there any delays on the part of the Levee Board and its staff in any functions it may have had to perform?

Colonel Diffley responded, they may have been, but nothing in the neighborhood of the sort of delays they were experiencing.

Commissioner Boissiere asked, if there were any delays on the side of the Corps?

Colonel Diffley stated the Corps had calculated those delays in as well.

Commissioner Boissiere stated when you say calculated those in as well, do you mean that they were contributory factors to cause the 180 days, or are you calculating all delays to the 180 days?

Colonel Diffley stated he was calculating mainly the lack of responsiveness with Design Engineering of 180 days. He added, no one wanted this project to work more than he did. He didn't need the work, the Corps had to reschedule as a result of that situation. He expressed he would have been delighted had things worked out, and he would not have entered into it expecting it not to work out. He stated he could not sit back and continue to allow it to fail at the expense of the taxpayers and it's a disservice to the Board; because the Board is in a position where it has to make decisions on a day to day basis. He stated he wasn't eager to see this project fail, but when it did he had to call it like it was.

Commissioner Boissiere asked, if Colonel Diffley felt comfortable in suggesting all the delays on this particular project were contributed only to the unsatisfactory work of Design Engineering, Inc.?

Colonel Diffley stated the work of Design Engineering, Inc. was unsatisfactory and he could no longer accommodate that sort of action on their part. He added, he had two things to consider primarily: 1) to work in partnership with the Board to get the job done and 2) the protection of the American taxpayer, Federal taxpayer in the execution of that. He further added, when he put those together, he could not tolerate that sort of performance the Corps was getting. It was taking three or four times in rework effort on the part of his staff for the work coming in. He stated the Corps has extensive experience with architects/engineers and they have done this many times so they have basis for comparison with other folks.

Commissioner Boissiere stated that's what caused his concern, he has been on the Levee Board since 1986. He added, Design Engineering had been a contracting consultant prior to that and as far as he knew this was the first time

he had gotten any indication from the Corps that there were problems with Design Engineering's work. He reiterated, he had been on the Board from 1986 to 1992 and in six years it caused him concern that all of a sudden in the last six months of one period the Board was having those kinds of problems with six years prior to that, apparently there was not documentation of problems. He added, as a matter of fact, there were letters of support for the work that Design Engineering was doing, and it caused him concern. He stated his exposure is two-fold; politically, he is supposed to make the right decisions for the people who elected him to serve in office; he too was concerned about flood protection for the City and he also had a liability as a commissioner to make the right and accurate decisions; along with personal exposure if he terminated a contract without due cause to do so he could be personally liable for damages to a consultant if he terminated a contract that was unreasonable. He stated he asked the questions because he was concerned that after six years all of a sudden he received letters of dissatisfaction and he was concerned how it came to that point, after six years of his knowledge that the firm worked with the Corps. He added, prior to 1986 he assumed the firm worked with the Corps, but his concern was the expressions of delays in six months of 1992.

Colonel Diffley stated he was not prepared to go over all of the history of all of the interactions that he's had. He stated even if the Corps had satisfactory relations with a firm in a particular capacity, if the Corps was getting unsatisfactory performance on a particular contract on a particular relationship that was the thing they would have to address; and that was what the Corps was addressing. He added, he felt it was unfortunate that it happened, but in his capacity he, too, was liable to do the things that are right in terms of expenses by the American taxpayer.

When he laid out in front of him expenses being incurred by his staff that are well and above the sorts of expenses the Corps normally has in reviewing the products of an architect/engineering firm, then he had to account for that. He further stated it was a very clear responsibility on his part, regardless of whatever public consideration, it has to be paramount because he is the taxpayers' representative.

Commissioner Boissiere asked, if there were any projects under the direct supervision of the Corps that had experienced delays equal to 180 days or more?

Colonel Diffley stated he asked his staff, which had much more experience with that, what historically covered this match up, and there was no comparison in the lack of quality and responsiveness the Corps had with Design Engineering.

Commissioner Boissiere asked, in relation to the Corps staff's performance there have been no projects that have been delayed by the Corps for a period longer 180 days?

Colonel Diffley stated the Corps had no experience working with an architect/engineer with the lack of responsiveness (interrupted by Commissioner Boissiere).

Commissioner Boissiere interrupted stating he was talking about the projects directly under the Corps, the delays the Corps had had that extended to six months or more; what the Corps wasn't doing, not a consulting engineer. He asked Colonel Diffley if all of the Corps projects were on schedule.

Colonel Diffley asked for an opportunity to give an explanation. He explained the word "partnership" with the Board means to get this job done. He stated it is a federal contribution and then there are the state and local contributions in the partnership. He added, in that particular capacity, the Board approached the Corps saying, "Do you want to sell the service to the partnership", and

that is the slight twist in this situation. He further added, at that point, the Corps, as partners accepted the stipulation that if the quality of work was provided on time, the response to the quality of work, that the Corps is not getting. He stated as a customer of that, as a partner in buying that service, the Corps was not getting it, and as a partner in that process, he's obligated to say the Corps must get the service from someplace else. He stated if there were any review of what went on, it would show that this was not the sort of thing the Corps should have expected in this relationship.

Commissioner Boissiere stated he looked at it from his side. He looked at the Corps as being a part also, and if he were going to employ the services of the Corps or employ the services of a professional consulting engineer, he wanted to look at both of the track records. He added, his previous question was concerning the track record of the Corps of Engineers, and asked if the Corps had any projects under the complete supervision that have been delayed for six months or more.

Colonel Diffley stated in the design effort -- he really didn't have the whole thing laid out.

Commissioner Boissiere stated he understood and he felt the Board was dealing with a reputation of a firm that's licensed in the State of Louisiana, has a bona fide contract with the Board of the State of Louisiana, and the professional projections of that firm was on the line. He added, the Board has to make certain decisions and those decisions have to be based on a lot of things. He further added, Colonel Diffley mentioned the partnership, which he reminded Commissioner Boissiere of, and it was a prior party agreement. If the professional firm that had been engaged did not do the work, then the Board would have to go back to the Corps for the work to be done and he wanted to know the

experience factor of the Corps in making decisions as to whether or not the Board should continue to employ outside consultants or whether the Board should rely solely upon the Corps' ability to deliver a final product.

Colonel Diffley stated the Corps was not delivering a product, and the Board had every right to come and put the Corps through paces in that regard, that was fair enough; and they were trying to work together toward the efforts. He added, he wouldn't expect the Board -- if he ever came up with that sort of behavior and lack of responsiveness to the Board, he would expect to be called on the carpet, and there was no doubt about that. He further stated he certainly expects his staff to uphold standards much higher than what they have experienced with Design Engineering, because the Board is entitled to that and as long as he is with the Corps of Engineers the Board will get it.

Commissioner Harris stated she was very pleased that Colonel Diffley was present at the Special Board Meeting. She stated her concern was when the Board received a letter that was in the media, and the Board could not contact Colonel Diffley. She stated they are all in a partnership together and they all have a responsibility to the American taxpayer. Commissioner Harris further stated she was not clear, she read in the newspaper that according to Colonel Diffley's letter, the Board endangered the life and personal property because of the loss of $5.5 million dollars. She asked Colonel Diffley, did the Board lose $5.5 million dollars that jeopardized or endangered the life and property of the taxpayers? Did the Board just plain lose it or did it not lose it?

Colonel Diffley stated the Board lost the opportunity to get the construction of $5.5 million dollars.

Commissioner Harris asked, did the Board lose $5.5 million dollars?

Colonel Diffley stated he wouldn't know until he received the status.

Commissioner Harris asked Colonel Diffley if he was aware of the letter received from the Board's consultant indicating that was not the case, that's what she was concerned about. She pointed out Colonel Diffley talked about responsibility, and she takes her responsibility with the Board very seriously; she's happy they all want to do the right thing, but when it was stated in Colonel Diffley's letter that the Board endangered the lives and property of the taxpayers because of the loss of funding she was very concerned. Her concern was greater when she found out the Board didn't lose the $5.5 million dollars. She stated she had asked the question over and over again, "Did the Board lose $5.5 millions dollars?" and no one answered the question. Commissioner Harris stated she understood the delays and Colonel Diffley's concern, but the responsibility was her key issue.

Colonel Diffley stated the connection between those two was unfortunate in that regard, because they were not expecting a delay in contracting capability. The $5.5 as best as the Corps can tell is still available as a multi-year appropriation, but that does not mean that won't change.

Commissioner Harris stated she understood.

Commissioner Rodney stated the Board was doing a tremendous disservice to Colonel Diffley. He pointed out that Colonel Diffley never stated the Board lost the money. He stated Colonel Diffley stated the money had to be given up for the fiscal year. He added the Press reported that the Board lost the money, and to that extent the Press was irresponsible.

Commissioner Harris stated since she raised the issue, her point was, in Colonel Diffley's letter where she read, "The Board was endangering the life and property" that was a concern to her and perhaps it was just the way it was stated.

Colonel Diffley indicated his concern with every delay in the project, which was the main point he wanted to get across.

Commissioner Harris stated she understood.

Commissioner Huey expressed, he was probably the most confused person on the entire Board. He added, as Chairman of the Engineering Committee, Colonel Diffley was present at one of the first meetings he had once becoming a member of the Board of Commissioner of the Orleans Levee Board. He further added, upon meeting with Colonel Diffley, their approach and what they discussed with the staff and Colonel's was their desire to utilize the private sector firms out of the Board's 30 percent contribution and so forth. He stated the Colonel stated in order for him to consent to this the Board had to demonstrate its ability to perform quality work on time. He stated the Board set up a series of meetings, with its staff, in conjunction with the Corps of Engineers and went through a series of several months of discussions. Commissioner Huey expressed, he was very proud at a meeting, which took a total of 15 or 20 minutes, he went in ready to do battle to be able to accomplish a particular task. Colonel Diffley stated the Board had done a very good job referring to Design Engineering, Inc. indirectly, but the Levee Board had done an excellent job in providing the information in a quality fashion. Therefore, Colonel Diffley gave authorization for the Board to proceed with the selection of engineers, which the Board did. He further stated Mr. Judlin from the Corps' staff came in and he complimented him from the Board and

appreciated the partnership arrangement conceded to, and he was very proud of that factor. He also stated the Corps complimented Design Engineering, Inc. in the Board Meetings and it's all in public record. He added, one thing that he and Colonel Diffley discussed -- as the Board passed the resolution to make sure that Commissioner Huey as Chairman of the Engineering Committee would stay on top of the flood protection program, because it was such a value to the community and an important project. He stated they would communicate with each other if, in fact, there were any problems or concerns on the monthly staff meeting that the Board's staff had. He added, he saw Colonel Diffley as recent as December, 1992 at the Fifty-Seventh Annual Meeting - Lower Mississippi Valley Flood Control Association held at the Westin Canal Place Hotel and there was no indication of any problems at that time; then all of a sudden the Board received a letter stating it was going to lose $5.5 million dollars. He stated the first thing he did in February was he went to Washington, DC and met with the Congressional Delegation, the House Appropriation Committee because they carried over $4.3 million dollars and it was determined between the Board's staff, and the Corps' staff that $12 million was needed and the additional $7.7 million dollars was reflected from the Appropriations Committee for that year. He added, there was some concern as to whether the Board could utilize all the dollars and cents in that particular year. He further added, by stating the Board would lose $5.5 million rather than just defer it, which had happened virtually every year to his understanding from that end of it, because there are delays that happen in a massive project like this. He explained, what he was leading up to was that that situation is not out of the ordinary, and then all of a sudden as Commissioner Lambert Boissiere stated Design Engineering and its firm, its employees - -

Commissioner Huey emphasized he really sympathized with the employees of Design Engineering, Inc., what they had gone through and he felt that was a slanderous situation and he felt nothing was wrong. He stated he wanted to know what went wrong; he commented, the Board consists of the Commissioners in Charge and the next thing the Board knew it received a letter saying it was losing $5.5 million dollars, the firm was not competent and derelict in its duties, and the Board was jeopardizing the life and safety of the people. He stated when he picked up the telephone to call Colonel Diffley immediately upon receiving the letter, and of course, he received it after the news media received it, Colonel Diffley could not be reached for 30 days; he felt that was one of the most outrageous things he has ever seen and this situation has been a tremendous disruption to everybody. He reiterated, he wanted to know Colonel Diffley's comments to his question, "What went wrong?"

Colonel Diffley stated, first of all, he had a staff there that could have been reached if he was not available; and he added, the Board is free to talk to his staff at any time. Secondly, the Board was right, the Corps did agree that as long as Design Engineering, Inc. provided quality work on time that was fine, and no one wanted that to work more than he did. He further stated he has all the work he wanted to do in the district, and his staff is fully employed and he doesn't need this. Colonel Diffley stated to Commissioner Huey, I don't know why you were uninformed by your own people as to where you were on the schedule, and explained he would have to ask them.

Commissioner Huey stated he certainly would.

Colonel Diffley stated the schedules are not something the members of the Corps keep to themselves, because the schedules are entered into jointly. He apologized to Commissioner Huey that his people did not keep him informed

and that it was that much of a surprise to him. He stated the fact of the matter was that if there was a failure to be able to respond, he couldn't tolerate it. He further stated Commissioner Huey is not involved in the day to day dealings with that and neither was he, but the staffs work them out and the staffs were both fully apprised of what the schedules were and there shouldn't be any doubt in anybody's mind as to what was happening with the schedule. Colonel Diffley stated they don't run into this normally in dealings with other firms they operate with; they don't have a case where they don't care about the schedule, apparently. He stated the Corps is not happy with this, he didn't like having to stand before the Board, he has never been in that situation before in his experiences; and he wished it was not the case.

Commissioner Huey stated that Colonel Diffley was standing before the Board and the Board was in the position that it was in because of a letter that was sent out to the Board and got to the news media, which put the Board in serious jeopardy with the community. He felt that a telephone call to the President of the Board along with himself at that time, Engineering Committee members, because the project was very important to the Board and what it was trying to accomplish. He stated he could ask the engineering staff at that time, but the Acting Chief Engineer was Alan Francingues, who was no longer with the Board. Commissioner Huey stated he practically lived with the Engineering Department and he was on the telephone for every monthly meeting to be sure his people were attending those meetings. He checked to see if there were any problems from the meetings, and nothing was brought to his attention other than the normal type of things that happened and the Engineering Department was moving forward with it until they received that letter. He further stated he hoped

Colonel Diffley could understand why he was shocked, and he wasn't putting the finger on anyone in particular, but it just didn't make sense to him that a few months back this firm had done such a good job that Colonel Diffley allowed him to go before the Board and select numerous qualified local sector firms to perform various duties. He stated he was excited about that, and then a few short months later he was informed the individual was totally incompetent; it just didn't make sense to him.

Colonel Diffley stated he was not going to make assessments on competency, because he can only make assessments on performance. He stated the firm demonstrated the capacity to perform, but why they failed to perform after that he didn't know. He further stated it is a question of performance in this particular case and the performance was unsatisfactory and at that point he had no choice but to point that out and take action.

Commissioner Sackett stated there were eight Commissioners and one Colonel. He stated he wanted to keep his questions simple, because he is a simple person. He asked Colonel Diffley if he was telling him that Design Engineering was no longer qualified - - that the work that has been submitted to the Corps by Design Engineering was not acceptable to the Corps of Engineers.

Colonel Diffley stated that is right. He added, at that point, being the person in charge, the relationship that the Corps entered into, he could not re-enter into that relationship because it failed. It cost the American taxpayers money and he could not put them in that position again.

Commissioner Sackett stated he would like to confine the answers as much as possible to the questions rather than trying to convolute a lot of different aspects of this relationship. He stated the first question was the

work that Design Engineering has supplied was not acceptable to the Corps of Engineers.

Colonel Diffley replied, that is correct.

Commissioner Sackett asked Colonel Diffley if he believed that Design Engineering can correct their mistakes in a timely fashion to satisfy the Corps of Engineers?

Colonel Diffley stated Design Engineering had not demonstrated that capability.

Commissioner Sackett asked, so you don't believe that capability exists?

Colonel Diffley replied, I don't believe, but I will try it again.

Commissioner Sackett stated the Board entered into a partnership, a cost-sharing agreement with the Corps of Engineers. He asked if the cost-sharing agreement flawed or was it the vendor the Board chose who flawed?

Colonel Diffley stated the cost-sharing agreement stood and that was stipulated in law. He stated the cost-sharing agreement was not in issue, it was a separate piece of that. The partnership, if you would, stays in being, and what they were dealing with was a particular relationship that by the request of the Board and concurrence of the Corps we entered into with regard to the consultant.

Commissioner Sackett stated at that moment in time, the consultant's work was not satisfactory. He added, the Corps had no indication the work could become satisfactory, the '73 cost-sharing agreement was still in force and not in jeopardy. Commissioner Sackett asked Colonel Diffley if that information was correct.

Colonel Diffley responded, that's correct.

Commissioner Sackett stated there was a work-in-kind agreement as part of that partnership. He asked if that agreement by form and not by it's vendor flawed?

Colonel Diffley stated they could still look at

that, the answer is no.

Commissioner Sackett asked Colonel Diffley if the work-in-kind credits were to be performed by another vendor, did he have a problem with that as long as that vendor did not provide the Corps with substandard work?

Colonel Diffley stated the Corps would entertain other proposals by the Board.

Commissioner Sackett stated entertaining proposals was not exactly a full affirmation and he was not trying to get Colonel Diffley to make a total decision on that issue at that point, but Colonel Diffley stated in a previous sentence that the work-in-kind agreement itself was not a flawed arrangement and he would be willing - - Commissioner Sackett asked Colonel Diffley if he was willing to continue on a work-in-kind arrangement subject to the triage concept that had previously been discussed, if the Board had qualified vendors.

Colonel Diffley stated he would be eager to get on with exploring ways they could get on with the business. He added, his letter stated one way to do it was for the Corps to take it over and go from there, but if the Board wanted to put another proposal on the table he would certainly entertain that. He further added, that would be a part of getting on with the partnership.

Commissioner Sackett stated he was not trying to negotiate a proposal there at the table at that time. He stated he just wanted to crystalize what that meeting was about and from his understanding the meeting was about the Corps dissatisfaction with one vendor that the Board had chosen, or a previous Board had chosen, more accurately, to handle the Board's engineering work; and the work supplied to the Corps was not to their standards. He asked, was that correct?

Colonel Diffley stated the meeting was about the

performance of the Board's consultant over the last eight months.

Commissioner Sackett thanked Colonel Diffley.

Commissioner Ramelli stated in those monthly meetings the Board attended with Colonel Diffley, the Board had staff there and Design Engineering had staff there, is that correct?

Colonel Diffley replied, yes.

Commissioner Ramelli asked, in those meetings, did the Corps let the Board know it was running behind schedule?

Colonel Diffley stated the schedules were discussed starting in November, the serious concerns came up, but the schedules were discussed each time.

Commissioner Ramelli asked, so the Board's consultant as well as its staff both knew the Board was running behind schedule and that the Corps was concerned about it?

Colonel Diffley responded, yes.

Commissioner Ramelli asked, what was the response from the Board's staff?

Colonel Diffley stated he could only say in terms of the 6 - - he was not there and his staff dealt with the Board's staff. He added, he had some of his staff available, who may have been able to answer that question, but he didn't think it would be fair for him to characterize it.

Commissioner Ramelli replied, okay. He asked, so the Board was aware of the problem that it was behind schedule?

Commissioner Ramelli asked, Mr. Lansden if he was aware of the problem?

Mr. Lansden stated at that time the Board received a letter from Colonel Diffley.

Commissioner Ramelli stated before then and

according to the Colonel the Board had monthly meetings with the Corps of Engineers on the projects that were on-going at that time. He added, Colonel Diffley stated in the meetings his staff stated the Board was running behind schedule on the projects and needed to get back on schedule. He asked, Mr. Lansden if he was aware of that?

Mr. Lansden stated he was informed of that, but he did not attend those meetings.

Commissioner Ramelli asked, at that time Alan Francingues was the Board's Chief Engineer, correct?

Mr. Lansden stated up through September.

Commissioner Ramelli asked, Mr. Frank Mineo, Acting Chief Engineer, if he attended those meetings?

Mr. Mineo replied, correct.

Commissioner Ramelli asked, Mr. Mineo if he was aware that the Board was running behind schedule?

Mr. Mineo responded, yes, sir.

Commissioner Ramelli asked Mr. Mineo what was his response to the Corps?

Mr. Mineo stated it was openly discussed in the meeting and the Board's consultant recommended certain changes and dates which the Corps of Engineers accepted, and those dates were not met.

Commissioner Ramelli asked, by whom?

Mr. Mineo expressed, by the consultant.

Commissioner Ramelli asked, what was the reasoning behind the consultant not meeting those dates?

Mr. Mineo replied, you would have to ask the consultant.

Commissioner Ramelli asked, so the consultant knew all along that he was running behind schedule?

Mr. Mineo replied, yes, sir.

Commissioner Ramelli stated that Mr. Mineo knew all along that the consultant did not try to get back on

schedule.

Mr. Mineo stated in every meeting he attended the consultant agreed to meet certain dates.

Commissioner Ramelli asked Colonel Diffley if those dates were met?

Colonel Diffley stated no, they kept slipping. He added, one standard thing, if you're in a that situation, where somebody can't deliver a product and we say, alright, when are you going to deliver it, at least set a date. He stated the Corps doesn't face this situation very often. He stated there would be non-delivery again, and they would set a new date, and he kept slipping. Colonel Diffley further added, that's how the six months slipped.

Commissioner Ramelli stated, so basically that's where the Board was on March 19, 1993. It had slipped so far behind the 8 Ball that it couldn't really get out. He further stated, basically the Board was aware of the slippage on a monthly basis knowing it was getting further and further behind schedule, and that's why Colonel Diffley wrote the Board a letter telling it the Corps was taking the project away from the Board and do it themselves, because the Board was not capable of doing the project, correct?

Colonel Diffley responded, correct.

Commissioner Ramelli stated the $5 million dollars or so the Board lost is not actually money the Board lost; it was money that had to be used up in another year, because it could not be used up in this period. He stated the construction the Board could have done is just not physically possible for the Board, the Corps of Engineers or anybody to do that amount of work in the amount of time left in this fiscal year to use up that $5 million dollars. He asked Colonel Diffley if that was a simple way of putting it?

Colonel Diffley replied, yes.

Commissioner Ramelli stated in 1999 the Board might get that $5 million dollars back, or in 1994 it may get the $5 million dollars back; but the money was not actually gone.

Colonel Diffley stated, that was correct.

Commissioner Ramelli stated the money had slipped back to a farther point in time and if the City had a hurricane within the next two years, it would be just that much farther behind the 8 Ball.

Colonel Diffley stated that was right.

Commissioner Saizan stated there was only one question that concerned him. He asked, if the money was not actually gone, did anybody on Colonel Diffley's staff during the 30 days he was out of town indicate to him that the Press reported the money was gone? He added, it looked like the consulting engineer and the Levee Board had totally bungled**the $5.5 million dollars and the Board found out through its Congressional resources that wasn't the case. He asked Colonel Diffley, in that 30 day period, did anyone on his staff talk to him and try to correct that, because he understood the process of how funds have to be rolled over; but he felt it would have served the Board a lot better if the community had been told the money was not lost, and there was still a chance to have it for flood protection.

Colonel Diffley stated he was kept abreast by phone as to what was happening, and that issue did not materialize.

Commissioner Saizan stated it was reported here in a manner in which it made the Board look extremely bad; the consultant, the staff of the Board, that the Board had totally lost it and it seemed to him if the Board hadn't, then it might have been best on the Corps part to say there were scheduling problems and there was a problem with the consulting engineer, but the money had not been lost

forever.

President Harvey stated this was really a serious point. He asked had anybody on the Board read the Colonel's letter? He stated it says, "As a result of these delays, I am giving up $5.5 million of the $12 million available for this parallel protection this fiscal year." He further stated that Commissioner Rodney had brought out that the media made the statement the money was lost, and the Board needed to review the tapes. He added, everyone was saying including the report that Channel 8 made that the fiscal year, $5.5 million for the fiscal year, no one had ever said on the present Board that the Board lost the $5.5 million total.

Commissioner Saizan stated he was not saying the Board said it lost the $5.5. million dollars, but that was the recollection he had from it being reported in the paper, primarily. He added, he read what Colonel Diffley said in the paper, and he understood that, but that wasn't reported that way; and he just thought that Colonel Diffley or someone on his staff in his absence could have corrected the newspaper that the money had not been totally lost. He further added, that was all that he was saying.

President Harvey stated in reference to "danger to life and property" which was another phrase brought out by the media, simply meant that the Board had extended the window of opportunity for a hurricane to blow through, when they might have completed the flood protection on a certain date, they would extend that completion date - - and it just increased the danger period for the citizens of this City, is that correct?

Commissioner Harris requested President Harvey to read the exact words Colonel Diffley wrote in regard to endangering lives, the exact wording.

President Harvey read, "Whatever the reason the

work is not getting done, we can't live up to the commitments we made to the Congress and most distressing we endanger the lives and property of the people in New Orleans." President Harvey stated he thought it was very clear if the Board kept setting the project back by delays, it was going to wind up one day regretting the delays. He added, he thought that was very clear what was meant, and he had made his point, he wanted to make it very clear that no one had ever said the Board totally lost the $5.5 million, it was lost for the fiscal year and the Board wouldn't get it back until some other year.

Commissioner Rodney stated he would try to make his questions as quick as possible, because Colonel Diffley had been standing there for some time.

Colonel Diffley responded, no problem.

Commissioner Rodney asked Colonel Diffley how long had he been on the job as the Corps of Engineers', Chief Engineer here in New Orleans?

Colonel Diffley replied, one year and nine months.

Commissioner Rodney asked, when did he first begin to be concerned about the dates slipped and the progress on the canal?

Colonel Diffley stated after the November meeting it first to his attention and he referred back to the staff to get it going.

Commissioner Rodney asked, was this in November of '92?

Colonel Diffley responded, yes.

Commissioner Rodney stated as a result of November of '92, you wrote the Board a letter sometime in November, he believed it was.

Colonel Diffley stated he believed that just came up in a meeting. He added, at that time the effort was to keep it down to staff level, have the staff work it out and

continue on with the relationship, but it got to the point where it became intolerable, actually in February, but January was really the highlight; the fact that they had to come to grips with the situation very quickly and nothing occurred after that. He stated in February, the Corps said, okay, we have to take more drastic action.

Commissioner Rodney stated it was near the time of the January letter Colonel Diffley decided that perhaps one option would have been for the Corps to assume the design of the Orleans Canal Project.

Colonel Diffley stated that was an option.

Commissioner Rodney asked if Colonel Diffley discussed that option with the Board's staff?

Colonel Diffley stated his staff discussed it the afternoon before they entered into the work-in-kind current arrangement. He added, the January letter was the intent to alert the Board in the strongest possible terms. At that point, he was hoping the Board would have come back with a proposal to somehow get on with the project and change the relationship. He added, that didn't happen so he had to send a letter out in February, stating stronger terms as to what he would have to do to react under those circumstances.

Commissioner Rodney asked Colonel Diffley what point in time did he first notify the Board's staff of his dissatisfaction with Design Engineering, Inc., such that he was ready to explore options of going on with the flood protection program without them, without Design Engineering, Inc.?

Colonel Diffley stated the end of January. He added, that was him personally, and he didn't know what correspondence his staff had or what they might have said. He also added, that was immaterial, he made his own decision. Colonel Diffley stated before that he had hoped the Corps could continue on with the relationship they had

struck.

Commissioner Rodney asked Colonel Diffley if he discussed his dissatisfaction with Design Engineering, Inc. with the Board's staff before the January letter?

Colonel Diffley stated the Corps' staff probably did, but he did not get involved. He added his staff brought it up to him and it was sent back to try and make it work, make the relationship work was his directions to his staff at that time.

Commissioner Harris asked for a point of clarification. She stated there was a recent directive from the Pentagon that was issued indicating the Corps would not be in direct competition for projects with private firms; she asked Colonel Diffley to clear that up for her.

Colonel Diffley stated the Corps is encouraged to enter into contracts with outside firms for placement work, but they have an in-house capability also. He stated it's not a case where they never do anything that might also or could possibly be done by an outside firm, and there is a balance between the work they do in-house and the work they contract out.

Commissioner Harris asked for the name of that directive or could Colonel Diffley give her more reference to that directive?

Colonel Diffley stated he didn't have the particular one she was referring to, but he just knew the basic Corps policy is to try to balance between the work to be contracted out and the work the Corps does in-house; and he didn't know of any particular directive that changed that, reinforced it, or modified it.

Commissioner Harris asked Colonel Diffley if he thought anyone on his staff would know?

Colonel Diffley replied, no, mam, I'm sorry.

Commissioner Saizan asked how was the Corps

effected locally by the cutbacks with the Defense Budget, and did it mean the Corps would have to lose staff or what?

Colonel Diffley stated the Corps hadn't gotten the directive yet, and at that time they were in a hiring freeze mode. He explained the Corps was going through reorganization and he could assure the Board that none of the staffing actions are based upon this action here. He added, whatever the Corps takes in, he has to adjust his schedule, he was eager to see the project work, and the Corps didn't need any work. He added, he will not get any extra staff as a result of taking on this work, so he will have to shop it out in other ways and adjust his schedule. He further added, this was not something the Corps was having fun having to adjust to, he assured the Board.

Commissioner Ramelli stated so you don't like this at all?

Colonel Diffley stated he would rather have this operation work, and he would rather have it work because that was the agreement and that was his goal.

Commissioner Boissiere stated his comments were a little bit off the subject, but pertained to levee protection. He stated the Board had heard rumors to the fact that the Corps or staff members of the Corps were a little bit unhappy or displeased with the Levee Board's actions to get parallel protection on the London Avenue Canal as opposed to the Board's first recommendation for frontal protection. He asked, did the impact of that change decision have any impact on your staff in its decision on protection in Orleans Parish?

Colonel Diffley stated no, sir. He added, they understood what protection was going to be in there and it was in the legislation and in his work order this year.

Commissioner Boissiere asked the one that was finally adopted by Congress and approved by Congress as

parallel protection?

Colonel Diffley stated the one that was stipulated in the 1992 appropriations data.

Commissioner Boissiere stated Colonel Diffley mentioned if he got some of the work back, he would have to then shop it out. He asked, if that meant he would have to assign it to private firms to assist the staff in completing the work.

Colonel Diffley replied, yes. He stated their plan is to take in-house only those things that are so far behind that they would have to get right onto them, and even that would displace other work that those designers would have done and he would have.

Commissioner Boissiere stated Colonel Diffley was anticipating his questions. He stated that Colonel Diffley stated his platter was filled. He asked, if he got a job in-house what was he going to do with it? Will you do it yourself?

Colonel Diffley stated something else slips.

Commissioner Boissiere stated earlier he asked Colonel Diffley about the performance of the Corps, and Colonel Diffley did not have enough projects available to memory at that time, but he wanted Colonel Diffley to address that issue later. He asked, what is the timing schedule of the Corps? How efficient are their operators?

Colonel Diffley stated there is no priority higher than the hurricane protection for New Orleans. He added, if you go down to a lower priority project that didn't have the sort of impact this one did, you may find some slippage. He stated it's very difficult to say there is no slipping, you'd expect that sort of thing, but that's why he was there at the meeting so the Board could fully understand the impact of a failed business relationship, but the necessity to get on with the business of things and he would stay

there as long as he needed to.

Commissioner Boissiere asked, if there were any goals for minority involvement to do the work?

Colonel Diffley stated there were minority, small business goals that the Corps had.

Commissioner Huey stated regarding the engineering firms the Board selected for the various segments of the project (with where the Board stood right then), the Corps requested the termination and cancellation of all of their contracts, and asked, where did the Board stand there?

Colonel Diffley stated his letter in February said the Corps was prepared to do it all through their office, either in-house or through their contractor (not having heard anything from the Board in order to get on with the project). He added, if the Board has entered into any contractual relationship to have impact on this, the Board should get back with the Corps. He stated he believed there is one that the Board's staff sent to the Corps, a particular project into which a relationship has been entered, and the Corps has already given the go ahead for that particular one. He stated what he really wanted to do was to sit down and figure how they were going to progress from that point, because the relationship the Corps and the Board established earlier had failed to produce the products he needed to produce. He added, it was very difficult to write a letter and have everyone understand everything perfectly, but the thing he wanted to do was to have done what was going on right then, and come to grips with the matter and get on with the business of discussing the proper relationship and the proper way to get on with the business of providing parallel protection, hurricane protection to the folks in New Orleans. He further added, that was what he wanted to come to grips with and if the Board wanted someone on its staff to go and sit down with the Corps, he

would be delighted, and that's what he wanted to come out of the January letter - to get on with looking at a way to develop a new parameter by which to get on with things. Colonel Diffley stated if the Board wanted to come in and say, okay, we have these sort of relationships, he would be willing to explore that with the Board openly and on good basis.

Commissioner Rodney stated to Colonel Diffley, he hoped he recognized the Special Board Meeting as being an effort to move on with the issue, because that was what it was all about - - an effort to deal with subject as the Board had to deal with it and to move on with the issue as quickly as possible. He stated that was the purpose of having a special meeting two days after having the regular meeting to try and get this matter resolved, before the schedule Colonel Diffley picked. He added, regardless of what the issues were, he wanted the Corps to recognize the Board was trying to move as fast as possible to deal with the issues.

Colonel Diffley stated he certainly appreciated that and he appreciated the position the Board is in, and again, that was his purpose for being present.

Commissioner Rodney stated it may be a more cumbersome process than being under command, but it was a process the Board had to go through.

Colonel Diffley stated yes, sir.

President Harvey expressed the Board was trying to come to grips with the problem, and it understood the urgency. He also expressed, he believed Colonel Diffley's letters were very clear, and this is a serious problem and it effects flood protection. After all, flood protection is the primary job of the Board. He asked, what were the deadlines for the Board because the Commissioners needed to know that. What deadlines did the Board have to meet so it

could address those problems and do it timely so flood protection could be provided?

Colonel Diffley stated the point at which he needed to get on with the issue was Monday, March 22, 1993. He added, at that point all facets of the project don't have to advance at the same time, but his suggestion was, if the Board could empower someone on it's staff to go in, so they could work out where they were going to go from that point, then they could start that process on Monday, March 22, 1993, and he would be willing to make himself available on the weekend (March 20 and March 21) if the Board wished to do that; because it was an emergency to come to grips with the issue. He suggested his staff sits down with the Board's staff and figure what needs to be done without delay, who would do it and those things that were farther down the stream, a different approach could be taken as to how they would deal with those. Colonel Diffley stated they must come to grips with the issue staff to staff, because he Corps couldn't continue the way they were going. Please send somebody in who could deal with them in that regard, and let's start sorting things out - - the sooner the better. He added if he didn't get that to deal with, he would have to go by his own plan, and he would start executing that on March 22, 1993; but the key feature in the issue was if there was information available, and plans that could help them progress the schedule, then when the two staffs sit down that information should be in front of them so they would know what the options were. He explained there was some work that had been done that was of value that would help them, instead of starting at one level, they actually would be starting at another level, and that was why in his latest correspondence to the Board he said, if the Board had that information, put it on the table because they couldn't develop a coherent plan without knowing the

information that was available; and apparently that wasn't at the Board's staff access, so they would have to come to grips without it.

President Harvey stated in Colonel Diffley's letter of February 18, 1993, in the last paragraph of page one, he requested the Levee Board as a second step to turn over all design work currently underway on the Orleans Avenue Outfall Canal. He asked, since the letter of February 18, 1993, had he received any of the plans he requested?

Colonel Diffley replied, no.

President Harvey asked, had he had any communication from the Board's consultant with regard to these plans?

Colonel Diffley stated the Board's consultant claimed to have had some plans of that nature he had available which were progressive designs, and he was delighted to hear that, but he needed to see the product in order to be able to take advantage of it and be able to evaluate it.

President Harvey asked Colonel Diffley, had he received the plans within the week of February 18, 1993, those plans he requested, how far advanced would the Corps' schedule be at the present time?

Colonel Diffley stated he would have to sit down and add a number of details. He added, what he really needed was somebody that could sit with him to work out how they were going to deal with the issue. He stated there were two things he needed, and he would like to plan and he would like somebody he could talk to from the Board's side, staff to staff figuring out how to progress from that point; because again, it's was back to working together to get on with the progress.

Commissioner Huey stated he was not sure if

Colonel Diffley was aware that the Board selected a new Chief Engineer, and he felt something that wasn't mentioned that was very important was that the Board's Engineering Department, since he came on board and was Chairman, had worked around the clock. He stated during that time the City ended up with a hurricane, a flooding situation and had been under staffed there, but the Board has selected a new Chief Engineer and he would be the point of contact from the engineering staff.

President Harvey asked Colonel Diffley, if there was anything else he wished to tell the Board of Commissioners.

Colonel Diffley replied, no.

Commissioner Rodney stated his previous questions were on his own behalf, but he was asked to ask Colonel Diffley a question on behalf of someone else. He stated he knew this was a secondary issue, but the urgency of flood protection for the City had been discussed. He stated one of the things he thought the City had come to grips with was the fact that this was going to be one of the largest construction projects of its type, or the largest construction project of this type in this city; and the Board met with Mr. Dan Judlin, with the U.S. Army Corps of Engineers, to try to work out the details to do some mitigation to have a public arts program in connection with this project and he just wanted to get on the record that the Corps was not opposed to public arts programs in connection with this project.

Colonel Diffley replied, that's correct.

Mr. Mike Johnson, Design Engineering, Inc. asked if he may ask the Colonel a few questions.

President Harvey stated he may come up and ask the Board questions.

Mr. Johnson stated the Colonel made statements

that were not correct and he felt it was important Colonel Diffley responded to the Press as he had already done.

President Harvey stated the meeting was not a debate.

Mr. Johnson stated Design Engineering, Inc. (DEI) was supposed to be able to present their version of the story.

President Harvey stated he would like DEI to present it to the Board.

Mr. Johnson stated it was important to point out that what Colonel Diffley said was inaccurate. He stated he was sure the Colonel didn't mind responding, because he felt what he said was accurate.

President Harvey asked Diffley if he had a problem responding to the questions of Mr. Johnson (DEI).

Colonel Diffley stated he came before the Board so it would have the information it needed. He stated the Board asked to sell the Corps of Engineers a service as a part of the partnership; he went into the Board's store, if you would, and he found the service lacking. He added, he's talking on behalf of the American taxpayers and the responsibilities with him and he was going to go shop under other conditions. He further added, just like any other shopper that decided to shop elsewhere - - there is a difference between a hostage and consumer. The Corps was a customer and the bottom line simply is: The Corps of Engineers is dissatisfied with the performance. If the Board needed further information from him, he would be available to speak with the Board.

President Harvey suggested to Mr. Johnson, if he wanted to lay out his dates, lay them out for the Board first.

Mr. Johnson stated he would, but he just wanted to point out a few things. First, he stated that Commissioner

Harris asked Colonel Diffley if there were any directives pertaining to the Corps providing services in lieu of private firms. He added, all of the Corps members present stated they were not aware of any directives of that sort. He stated DEI had extra copies and would be glad to give them to the Corps, but he was looking at a Department of the Army directive from (he believed) General Hatch, and he stated he was sure the Corps knew who General Hatch was.

President Harvey stated, "Mr. Johnson, I think that was quite unfair that he made a trial of the meeting." He added, if he wanted to present to the Board something he felt was important, please do, and he wanted the commissioners to hear it. Also, if he had a directive, pass it out to the Board, and they would look at it.

Mr. Johnson pointed out that directive clearly applied to that situation and what it stated, among other things was, "we should not submit proposals in response to requests which have been announced to U.S. firms" which is what this situation is. The Corps should know of this directive, the one dated October 29, 1991 and there was another one from the new commanding officer, he believed, General Authur, which reiterates the very same ideas. Secondly, DEI wanted to talk about what the letter was that was written January which the Colonel at various times said was not the first notice and at other times said it was the first notice of the problem. Mr. Johnson stated let's talk about the phases which were due by January, and he also wanted to point that even though Colonel Diffley's letter of January 15, 1993 said he had no plans, he actually had in his possession the plans for Phase I-A. He had those in his possession at that time.

President Harvey stated excuse me, Mr. Johnson, would you identify yourself for the cameras and for the record.

Mr. Johnson identified himself as Mike Johnson, Attorney for Design Engineering, Inc.

Mr. Johnson stated Phase I-A was in Colonel Diffley's possession at that time. Secondly, the only other phase that was due immediately -- well, there were two other phases that were due immediately thereafter, one was "II-B" and he pointed to that portion along the Orleans Canal extending from the levee on his drawing. He stated that in February, the second phase or the third phase, II-D was due and it was delivered on time, and the only two portions of this project which could be said to have been delayed were phase I-A and "II-B". He stated if the Board looked at the information that was provided by the Corps, you might think that was an accurate statement, but when you looked at it and compared it with other information prepared by the Corps, you would see: 1) the schedules the Corps prepared to show that Design Engineering, Inc. was late were inaccurate, based on inaccurate information, based on other Army Corps of Engineers documents, and 2) it showed that the delays were actually the fault of the Army Corps of Engineers. He stated he was not going to fault the Army Corps of Engineers entirely for some of the delays, because he thought some of them were important, and this is an important project that had to be done right.

Mr. Johnson stated before he went any further, he wanted to go back to a particular picture. (Presented visual aid) He stated the Colonel sent that letter in January pointing out that because I-A and "II-B" were late, he was giving up $5.5 million dollars, and he didn't explain what giving up meant. He added, the fact of the matter was that no money had been lost, nothing had been given up, and those particular projects were underway. In fact, I-A was bid in, the Corps said they were going to bid it in February, but he didn't think they bid it until March. He

further added, there was a delay of a month strictly attributable to the Corps, but the point of it was that project was underway, and there will be money spent on it during this fiscal year, he believed, so not only was that money not being given up as Colonel Diffley suggested, but the project was also underway. He stated Phase "II-B" is scheduled to be bid sometime in the not too distant future; it was set for March 12th, but the Corps did not bid and Design Engineering, Inc. didn't know why. He stated II-D was submitted on time in February, so he didn't know how it really related to this. He discussed the schedule that was prepared by the Army Corps of Engineers, and added to support their statements to the Levee Board, then Design Engineering was late. He added, before he did that, he wanted to refer the Board to a letter to Mr. Alan Francingues.

(Interruption by President Harvey. He stated one of the commissioners had a question).

Commissioner Rodney stated that Mr. Johnson, seemed to be approaching or explaining what happened by phases, because he explained what happened in Phase I-A and he explained what happened in Phase "II-B" and he was about to move on to II-D, but he had some questions he wanted to ask. He asked, are you saying that Phase I-A was delivered to the Corps on time?

Mr. Johnson replied, yes.

Commissioner Rodney asked, when was it delivered to them?

Mr. Johnson responded, June 26, 1992.

Commissioner Rodney asked Mr. Johnson if he was saying the design plans for Phase "II-B" were also delivered to the Corps on time?

Mr. Johnson replied, no, they were not.

Commissioner Rodney asked Mr. Johnson, why did he

say the "II-B" delivery date was not met, because of the Army Corps of Engineers?

Mr. Johnson stated he wanted to address that, but may he first address I-A, because it was very clear and simple.

Commissioner Rodney stated I-A as Mr. Johnson said was delivered on time, on June 26, 1992.

Mr. Johnson replied, yes. He stated he wanted to show the Levee Board again, and he asked the Board if they remembered a particular document (pointed to document). He stated the document was prepared by the Army Corps of Engineers, and was given to the Board back in January when the issue came up, the Corps produced it and said, "Look, this is where the consultant is late, they delayed this whole project".

Commissioner Rodney asked Mr. Johnson to identify the document and the date of it.

Mr. Johnson identified the document as, "The Orleans Outfall Canal - Phase I-A and it went on to show how Design Engineering, Inc. delayed that project.

Commissioner Rodney stated, Mr. Johnson, if in fact, it was his contention they were delivered on time, could they please move on to the other parts?

Mr. Johnson stated he would like to, but there were lies in the Colonel's arguments. He stated the Colonel stood before the Board and stated it was late, and he used that particular document to support it, in fact, the document was not accurate.

President Harvey asked Mr. Johnson, can the Board spend $12 million dollars in fiscal year '93?

Mr. Johnson replied, I believe you can.

President Harvey stated he didn't want to hear from him, he wanted to hear from the engineers the Board hired? He asked if the engineers from Design Engineering,

Inc. were present?

Mr. Johnson stated it was his impression that he would be able to present their position.

President Harvey stated he didn't find Mr. Johnson to be an engineer, and wanted to ask an engineer, could the Board spend $12 million dollars in fiscal year '93?

Mr. Johnson stated he believed the Board could spend $12 million dollars in fiscal year '93 if the Corps did the work.

President Harvey stated he did not want Mr. Johnson to believe, he wanted to have a consulting engineer that the Board paid money to, tell him what amount of money the Board was going to spend in fiscal year '93.

Mr. Johnson stated without further interference from the Corps, he was sure the Board could.

Commissioner Rodney stated it really didn't matter to him who the spokesperson was. All he wanted to say was, if Mr. Johnson's contention was that I-A was delivered on time, he may have other things he wanted to present, but that wasn't his question. His question was, if I-A was delivered on time, fine; what about "II-B" the delay Mr. Johnson stated was caused by the Corps of Engineers? What was the reason for the delay?

Mr. Johnson stated he still would like to point out that it was not his contention it was delivered on time, it was a fact it was delivered on time.

Commissioner Rodney stated for the sake of argument, accepting it as a fact (interrupted by Mr. Johnson).

Mr. Johnson stated he didn't want it to be for the sake of argument. He stated this is another document prepared by the Army Corps of Engineers, and he was sure they all recognized it to be the schedules that it maintained on each project it was overseeing. He added, I-A

was listed on that document, the Corps's document, and it correlated under column G, when the plans for I-A were due and it showed June 26, 1992.

Commissioner Rodney stated point of privilege, Mr. Johnson, I understand your urge to irrefutably rebut the fact that I-A was late. He stated he was giving Mr. Johnson the benefit of the doubt that he had the facts to support that, and he was trying to get through the hearing as quickly as possible and asked him to please move on to "II-B".

Mr. Johnson stated he would, but he just wanted to point out that despite the fact the Corps showed it was due on June 26, 1992, in their schedule that they gave to the Board to support 84 days of delay, they said it was due on April, 1992 which was not true, and they attribute 84 days of delay to Design Engineering for that simple fact.

President Harvey stated what was happening was he called a special meeting for the purpose of discussing and allowing him to make a presentation of all of his evidence versus the evidence that the Levee Board had. He added, Mr. Johnson showed up with his evidence, but he did not see any commissioners with evidence in front of them, and the Board was being subjected to Design Engineering's side of the story, without the Levee Board having the information so they could judge what was going on. He stated Mr. Johnson called it a "public lynching" when he was there before and now all of a sudden it was not a "public lynching".

Mr. Johnson stated he did not call it a "public lynching", one of the commissioners called it a "public lynching".

President Harvey stated well, one of your friends called it a "public lynching".

Commissioner Boissiere stated he called it a "public lynching" and told President Harvey he was not

giving Design Engineering a chance to present its side and he allowed the Colonel to present the Corps' side. He stated President Harvey let each commissioner ask questions in a timely fashion, but he kept interrupting Mr. Johnson.

President Harvey stated Commissioner Boissiere was out of order and he made a point the Commissioner Boissiere did not want the evidence presented at the last meeting, and now he was allowing it to be presented without the Board having the benefit of its engineers and their documents.

Commissioner Boissiere stated President Harvey was presiding this meeting in direct conflict (interrupted by President Harvey).

Commissioner Rodney interjected and stated he was only trying to move the meeting along. He stated he would like and the other commissioners would like Mr. Johnson to address the issues and he would like him to forego any detailed discussions of all of the different pieces of evidence he had to make his basic contention. He added, the Board had the Colonel and his staff there simply to ask them if they agreed or disagreed. One of the problems they were having as a Board was that the position of its consultants was so diametrically opposed to the position of the Corps, it was so different that they have difficulty determining who was right and who was wrong.

Mr. Johnson stated he understood that and he was supported by fact and the Board should ask for some facts to support those conclusions.

Commissioner Rodney stated he was, but he was asking Mr. Johnson to forego the detailed courtroom type of presentation that he was so typical of making.

Mr. Johnson stated that was the only possible way Design Engineering could demonstrate to the Board that what had been said by the Corps was simply untrue.

Commissioner Rodney stated he asked Mr. Johnson

not to cross-examine the Colonel, because he didn't think that was the proper time for cross-examination. He stated he understood Mr. Johnson's point about the detailed evidence, but could help the Board try to keep the meeting as short as possible.

Mr. Johnson stated he would go to Phase "II-B". He reminded the Board that there were only a couple of phases involved, so if they established that I-A and "II-B" really weren't delayed, they would have defeated the entire argument the Corps presented. He stated he had already shown the Board that I-A was delivered timely, and with respect to "II-B" there was a meeting on February 27, 1992, when for the first time the Corps presented their schedule to Design Engineering. Design Engineering objected to the schedule and said it was not appropriate and couldn't possibly be met. He added, there was also a discussion at that time that the date for the delivery of the plans to the Lower Mississippi Valley would be checked and the delivery date would have been May 15, 1992. Design Engineering delivered the plans April 30, 1992, two weeks early. He further added, at the same time there was a discussion that the Corps and the Levee Board along with everyone involved as to whether or not a test pile program should be conducted with those designs. Mr. Johnson stated there was an agreement that there should be, there was a plan and specification put together for the test pile program and it was initiated; and those were the relative dates that pertained to that test pile program because it was a very significant thing. He stated it was going to determine the types of piles to be used, how they would be inserted and various other things that relate very much to the design of the project.

Commissioner Rodney asked, how long did the test pile program take?

Mr. Johnson stated he did not know exactly what Commissioner Rodney meant by "how long did it take", but the piles were driven and in place by April 29th; all of the test piles were driven by April 29, 1992, the day before the plans and specifications were submitted. He further added, there had been an agreement by the Army Corps of Engineers that they would accept the raw data from Eustis to make their calculation and the raw data was submitted by Eustis to the Corps of Engineers on May 5, 1992. He stated on July 6th, there was a meeting that the Corps requested further information from Eustis and then on September 18th, the Corps finally approved piles that had originally been put into the design by Design Engineering, Inc. The Corps suggested using another kind of pile, which was more expensive, but the test pile program showed that Design Engineering's design was the one that should be implemented in that respect. He stated the important things to remember were that the plans and specifications had been submitted on April 30th, the Army Corps of Engineers didn't give their approval until September 18, 1992 and somehow this was all attributed to Design Engineering, but he didn't think any fair minded person would do that.

Commissioner Harris stated that she understood what Mr. Johnson was saying, and she didn't want her comments to sound defensive, she knew she was surrounded by lawyers and she would not pretend to know what the proper procedures would be. She expressed, she would prefer that Mr. Baudier indicate exactly what took place, and it would not appear there was a defense if he told the Board exactly what happened, he knew who he met with, he know what took place and he could explain to the Board what happened.

Commissioner Harris asked, am I out of order?

President Harvey replied, no, you're not out of order at all commissioner.

Commissioner Rodney stated he did not think it mattered who Mr. Baudier chose as his representative, that was up to Design Engineering, and what difference did it make who he asked to speak for him.

President Harvey asked if the Board would have the opportunity to question the engineers with Design Engineering.

Mr. Johnson stated he did not mind if the Board questioned them.

President Harvey stated not just for his sake, but for any commissioner's sake.

Commissioner Harris stated she just thought it would speed up things to have first-hand information, and the Board would not have to go back and question them, the Board would know exactly what went on, what took place and probably get on with things.

Mr. Walter Baudier, Design Engineering, Inc. stated he would be happy to answer any questions. He stated the significance of the test pile program was for the engineers who were really the essence of the job; the engineers couldn't have completed their design until the Corps of Engineers told them what piles would be lodged, how many piles would be required, the length of the piles, the type of piles and the place for the piles. He added, without that information, their engineers in their office simply couldn't complete the design and that was the simplest he could put it. It was the essence of the project, without an accrual of the essence of the project from the Corps of Engineers, there was no way their firm could possibly complete the plan, it was just impossible. The Corps of Engineers own schedule in February, 1992 that they produced required that this particular project, Phase "II-B" be bid on August 31, 1992. He further added, it was absolutely impossible for their firm and their engineers to

design a project and bid the project by August 31, 1992, when the Corps of Engineers failed to give their firm the needed information and approval to design the project and didn't come across with it until almost three weeks after the bid date. He stated it would then take them several months to finish the plan, but that the Corps of Engineers said, "Design Engineering delayed the project" and Design Engineering regards that as an absolute outrage.

President Harvey stated to Mr. Baudier that in November when Mr. Judlin appeared in the Board Room and indicated there was serious slippage in the dates, and that information was a matter of public record, he didn't hear Mr. Baudier say that there was serious slippage in the dates, he didn't hear him say that the test pile program had delayed him, he didn't hear him complain at that time the Corps had delayed him, and asked, could he explain to the Board why it did not get that information in a public meeting?

Mr. Baudier stated the reason why Design Engineering didn't say that was because the Corps of Engineers adjusted their schedule, they adjusted their schedule for their delays and as a result of that Design Engineering could meet the adjusted schedule, now the Corps came back to the Board and said because of their delays that they adjusted their schedule, they were now charging Design Engineering with their delays, and it is just an outrage. It's just an outrage.

President Harvey asked Mr. Baudier, why didn't he advise the Board of that?

Mr. Baudier stated because it wasn't a slippage, Mr. Harvey, it was an adjusted schedule. He explained, when they met on February 27, 1992, he advised Mr. Harvey, as a matter of fact, he wrote him a memorandum, he wrote Commissioner Huey a memorandum, and he also wrote a

memorandum to the file and to everyone else who attended the meeting on February 27th, that Design Engineering strenuously objected the schedule the Corps of Engineers was proposing because they knew and the Corps knew that that test pile program was going on at that time, Design Engineering knew and the Corps knew that those results from that particular test pile program wouldn't be forth coming until some time in July, or later, or actually April 29th.

Commissioner Huey stated maybe that answered his question as to why he wasn't informed as the Chairman of the Engineering Committee that there was no slippage also. He asked Mr. Baudier, if this was not also during the process (he thought) Senator Morial through Commissioner Rodney was concerned and he (Mr. Baudier) had to go and make a presentation to the community about the effect of vibration an so forth on the community.

Mr. Baudier stated, that was correct. He added, one of the serious things to take into account in that project was the multitude of homes. He stated they are concerned about risks, just as everyone else is concerned about risks; and they have a multitude of homes directly adjacent to this project. He added, their engineers were very concerned, as were the Corps of Engineers about liability. He asked, suppose they started driving the piles and the vibration damaged the houses, what would the Board do, what would be the Board's recourse? Would the Board come after Design Engineering because they failed and not diligent in their duties? Of course, not. He added, everybody wanted to do a test pile program to determine how best to place the piles for the benefit of this Board and the community, and he didn't see anything wrong with that or anything wrong with the Corps of Engineers' engineers and his engineers taking the time to make sure, make absolutely positive and sure that that test pile program and that

project didn't cause anybody any damage. He further added, even if it took them two months longer or three months longer to make their decision, so be it, so what if some bureaucrat in Washington, DC is aggravated with Design Engineering for whatever reason some schedule set for February 27, 1992, that Design Engineering objected to wasn't met. He stated they are more concerned about the safety and security of the people of the City of New Orleans and about whether or not they do any damage to anybody's homes than they are about some bureaucrat's schedule.

President Harvey stated to Mr. Baudier that he was present at that meeting in February at the Corps of Engineers with him. He stated he didn't hear him objecting, but he did hear him say that the spending of $12 million dollars was an aggressive schedule, and asked at what point in his coordination contract and his representations to the Board did he advise it that it could not spend the $12 million dollars? Why can't the Board spend it?

Mr. Baudier stated he advised the Board on February 27th, and added, actually he and President Harvey were not in the same meeting, he was in a meeting with the staff of the Corps of Engineers, and the meeting referred to wasn't exactly the same meeting he was referring to, but President Harvey was quite correct, because they did meet with the Colonel and he also advised President Harvey, he guessed it was about a week later that he wrote a memorandum. He stated subsequently in March when they met with Congressman Jefferson he provided President Harvey, Congressman Jefferson, Councilman Boissiere, and Mr. Huey with a document, a four page, loose-leaf binder of documents, and in those documents he wrote a memorandum and he told each of them that the expenditure of money on that project was contingent on about ten items, one of which was cooperation and approval by the Board and by the U.S. Army

Corps of Engineers, and if those things weren't met, they probably wouldn't be able to spend the money. He stated the other thing that he did at the same time was informed all of them that the schedule that was proposed by the Corps of Engineers simply was very difficult to be met, probably couldn't be met, but was absolutely contingent on a number of items, some of which were public responses, some of which were public input, a number of items, and if any of those items failed or caused the project to change in anyway shape or form, those funds wouldn't be spent.

President Harvey stated to Mr. Baudier that until he received a letter from the Colonel in January, he had no idea that Mr. Baudier didn't know he was behind schedule.

Mr. Baudier stated they were not behind schedule.

President Harvey asked if Mr. Baudier in one of his letters to him admitted that the plans delivered to the Corps were technically deficient, did you admit that one of the set of plans that you sent to the Corps was technically deficient?

Mr. Baudier replied, one of the set of plans they sent to the Corps of Engineers required a translation from Autocad to Microstation; in the computer translation there was a problem in the disc and after they got it back from the Corps of Engineers on January 5, they sent it back to them on January 12th (seven days) and he didn't regard that as being late. He added, Phase II-D the plans that Design Engineering turned on February 12th, that were due on February 16th, was another interim of delays by the Army Corps of Engineers. He stated the Army Corps of Engineers said they delayed Phase II-D. He asked, how did Design Engineering delay Phase II-D? and further added, he found that comment most interesting. He stated in the schedule the Army Corps of Engineers developed in February, it said they were supposed to submit the plans in July of 1992, and

they did and they submitted them on time in July, 1992. He further stated when they submitted those plans the Corps of Engineers asked them to put a concrete cap on wall that wasn't previously in the job. He added, when they put the concrete cap on the wall, it did take them two months, but it also advanced the project by three years, because that portion of the work wasn't due to Phase "3" in 1996, so they advanced the project by three years and the Corps stated they delayed the project, and that was not true. Mr. Baudier stated they gave them back the plans, they made the changes, the changes advanced the project by fours years, and he didn't understand how they can then be charged for the delay. He stated Colonel Diffley was correct and he himself didn't understand it, he didn't understand it all because what they really had was a series of delays caused by the Corps of Engineers that didn't have anything to do Design Engineering.

President Harvey asked who was present at the meetings, the monthly meetings with the Corps and the Board's staff? He added, Mr. Frank Mineo recently stated that there were comments at the monthly meetings that the schedule was slipping and there were new dates and you were aware of that and you were briefed to it, were present at those meetings?

Mr. Baudier stated on occasion, he was present. He stated on at the first monthly meeting when the Corps came out with that schedule, Design Engineering stated there was a possibility that schedule was impossible to make, that there was a good probability that it was impossible to make and the Corps told them that wasn't unusual, that it was an ordinary event and if there were good reasons for those changes that was no problem, and he had that in his minutes, his notes, and his memorandum all of which had been distributed to everybody. He added, he didn't understand

why a year later that very same statement made to him and his staff was now different - (If there was a good reason, then there is a change in the schedule). He further added, he thought a good reason was clearly the Corps of Engineers hadn't finished the analysis or the approval of the test pile program for that project, and that was a good reason for change, and it was a good reason for change when they added something to the project that significantly didn't delay, but increased the shortness of the length of time by fours. Mr. Baudier stated instead of delaying the project as it had been represented to him, he actually accelerated the project by four years, they were bringing flood protection home sooner.

President Harvey stated he realized there was a difference of opinion between Design Engineering and the Corps, and that was something the Board had to deal with. He stated he didn't know if the Board could do it, because it may take greater minds than sitting on the present Commission to determine who's right and who's wrong and he was sure the Board had several suggestions before it.

Mr. Johnson stated before they concluded, they intimated a couple of other items relating to those monthly meetings. He presented a letter that was sort of an outgrowth from one of the monthly meetings, and maybe it would explain why there was so much confusion as to whether there was an impression that Design Engineering was doing its job well. He stated the letter was from the Interim Chief Engineer of the Orleans Levee Board dated August 19th, and it was when the Corps indicated that Design Engineering was doing such a good job that the Levee Board could go out and hire other consultants. He stated the letter read:

"You stated that the Levee Board has accomplished the goal set forth in the schedules for the Orleans Avenue Canal Project and as per the Levee District's agreement with

your office the team effort set forth by President Robert Harvey, Commissioner Jim Huey, Mr. Walter Baudier of Design Engineering, Inc. and his staff, yourself and members of your staff and the Levee Board's Engineering Department has been exemplary". He stated, yet at these same meetings they were being told and comments were being made that the work was not up to par and there was slippage.

President Harvey asked what was the date of the letter.

Mr. Johnson replied, August 19, 1992 and the plans for I-A and "II-B" were already in the hands of the Corps of Engineers and the only thing going on at that time was Design Engineering waiting for the Corps of Engineers to make its decision on data that had been in his hands since June, that was the only thing that was taking place. He added, lastly, he heard Colonel Diffley say the Corps' staff was busy, they were going to have to move things around and change everything, because they really didn't want that work. He presented a letter dated November 8, 1991 when the change was made to parallel protection, and stated Colonel Diffley had a different position apparently at that time, because he announced in that letter that he was going to take over all of the design work and that wasn't his interpretation of the letter, but the letter read. "As parallel protection is now the project plan, we will do the design, we will use in-house forces and architect/engineering contractors selected by their procedures". Mr. Johnson added, the paragraph next to the last paragraph read, "There may be other items that need to be discussed between our staffs, but generally the design of the parallel protection will be a Corps of Engineers effort. We need to expedite any transfer of data or designs so we can take over the full design effort as soon as possible."

Mr. Johnson stated there were no other ways at

that point in time...(interrupted by President Harvey)

President Harvey asked, "Was that the letter in response to Mr. Maloney's request that the Corps take back the project?"

Mr. Johnson replied, no, that letter preceded Mr. Maloney's request.

President Harvey asked, did Mr. Maloney request as president of the Board to turn the project back over to the Corps?

Mr. Johnson responded, no, the letter President Harvey related to came after that letter and all he could say, even though he heard the Corps profess they were perplexed, they were busy and they didn't have a lot of people for those projects, he saw in 1991 they wanted to take over all of the designs without stating there was anything wrong with the engineering work and without stating there was any slippage.

Commissioner Rodney stated he wanted to ask Colonel Diffley if he wanted to answer any additional questions or wanted to respond to it, because he wasn't sure the Board presented the meeting that way and he didn't want to be unfair to him, if he wasn't prepared, but he wanted to ask him some questions about some of the points that were made.

Colonel Diffley stated he was there to help the Board sort the situation out. He stated regarding the pile driving tests, you have January '91 and you have the initial plans to review, and when they looked at those, the sort of piles that were called for in that particular design were the types that the Corps would not put in without a pile testing program. He stated they probably would not have done that particular design, but they said what they would do instead was run the pile tester on the promise of there being some economies in the process, that came by their

estimates, again, that sort of work should take nine months to do, but it took instead nine months to get started. So they had an initial review decision for the pile test in January of '91 and October '91 and they estimated at that point it would be about nine months for them to get through the process. He added, in October of '91, nine months later they initiated the pile test, the pile test evaluation was not complete until September of '92, 20 months later and that was the issue. He further added, a lot of those things that were referred to as being delivered to the Corps at a particular time, because of a poor quality product, you have to rework and then return for comments, which prolonged the delay. He added, it may be called a Corps delay, but in fact, it was a function of the product they received.

Commissioner Rodney stated to Colonel Diffley, he guessed he could see from the Corps' presentation and Design Engineering's presentation why a Board of non-engineers would be confused; and why there would be some difference of opinion as to what happened. He stated he hoped Colonel Diffley would put himself in the Board's position to understand what it was the Board viewed, everyday, point counter point, no concession in between at all, no exceptions that a portion of the delay was ours and a portion of the delay was theirs, it's either one is totally right or the other is totally right - - nothing in the middle. He stated Design Engineering stated Phase I-A was delivered to the Corps on June 26, 1992, therefore, it was not late and Colonel Diffley's letter seemed to intimate there were delays in that particular part of the project. He asked, can you help us with that?

Colonel Diffley stated II-B and II-D were the prime issues, one being delivered in June of '92 didn't strike him, and they made the decision in August of '92 to go ahead with that particular relationship they had, so he

would have expected some reasonable performance before that time, and most of the issues they were bringing out rose after that day.

Commissioner Rodney stated II-B -- he understood there were basically two contentions, one that the plans were given to the Corps in April of 1992 and in between that time there was a pile test that was done which was absolutely necessary in their opinion, then the results were given to the Corps and there was considerable delay on the part of the Corps of Engineers in responding to those results. He added, therefore, there was an unusual delay in the deliverance of II-B which was that little gap of about five or six blocks from the lake itself. He stated the Corps' contention, the test pile program was, in fact, considered to be important by the Corps of Engineers, but it took far too much time to complete. Do you know the reason why it took such a long time to do the test?

Colonel Diffley stated Commissioner Rodney would have to ask the consultant, he didn't know.

Commissioner Rodney stated in Colonel Diffley's opinion, that period of time in doing the test, was much too long, which then led to his satisfaction on the delivery of the plans for II-B.

Colonel Diffley replied, yes.

Commissioner Rodney stated Design Engineering's content was right before the period of time in which the Corps contended that he was beginning to become dissatisfied in November or so, that only a month or two before then, he was commending them for exemplary work that had been done on that particular project.

Colonel Diffley stated he was happy with the arrangement they made in August, and he couldn't have been happier with the performance, and after that he was very disappointed with the turn of events. He added, he was not

a lawyer, but he is a professional engineer and he knows what quality is and his staff knows what quality is and there were plenty of different benchmarks to prepare with and all the people that they deal with. He stated it was laid out there, they based it on the basis of timeliness, looked at functionality, was the item designed to produce, its constructability and all the other features you would consider in examining a design. He stated it was clear there was a failure to produce in that particular case, and he wasn't going to go digging as to what the reason was, because again, that wasn't an issue, and he didn't have to prove in court one way or another the capabilities of that particular program. All he knew was it didn't respond in a way that he knew and the Corps couldn't spend anymore money trying to correct it.

Commissioner Rodney stated he hoped it wasn't a foolish hope on the Board's part that if Colonel Diffley understood how the miscommunication occurred, and what was the reason for the delay, perhaps there may be a simpler resolution of the issue, if the reason for the delay was a misunderstanding as to the importance and as to the length of the test pile program; maybe there wasn't much of a problem. He added, but, if Colonel Diffley was dissatisfied with the plans that were submitted on II-B earlier before the test pile program was agreed to, then maybe there was a bigger problem. He asked, Colonel Diffley if he was dissatisfied with the preliminary plans sent to him in April of 1992.

Colonel Diffley stated the Corps had concerns with them, as a matter of fact, the products they were getting from them were things that generally took more comments, greater review, harder to bring up to the sort of standards they were used to, but up until that time, again, they worked out an arrangement where they could test that

capability and they entered into the arrangements that they made.

Commissioner Rodney stated, in other words, the Corps' dissatisfaction was not really based on any one particular thing, it was sort of an incremental thing, a whole list of little deficiencies that took a lot of the Corps' staff time.

Colonel Diffley stated quite a bit. Again, it cost the Federal taxpayer. He added, he was unwilling at that particular time to enter into or get back into that relationship.

Commissioner Rodney asked, with Design Engineering, Inc.?

Colonel Diffley replied, correct. He stated they examined the reasons, but it was so far out of the realm that the Corps is accustomed to operating in terms of timeliness, responsiveness and quality as they measure it of a professional product; that he could not in good conscience put the American taxpayer into a position where they have to nurse that along. He added, the Corps gave it a good test, and he was happy with the decision made back then, it was a fair decision; but it failed. He further added, how the Board works out, evaluates and access things with the people it comes in contact with, is its business and the Board has much to consider in that regard, but the Corps business was whether to continue or not continue with the particular relationship they established.

Commissioner Rodney asked, if there was anything Colonel Diffley heard at the meeting, as to the explanations for the actual calendar the Board had, whether it was perceived as a delay or justifiable reevaluation, there was nothing that he heard that day that would in any way change his decision not to work with the Levee Board's consultant on that particular project.

Colonel Diffley stated that was correct and there was nothing he heard that day that would encourage him to get back into the relationship and he was certain he would get no direction from his higher headquarters encouraging him to go against his better judgment.

Commissioner Rodney replied, thank you.

President Harvey stated he had a recommendation at that point the Board was wasting time going point by point. He added, the Corps made its statements that the plans were delayed and some of them technically deficient. He added, Design Engineering made its position that the plans were timely and technically good, and President Harvey stated Commissioner Ramelli had a recommendation.

Commissioner Ramelli stated the Board had not read a resolution or a motion at that point, the Board just opened up a meeting and didn't know where it was. Could the Board have the resolution or the motion read?

Mr. Baudier stated he wanted to respond to Colonel Diffley's remarks in regard to federal taxpayers versus local taxpayers. He stated the Board had to understand the significance of federal taxpayers versus local taxpayers, and it would understand why Colonel Diffley was worried about what the federal taxpayers do. He added, when the Corps of Engineers embarked on the project, it was a very significant portion of work, the significant portion of the work throughout the course of the whole city. He further added, what was very important about the work was that the Corps of Engineers did not want to do parallel protection; the Corps of Engineers, in fact, wanted to build a dam across the mouth of the Orleans Canal and London Outfall Canal at the expense of the local taxpayers versus the expense of the federal taxpayers. He stated what was very significant for the Orleans Levee Board was that Commissioner Lambert Boissiere, and unfortunately,

Commissioner Dickhaus and Medo, who are no longer here, and others embarked upon requiring with Design Engineering's assistance the U.S. Army Corps of Engineers build parallel protection. He asked, how significant is parallel protection to this city? Mr. Baudier stated if they would have agreed with the Corps of Engineers original plan, which was to build a dam across the mouth of the Orleans Canal, it would cost the taxpayers of the City of New Orleans a substantial amount of money. In fact, what it would have cost the City of New Orleans, this Orleans Levee Board would have spent $31 million dollars on frontal protection plans that the Corps of Engineers wanted to do. He stated, instead of the Corps of Engineers paying 70 percent of the cost of the project, they would pay 16 1/2 percent of the cost of the project and instead of the Levee Board paying 30 percent of the cost of the project, they would pay 83 1/2 percent of the project.

Commissioner Ramelli asked what did that have to do with what was being discussed?

Mr. Baudier stated it had something very significant to do with the discussion, it was extremely significant because Design Engineering changed that and their firm opposed the U.S. Army Corps of Engineers, they believed their opposition to the frontal protection plan contributed very much to the problems they were currently having with the Corps of Engineers, they believed that firmly because they watched them all the way, for the Board and for the citizens.

President Harvey stated you are saying "we", who is "we"?

Mr. Johnson stated Mr. Feingerts was engaged by the Board; as an attorney, they were engaged as a project coordinators, the economist and the civil engineers to tell the Board why it was economically significant and physically

important to the Board. He added, as a matter of fact, what happened to the Board was that instead of paying $31 million dollars, it was now paying $11.5 million dollars for the very same work and the Board saved over $20.5 million dollars on the Orleans Canal alone, on the London Avenue Canal the Board saved between $50 and $40 million dollars, a significant amount of money. He further added, what else was very significant to the Board was the Board was able to take that money and pay off a lot of debts it had. The Board took that money and moved $3 million dollars from its SLIP fund and paid the debt service of South Shore Harbor, that was a very significant thing to the Board. He added, the Board now possessed $76
million dollars in its SLIP fund to complete the project and the Army Corps of Engineers wrote the Board in December and said, "Mr. Harvey is loaning me $13 million dollars more with the combined credit to pay the entire cost of the project." Mr. Baudier stated had they not done that, had they not fought for the Board, had they not gone out of their way and put their reputation on the line, the Board would be in debt. He added, the significance was as soon as the parallel protection plan became a reality on August 17, 1991, the Colonel - U.S. Army Corps of Engineers wrote the Board a letter in November and said, "Gentlemen, now we are going to take over the project and we are going to design the project, and we don't want Design Engineering anymore, and we don't want Burke-Kleinpeter anymore, we want to do it ourselves."

President Harvey stated the Board paid Walter Baudier close to $11 million dollars as a consulting engineer.

Mr. Baudier stated the Board had paid him 1 1/2 percent of the project cost to be the Project Coordinator. He stated when the Board makes $20 million dollars it has

made $20 million on one project and $40 million dollars on another project.

President Harvey asked Mr. Baudier if he complied with the February 18th letter and turned over all of the work that he currently had underway on the Orleans Outfall Canal?

Mr. Baudier stated he never received the February 18th letter from Mr. Harvey or from the Board of Commissioners.

Mr. Johnson asked, who was the letter directed to?

Mr. Baudier stated he received a request from Mr. Mineo at 5:24 p.m. on March 15th, after his office had closed to turn over all the plans by the meeting time at 3:00 on March 17th, he gave him eight hours to turn over all the plans. Mr. Baudier stated he saw the letter, but he did not get any directive from Mr. Harvey, and the Board didn't have the courtesy to send the letter to him.

President Harvey stated, "I'm sorry we are wrong in everything, Mr. Baudier."

Mr. Ramelli stated he wanted to have the agenda motion read, not the entire resolution.

Secretary Lansden read Motion No. S1-031993: To approve the finding that Design Engineering, Inc., has failed to comply with the provisions and failed to perform their responsibilities under their contracts to prepare design plans and specifications on a timely schedule causing delays which jeopardize the lives and property of the citizens of New Orleans, and has been paid over $9 million dollars in approximately an eight year period for which the Orleans Levee District has received inadequate engineering services, and that based upon said finding and other for other causes as may be appropriate, the Board does hereby terminate immediately all contracts with Design Engineering, Inc., and authorizes the President, Director and General

Counsel to take any action as may be necessary to carry out the above."

Mr. McGinity asked, whose resolution was that?

Secretary Lansden replied, President Harvey's.

Commissioner Ramelli stated that was just the motion, if the Board wanted to have the entire resolution read, the Secretary would do it.

Vice President Harris stated she wanted to offer a substitute resolution.

Commissioner Ramelli stated he wanted to second that and asked the Board to go into executive session.

Commissioner Boissiere stated the substitute motion should be read before the Board went into Executive session, because the public needed to know what the Board would be debating in executive session.

Vice President Harris stated she would like the Board to go into executive session before the substitute motion was read.

Commissioner Ramelli seconded.

President Harvey asked all in favor of the Board going into executive session.

Commissioner Rodney stated the law required the Board to give a statement as to why it was going into executive session.

Mr. McGinity stated, for the record, the executive session was because the Board was going to discuss the professional competency of Mr. Baudier. Mr. McGinity stated he discussed it with Mr. Baudier's lawyer, Mr. Mike Johnson, who agreed they would prefer that it be done in executive session and waived any further notice other than that to go into executive session. He added, in addition, the Board had been served with notice pending litigation in the event of certain action by the Board, however, the professional competency was sufficient reason to go into executive

session with the person's agreement.

President Harvey called for a vote to go into executive session. The vote to go into executive session was as follows: Commissioners Harris, Boissiere, Huey, Ramelli, Rodney and Saizan voting yea, and Commissioner Sackett voting nay.

The Board reconvened at 9:20 p.m. with all Commissioners present.

Mr. McGinity stated in executive session the Panel thereby discussed the professional competency, pro and con, and no vote was taken; the executive session was over and the Board was calling to order the regular session.

President Harvey stated the Board had a motion before it and a second.

Commissioner Rodney stated he would like to offer a substitute motion.

President Harvey asked Secretary Lansden to read the substitute motion.

Secretary Lansden read the substitute motion for S1-031993 - Commissioner Rodney.

WHEREAS, the Board has entered into certain contracts with Design Engineering, Inc. for flood protection and capital improvements and the coordination thereof, and

WHEREAS, circumstances now prevail which dictate the termination of certain of these contracts, and

WHEREAS, in order to provide the consulting engineer with fair compensation for work done, it is considered that these actions and/or procedures are to be followed:

A. A Big Six financial firm to be retained to audit completely all work invoices and payments and claims for those contracts to be terminated.

B. Delivery of all drawings and information on design of the Orleans Avenue outfall canal not later than

Monday, March 22, 1993.

C. Delivery of all work done and claimed within 15 days.

D. Resolution of staff's interpretation of projects and cost coordinated.

E. Consultant will be paid $20,000 per month until audit is complete for credit.

F. Consultant retains all contracts other than those listed herein.

G. Final payment to be that determined from the audit in an amount equaling the audit figure plus 15 percent up to the total maximum $2.5 million dollars.

WHEREAS, contracts which are to be terminated are:

A. Coordination Contracts

B. Orleans Avenue Canal Contracts

C. Highway 90/11 Road Raising Contract

D. Citrus Lakefront Encroachments

E. All Lakefront Levee Crossing Except Canal Boulevard

F. Contract for professional services for South Shore Harbor Phase I, Phase II, Hurricane Protection and Capital Improvement Projects

G. Field Yard Administration Operations Building

H. New Orleans Lakefront Airport Retaining Wall

BE IT THEREFORE RESOLVED, that the Board of Commissioners hereby approve termination of the contracts with Design Engineering, Inc. as listed above and all provisions provided herein.

BE IT FURTHER RESOLVED, that the President, Director, Chief Engineer and General Counsel are hereby authorized to take any and all actions required to implement the above.

Commissioner Boissiere seconded the substitute

motion.

Commissioner Rodney stated for a point of clarification, the motion was his motion. He added, he believed that the South Shore Harbor I and II were not to be included in the contracts for which Design Engineering was terminated, so if he were submitting that motion, he was submitting it with the elimination of South Shore Harbor I and II from the listing of the contracts to be terminated; and that was in fact, his motion.

Secretary Lansden stated for a point of clarification, Commissioner, that was an all inclusive contract which contained hurricane protection and control, that was a consultant contract, not a design contract. He added, it was a contract that provided that the consultant will review proposals and limitations, or other actions considered by the Board for all projects contained within South Shore Harbor Phase I and South Shore Harbor Phase II, hurricane protection and consolidation.

Commissioner Rodney stated he understood what it was, but it wasn't his motion to include it. He added, if somebody wanted to offer an amendment to that, that was fine; but his motion did not include it and he wanted the record to be clear that his motion did not include it.

Commissioner Ramelli stated, basically Commissioner, you want to remove South Shore Harbor Phase I and Phase II?

Commissioner Rodney replied, yes, Mr. Ramelli; that was the changes he wanted to make.

Vice President Harris asked if Mr. Rodney had a second on the motion?

Commissioner Ramelli stated he was trying to get a clarification. He stated the flood protection part could be kept into it, Mr. Rodney was just eliminating the South

Shore Harbor I and II?

Commissioner Rodney replied, right. He added, he was just eliminating the consulting agreement as to South Shore Harbor I and II and he understood that was considered part of the Board's flood protection system and he didn't have any problems with that. He further added, it was not a project in which Mr. Baudier was involved directly with the Corps of Engineers, which was also part of the Board's understanding; so to be absolutely clear, the motion as read by Secretary Lansden was his motion with the exception that South Shore Harbor I and II was not included in the list.

Commissioner Ramelli stated from what he understood, that was a coordination contract in itself. He asked Mr. Rodney if it was his intent to leave a coordination contract pending?

Commissioner Rodney replied, no, that was not my intent.

Commissioner Ramelli stated that is what the contract consists of.

Commissioner Rodney stated his intent was to leave onto - - as all of these projects that are listed are covered in part by the coordination contract, his intent as it was to all of them was to exclude that portion of it which allowed him to be the consulting engineer of South Shore Harbor I and II.

Commissioner Ramelli stated that was the catch-all contract that Design Engineering had with the Board, that contract covered everything that was left out of the original coordination contract.

Commissioner Rodney responded, okay; then you should offer an amendment, Mr. Ramelli.

Commissioner Ramelli replied, okay; and stated he offered an amendment to the motion . . . (interrupted by Commissioner Boissiere).

Commissioner Boissiere stated please, before an amendment is offered, he was trying to get clarification on or part of the clarification he had in mind was that South Shore Harbor I and II, South Shore Boulevard and Lakeshore Drive would also not be included in the scope of that resolution.

President Harvey stated that Lakeshore Drive and South Shore Harbor Boulevard were actually the only two the Board eliminated.

Commissioner Boissiere stated, well, the Board just discussed South Shore Harbor I and II as alternates and not being a part of it.

President Harvey stated that wasn't part of the resolution, but the Board was going to get an amendment to it.

Commissioner Boissiere asked, what was the problem with I and II? You're saying I and II (interrupted by Commissioner Ramelli).

Commissioner Ramelli stated the actual contract that the Board had was a catch-all contract which covered anything that was missed in the original coordination contract - - is caught in South Shore Harbor Phase I and Phase II Coordination Contract. So basically, if the Board didn't eliminate that, it had done absolutely nothing.

Commissioner Boissiere asked if the Corps of Engineers was involved with I and II?

Commissioner Ramelli replied, yes, sir; because it was flood protection and the actual contract to do South Shore Harbor Phase I and Phase II, he had no problem with, but that contract he did have a problem with because it was strictly a coordination contract.

Commissioner Boissiere asked, are you saying you are going to rewrite a contract for South Shore I and II?

Commissioner Ramelli stated if that was the

pleasure of the Board, it could do it, but the Board had to terminate that contract.

Commissioner Boissiere stated well, that resolution would have to cover a lot of things. He added, you're saying you would rewrite a contract for South Shore I and II which include work other than coordination on all other projects?

Commissioner Ramelli stated he had no problem with doing that.

Commissioner Boissiere commented, he would have to hear the reading of that amendment.

Commissioner Ramelli stated his amendment to Mr. Rodney's amendment would be to bring back in the existing contracts for South Shore Harbor Phase I and II flood protection and capital improvement projects, correct Baylor?

Secretary Lansden replied, right.

Commissioner Ramelli stated if the Board wanted to add to his amendment to reissue a contract for construction and engineering for South Shore Harbor Phase II - - he asked Mr. Jerome Pepper if he had Phase I.

Mr. Pepper responded, yes.

Commissioner Ramelli stated Phase II he had no problems with, but to keep that contract in the Board had done absolutely nothing at the special board meeting on March 19, 1993.

Commissioner Rodney stated he did not agree that the Board had done absolutely nothing. He stated he felt his motion was clear and it was stated the way in which he wanted it. He added, he thought what the Board had done was terminated the services of Design Engineering from the Orleans Canal, and that was absolutely clear; and that was something. He added, the Board had terminated the services of Design Engineering in all aspects of his coordination projects.

Commissioner Ramelli responded, no, sir; you haven't.

Commissioner Rodney stated he disagreed with Commissioner Ramelli on that.

Commissioner Ramelli asked if the Board could hear from Counsel, (Mr. McGinity) he was the one who should know. He asked Mr. McGinity what was his opinion on that?

Commissioner Rodney stated any provisions that were contained in the South Shore Harbor Phase I and II plan which tied into the original coordination contract, that was not his intention. He explained, his intention was to allow Design Engineering to complete the job that they had done in terms of coordinating the new development that we are having on South Shore Harbor for Phase I and II. Now, if Mr. Ramelli could state that in another way, then they may not have a disagreement. He further added, if Mr. Ramelli was saying to him, that tied the Board back to the original coordination contract, he agreed with him and he did not wish to do that.

Commissioner Ramelli stated that was what the Board was doing if it didn't terminate that contract.

Commissioner Rodney stated he thought that was Mr. Ramelli's opinion.

Commissioner Boissiere asked, shouldn't the auditor also have some say as to what was in I and II subject to the motion? He asked, are we hiring an engineer or accounting firm to review this?

Commissioner Ramelli stated the Board previously voided that contract out at one point, and asked did it buy it out again?

President Harvey stated we are buying this contract . . . (several interruptions).

Commissioner Ramelli stated he understood, but that was being eliminated out of the agreement.

Commissioner Boissiere stated, but there was another thing that was accepted from, right?

Commissioner Ramelli stated what he was saying was the Board needed to terminate the contract for South Shore Harbor Phase I, Phase II hurricane protection and capital improvements projects. He added, if the Board wanted to give him a contract to do South Shore Harbor Phase II, that was a different contract all together, but that contract was the one that had to do with flood protection - it was a catch-all contract that covered anything that was missing. He added, the original overview contract was caught in that contract, so nothing had been eliminated and if the Board wanted to give him (Mr. Baudier) a contract back for South Shore Phase II, he would agree. " We'll give him a contract to continue to work on South Shore Harbor Phase II."

President Harvey stated he thought the Board had purchased that contract and stated the Board paid, if he remembered correctly, $346,000 for work done and to terminate that contract in the year 1993 or 1994.

Commissioner Huey stated it was the year 1995.

President Harvey stated that was for Phase II, the Board paid for that. He added, what the Board was doing was taking and giving him back the contract it bought out, because the Board paid for what was already existing. He further added, all the Board had to do was take it out in the resolution and leave it out.

Commissioner Boissiere asked, wasn't that subject to an audit?

Commissioner Ramelli asked, if the Board wanted to remove it from that agreement, or leave it in the agreement, and if the Board was right, it was right, and the auditors would bring it out. He added, do not remove it from the

agreement, leave it in the agreement and if the auditors say the Board hadn't paid him for it, it would pay him for the contract.

President Harvey stated he believed he had an agreement, the Board paid $346 some odd thousand dollars to get rid of that contract.

Commissioner Huey stated, no, not to get rid of it.

President Harvey replied, yes, we did.

Commissioner Huey stated it terminates in 1995, he was in the meeting and he thought General Counsel was in the meeting also.

President Harvey asked, what was he paid for?

Commissioner Huey stated the equalization of it, what was owed him and it was agreed that the timing was in there, that it would not be terminated until 1995.

President Harvey stated the Board didn't need that to take it out of the agreement, it was already existing in the agreement it had.

Commissioner Huey stated, "I tell you, you're nagging on a previous agreement the Board made, which is done every time on this Board."

Commissioner Boissiere stated he seconded Mr. Rodney's motion as he so corrected it.

Commissioner Rodney requested an amendment be added that stated "This does not include any matters as to South Shore Harbor I and II that were previously settled with the Board."

Commissioner Boissiere stated let's get the first amendment straight, the first motion cleared up what Commissioner Rodney had on the floor.

Commissioner Rodney stated he thought it was clear. He added it was clear that the motion . . .

(interrupted by Commissioner Boissiere).

Commissioner Boissiere stated all contracts except South Shore Harbor I and II, South Shore Boulevard and Lakeshore Drive.

Commissioner Rodney stated as was read by Secretary Lansden.

Commissioner Boissiere stated the Board knew why he was saying that, because sometimes the tape skips certain things that he says, so he was going to say it again to see how many times the tape would skip that night.

Commissioner Rodney asked, do you want to say it one more time?

Commissioner Boissiere stated he would say it one more time. "All contracts except those identified as South Shore Harbor I and II, South Shore Boulevard and Lakeshore Drive."

President Harvey stated the amendment was on the table.

Commissioner Rodney replied, yes, sir.

Commissioner Ramelli asked if that included the contract that the Board already paid for.

Commissioner Rodney responded, no. He stated that was the amendment that would be offered by the President to clarify the situation.

Commissioner Ramelli stated he was offering an amendment to Mr. Rodney's amendment that said the Board added the contract from South Shore Harbor Phase I and Phase II that had previously been paid and settled by the Board to the original agreement to terminate. He asked if he had a second.

Commissioner Sackett stated he would second it, "but let's get it on the floor so the Board could discuss it." He commented, "as a point of information, had the other amendment been accepted?"

President Harvey stated it had been seconded, but there was a substitute amendment.

Commissioner Sackett stated he didn't know if the Board could substitute an amendment. He knew about a substitute motion, but he didn't know if you could substitute an amendment.

Commissioner Boissiere asked, can a substitute motion be amended, Mr. Parliamentary?

Commissioner Sackett stated he was going to ask the Parliamentary three questions as a point of information. One was, he understood a substitute motion took precedence over an existing motion and that there was an amendment on the floor to a substitute motion which was treated as a regular motion once it had become entered. Had that amendment been passed?

Commissioner Rodney replied, no.

Commissioner Sackett asked if the Board could amend an amendment before it was passed? He stated he didn't think so, he thought the amendment had to be passed first, then the Board could amend the motion again. He further stated he didn't think the Board could amend an amendment.

Mr. McGinity stated the amendment was in addition to the amendment and that it wasn't trying to substitute an amendment. He asked, is that correct?

Commissioner Sackett stated it was a different originator and a different second, sir.

Commissioner Boissiere stated Commissioner Rodney's was a substitute amendment.

Commissioner Sackett asked if it was part of the amendment Commissioner Rodney offered?

Commissioner Boissiere explained, the first motion was read before the Board went into executive session. The

Board went into executive session and came out - Commissioner Rodney offered a substitute motion to the one that had been read and it had been properly seconded. He added, there was an amendment hoping to be made to amend the substitute motion. He asked if an amendment could be introduced to a substitute motion that had not been voted on.

Commissioner Sackett stated he heard a number of amendments come up.

Mr. McGinity stated that was the second amendment.

Commissioner Boissiere stated Commissioner Rodney is amending the language, and he understood.

Mr. McGinity stated the Board had an amendment on the floor and had an amendment to add onto the amendment.

Commissioner Boissiere suggested Commissioner Rodney withdraw the first substitute motion and read the new substitute motion.

Commissioner Rodney stated he would, although he didn't think that was necessary. He stated all he was trying to do was to clarify his motion as read, he was not offering an amendment to the motion, he was attempting to clarify and he thought he asked for a point of clarification and asked Secretary Lansden to read his amendment then as he the mover was clarifying.

Mr. McGinity stated the Commissioner stated the substitute motion as read contained an error that he was correcting, and the Board only had a substitute motion on the floor, less removing the error which he had the right to do since it was his motion to begin with.

Commissioner Rodney replied, right.

Mr. McGinity stated he believed that was item J or E that was removed from the substitute motion.

Secretary Lansden stated item F - - For professional services for South Shore Harbor Phase I and II

hurricane protection and capital improvements.

Mr. McGinity stated it would stand as the correction to the substitute motion read.

Commissioner Sackett stated point of personal privilege by him. In order to avoid future conflicts, he recommended the Board look for a second for that motion, right then, and proceed.

Mr. McGinity stated the Board had a second to the substitute motion as corrected.

Mr. Sackett responded, let's reconfirm that with the correction, who was the second?

Commissioner Rodney stated Commissioner Boissiere was the second.

Commissioner Sackett asked Commissioner Boissiere if he would reconfirm the second with that change?

Commissioner Boissiere stated he didn't hear the change.

Commissioner Huey stated the original change.

President Harvey stated the original change dropping "F".

Commissioner Ramelli stated dropping the South Shore Harbor statement.

Mr. McGinity stated the second was to the substitute motion as corrected.

Commissioner Ramelli stated reconfirm your second with the correction so there is no objection to the meeting down the road.

Mr. McGinity stated the motion that had been seconded was open for motions.

Commissioner Ramelli stated he wanted to place a substitute amendment to that motion to read - - What is it going to read again, Richard? I forgot. It would read that South Shore Harbor Contract Phase I, Phase II, hurricane flood protection and capital improvement projects that had

already been agreed upon, is settled and paid for will go back into the termination - - that contract be terminated.

Commissioner Sackett stated he would second that so that amendment could get on the floor for discussion.

Commissioner Rodney commented, "for discussion". He stated to Mr. Ramelli, the Board could have an amendment that accomplished his goal, but he thought the language that he was using there was overbroad. He added, if he simply wanted to eliminate from consideration those portions of the South Shore Harbor I and II covered by the agreement, which had already been resolved, then why didn't he simply say that; as opposed to saying "Now let's eliminate all of I and II, because he thought everybody present was clear that there was work remaining under the South Shore Harbor I and II contract.

Mr. McGinity stated the intent of Commissioner Ramelli's amendment was to delete from South Shore Harbor Phase I and Phase II any provisions pertaining to hurricane flood protection and capital improvement projects which were included in the contract of November 18, 1987, so let everything involving South Shore Harbor Phase I and II remain, but delete the hurricane flood protection and capital improvement projects, subject to prior agreement.

Commissioner Boissiere asked, why did it have to be included in that motion if it had already been addressed?

President Harvey stated it had not been addressed, exactly, he just deleted the hurricane flood protection, what the Board was dealing with - - (South Shore Harbor Phase I and II subject to previous agreement) that answered all of the questions.

Commissioner Boissiere asked, why did it have to come at that time?

President Harvey stated the Board was clarifying it, just to make sure everyone understood what the Board was

voting on.

Commissioner Boissiere stated it had not been clarified and he was going to vote against it.

Secretary Lansden stated to President Harvey it may be helpful to read part of the contract, it was a separate and distinct contract and it had nothing to do with the coordination of South Shore Harbor Phase I and II as the Board had known in the past or what was going on before construction.

Commissioner Boissiere asked, did it have anything to do with the Corps of Engineers?

Secretary Lansden stated it had to do with hurricane flood protection.

Commissioner Boissiere asked, did it have anything to do with the Corps of Engineers?

Secretary Lansden stated it could very well be.

Commissioner Boissiere asked did it have anything to do . . . (interrupted by Secretary Lansden).

Secretary Lansden replied, yes, it did.

Commissioner Boissiere stated that was what he wanted to hear, just tell him, don't tell him other things that Secretary Lansden wanted to tell him, just tell him what he asked.

Secretary Lansden asked, do you want me to read it?

President Harvey asked Commissioner Boissiere, do you want the contract read? He stated to Secretary Lansden why don't you read the part that you refer to.

Secretary Lansden read as follows: "This will be therefore resolved that Design Engineering shall be engaged on a continuing basis for the conclusion of South Shore Harbor Phase I and Phase II and the hurricane flood protection and capital improvement projects to review and

make recommendation to the Board pursuant to adopted policies of the Board stated September 24, 1986 Resolution and in a letter reported August 28, 1986 by Design Engineering at, thereto to consult or review and recommend on the following progress schedules showing anticipated completion dates, proposed progress of construction, proposed cash flow or drawn out schedule relative to project costs, current progress and sources and uses of funds, recommendations relative to any alterations, any conceptual design necessary to complete the anticipated construction of the project that varies from the originally employed plan used as a basis for the estimated project cost and/or revenues, statements regarding the U.S. Army Corps of Engineers for the Louisiana Lake Pontchartrain and Vicinity Hurricane Protection Project permit that may be effected by the proposed construction of the information. Consultant may deem it necessary to assist the Board during the decision-making process (and it goes on stated Secretary Lansden).

Commissioner Boissiere stated that motion was more detailed than the motion the Board was dealing with that effected the work with the Corps. He added, it raised his antennas as to what the Board was really trying to do, because the problem it was facing at that time was to resolve the question between the Corps of Engineers and Design Engineering. He further added, Colonel Diffley came before the Board and he demonstrated his concerns, and they were trying to resolved his concerns. Commissioner Boissiere stated the Board was stretching Colonel Diffley's concerns into other matters that the Board had, but the other matters had nothing to do with the Corps of Engineers except the terminating of South Shore Harbor I and II projects. That was not what the Corps complained about. He said, "I think you have now extended what we were trying to

do in good faith into other areas this Board had questions on. He suggested the members vote against that amendment."

Commissioner Ramelli asked Mr. McGinity, in his opinion, what did the contract cover, basically?

Mr. McGinity stated he didn't know because the contract had never been engaged. He stated the discussion the Board had at length about the contract during the settlement negotiations that it was engaged in.

Commissioner Rodney stated, Mr. McGinity, you can stop there if you don't know. He added, let me tell you what I think the problem is. He said, "The problem is when we went, we've been meeting - - it's 10:45 and Colonel Diffley came here and talked to us. We talked to our consultant engineers. We have given all due respect and accepted in essence the position of the Corps of Engineers with regard to flood protection. We have discussed the performance of the engineer on that for hours on end. We had not made any determination that the work that the engineer has done for the Levee Board has been anything less than exactly what we asked for, so that is why we are not removing the engineer until that determination is made or could be made. Now, when that determination is made that he has not performed up to our standards, on our work, then we will deal with that then. Today, we are dealing with what the Corps of Engineers' complaint was, and what it was that our review of his actions in executive session revealed to us."

Commissioner Harris stated she would like to call the question on Commissioner Rodney's amendment.

Mr. McGinity stated it was Commissioner Ramelli's amendment.

Commissioner Rodney stated, Commissioner Ramelli, I ask you to withdraw your amendment or let's vote on it.

Commissioner Harris stated let's vote on it.

Commissioner Ramelli stated he was going to lose, so he might as well withdraw it.

Commissioner Rodney responded, thank you very much.

Commissioner Ramelli asked, will Commissioner Sackett withdraw his second?

Commissioner Sackett stated if Commissioner Ramelli withdrew it, he would withdraw the second.

Commissioner Boissiere called for the question on Commissioner Rodney's amendment.

Commissioner Sackett stated he would have liked some discussion on the motion.

Commissioner Boissiere asked, what are the rules on that, because he called for the question.

Mr. McGinity stated they voted on the objection.

Commissioner Boissiere stated he called the question and there was an objection.

Mr. McGinity stated that required a vote.

Commissioner Boissiere stated he withdrew his question.

Commissioner Sackett replied, thank you.

President Harvey offered a substitute to Commissioner Rodney's substitute resolution and that was to say that item F that was removed from his resolution would be subject to any agreements the Board entered prior to this date (March 19, 1993) with Design Engineering, Inc. He asked, if he had a second on that.

Commissioner Sackett seconded.

President Harvey stated the Board previously entered into a settlement agreement with Design Engineering, Inc. on that contract with South Shore Harbor I and II, and what he was saying was that resolution made those two subject to that agreement, it didn't single it out and in some way reinstate the Board's position before it made the

settlement. He asked if the Board members understood.

Commissioner Boissiere responded, no, and he didn't understand why it had to come up at that time.

President Harvey stated because the Board might be reaffirming a contract it had already paid $350 thousand dollars to do away with.

Commissioner Huey stated leave it as it was.

President Harvey stated subject to whatever the agreement was, the Board was reaffirming that agreement and it wasn't effected by (interrupted by Commissioner Huey and Vice President Harris).

Vice President Harris called the question on the amendment.

President Harvey asked, all in favor of the amendment to the substitute resolution signify by saying "aye".

The vote was as follows: Commissioners Ramelli, Rodney and Sackett voting yea, and Commissioners Harris, Boissiere, Huey and Saizan voting nay.

Commissioner Rodney stated let's go the substitute.

Vice President Harris stated the amendment had failed.

President Harvey stated the Board had a second and discussion on the resolution.

Commissioner Sackett stated he knew there were people out there who may have been a little confused by the process. He added, he wanted to clear it up for them, the motion the Board was about to vote on meant that it would be voting to keep an engineering firm that the Corps had told it was unacceptable to them, and that was unacceptable to him.

Commissioner Rodney stated Commissioner Sackett could do that later, if he had a problem with the vote.

President Harvey stated Commissioner Sackett had a right to the floor, and he understood Commissioner Sackett's position.

Commissioner Sackett stated if the Board was going to terminate for a job poorly done, it should terminate and not pay a 15 percent bonus for Mr. Baudier's work up to $2.5 million dollars. He added, he felt the Board should terminate the contract completely and let the Courts decide what was owed (interrupted by Commissioner Rodney).

Commissioner Rodney stated Commissioner Sackett's recommendation was a cheap shot.

Commissioner Sackett stated the cheap shot was to ask him to vote to terminate a man and pay him 15 percent on top (interrupted by President Harvey).

President Harvey asked other Board members to allow Commissioner Sackett to finish his comments.

Commissioner Sackett stated he was going to vote against the [amendment] (sic) [motion], not because he didn't want to terminate Mr. Baudier's company, but because he didn't want to pay 15 percent extra for his work that the Board deemed he had not yet completed.

Commissioner Rodney stated since the Board's fellow commissioner who was in executive session was chosen to try to make all other commissioners look as if they had done something that was somehow unsavory. He stated he wanted to say to the public, the Board terminated Mr. Baudier's services on work that was done on the outfall London Avenue Canal and Orleans Canal as was complained of by the Corps of Engineers and the Board spent much of its time discussing that. However, it was also determined, not only by the Board's staff, but by others, there was work for which Mr. Baudier is entitled for payment. He added, to that extent and for future payment for which he may have been entitled for his contract, the Board has attempted to

reach a reasonable settlement. He stated as to the issue of other work that Mr. Baudier had done in connection with the Levee Board, much of which is evident to the public everyday, there had not been the allegation that his work does not meet the requirements of the Levee Board. He added, there was nothing presented to the fellow Board members to indicate that all of his contracts with the Levee Board should have been terminated and the Corps has stated unequivocally it does not wish to work with Design Engineering. He expressed, it's the Board's position that they don't have to, because the Board deferred to its Federal Government partners in order to expedite flood protection, and that really was the basis for the Board's decision as he understood it.

Commissioner Harris stated she agreed completely with Commissioner Rodney, that the Board should negotiate and only make decisions on facts.

President Harvey stated it was very clear that the Board members were criticizing Commissioner Sackett for making a stand. He added, Commissioner Rodney made a very generous statement saying, "This is a compromise, it didn't mean that everybody agreed, and the Board thought out the situation for hours". He further added, the Board was sitting and praising and he didn't feel that was fair to everyone as maybe he and Mr. Sackett do not agree with every point. He stated Commissioner Rodney made the statement and he felt the Board should accept that.

President Harvey called for the vote on the substitute resolution offered by Commissioner Rodney.

The vote was as follows: Commissioners Harris, Boissiere, Huey, Ramelli, Rodney, and Saizan voting yea and Commissioner Sackett voting nay.

MOTION: S1-031993

RESOLUTION: S1-031993

BY: Commissioner Roy J. Rodney, Jr.

SECONDED BY: Commissioner Lambert C. Boissiere

March 19, 1993

R E S O L U T I O N

WHEREAS, the Board entered into certain contracts with Design Engineering, Inc. (D.E.I.), for flood protection and capital improvements and the coordination thereof, and

WHEREAS, circumstances now prevail which dictate the termination of certain of these contracts, and

WHEREAS, in order to provide the consulting engineer, D.E.I., with fair compensation for work done, it is considered that these additional actions/procedures should be followed:

1. A Big Six financial firm be retained to audit completely all work, invoices, payments and claims as may be necessary to determine equitable compensation for work done on those contracts terminated herewith.
2. Delivery of all drawings and information on design of the Orleans Avenue Outfall Canal not later than Monday, March 22, 1993.
3. Delivery within 15 days of all work done for which D.E.I. has been paid or expects to be paid.
4. Resolution of staff and consultant differences of interpretation as to project definition and other matters, based upon the aforesaid audit.

5. D.E.I. to be paid $20,000 per month until the audit is complete, the total paid to be credited to the Board and deducted from any amount determined by audit to be due Design Engineering, Inc.

6. D.E.I. retains all contracts other than those listed hereinbelow.

7. Final payment to be that determined from the audit in an amount equalling the audited figure plus 15% up to a total maximum of $2.5 million, less any credits as provided herein.

WHEREAS, the contracts which are terminated are:

A. Coordination Contract(s)

B. Orleans Avenue Canal

C. Highway 90/11 Road Raising

D. Citrus Lakefront Encroachments

E. All Lakefront Levee Crossings except Canal Boulevard

F. Engineering Agreement for Professional Services for South Shore Harbor Phase I and Phase II and the Hurricane Flood Protection and Capital Improvement Projects of November 18, 1987, less and except that part that provides for coordination services through the conclusion of South Shore Harbor Phase I and Phase II.

G. Field Yard Administration and Operations Building

H. New Orleans Lakefront Airport Retaining Wall

BE IT HEREBY RESOLVED, That in accordance with the prevailing circumstances, the Board of Commissioners does hereby terminate the above listed contracts with Design Engineering, Inc.

BE IT FURTHER RESOLVED, That the President and/or the Director, the Chief Engineer and the General Counsel are hereby authorized to take any and all action required to implement the above.

AYES: Commissioners Harris, Boissiere, Huey, Ramelli, Rodney and Saizan

NAYS: Commissioner Sackett

ABSENT: None

RESOLUTION ADOPTED: Yes

B. To terminate all existing contracts with the firm of Design Engineering, Inc., for cause.

C. To proceed with the advertisement for the Rail Street Levee crossing project, which includes a temporary road to allow for entrance to Rail Street, and that the President and/or Acting Chief Engineer be authorized to sign any and all documents to carry out the above.

D. To increase the project funding for artistic treatment for the London Avenue Canal High Level Plan to $36,450, and to authorize the President and/or Acting Chief Engineer to sign any and all documents to accomplish the above.

E. To authorize Design Consortium to proceed with final plans and specifications for the streetscape of Lakeshore Drive in accordance with their status schedule and that funding for this project be authorized from SLIP funds with a construction budget of $1,900,000, and that the President and/or Acting Chief Engineer be authorized to sign any and all documents to carry out the above.

F. To increase the cost for the rebuilding of Lakeshore Drive Phase I-A from $1,700,000 to $2,140,000 to provide for 276 additional parking spaces, funding to be obtained from SLIP funds, and that the President and/or Acting Chief Engineer be authorized to sign any and all documents to carry out the above.

G. To accept the present plans and specifications for the road construction of South Shore Harbor Boulevard as completion of the final design phase of the design contract; to engage a consultant to design a roadway and to prepare plans and specifications to construct a roadway to meet the needs of a gaming boat within the required time frames; and to authorize the President, Chairman of the Engineering Committee, OLB Director and Acting Chief Engineer to select the consultant and that the President and/or Acting Chief Engineer be authorized to sign any and all documents to accomplish the above.

President Harvey stated there were some other matters on the agenda. He moved to defer his motion to the next regularly scheduled Board meeting.

Commissioner Rodney stated he moved to defer all of his motions to the next regular scheduled Board meeting.

II. ADJOURNMENT:

There were no further discussions, nor was there anyone who wished to bring any more business before the Board; therefore, the meeting was adjourned at 9:55 p.m.

Respectfully submitted,

H. B. LANSDEN
SECRETARY

I, H. B. Lansden, Secretary of the Board of Commissioners of the Orleans Levee District do hereby certify that the foregoing is a true and correct copy of the minutes of the Special Board meeting of March 19, 1993.

H. B. LANSDEN, SECRETARY

originate McGinity
xc: Harvey
Glenda
3/30/93 3:11 pm
VLB

Board of Commissioners
Orleans Levee Board

OFFICE MEMO

March 30, 1993

TO: Richard McGinity
General Counsel

FROM: H. B. Lansden
OLB Director

Enclosed is the verbatim draft of that portion of the Special Board meeting held March 19, 1993, which relates to the resolution passed and discussion concerning it.

I have further indicated some notes which we recommend as changes to the resolution.

H. B. Lansden
Orleans Levee Board Director

HBL:vlb

Enclosure

xc: Robert G. Harvey, Sr.
President

3/30/93

VERBATIM DRAFT

DRAFT

Notes from Special Board Meeting
Friday, March 19, 1993

Mr. McGinity - In executive session we discussed the professional competency, pro and con, no vote was taken and the executive session is now over and we call to order the regular session.

Pres. Harvey - we have a motion before us and a second.

Com. Rodney - I would like to offer a substitute motion, Mr. President.

Pres. Harvey - Will the secretary read the substitute motion?

Mr. Lansden - This is substitute document for S1-031993 - Commissioner Rodney.

WHEREAS, the Board has entered into certain contracts with Design Engineering, Inc. for flood protection and capital improvements and the coordination thereof, and

WHEREAS, circumstances now prevail which dictate the termination of certain of these contracts, and

WHEREAS, in order to provide the consulting engineer with fair compensation for work done, it is considered that these actions and/or procedures are to be followed:

A. A Big Six Financial Firm to be retained to audit completely all work invoices and payments and claims for those contracts to be terminated.

B. Delivery of all drawings and information on design of the Orleans Avenue outfall canal not later than Monday, March 22, 1993.

C. Delivery of all work done and claim within 15 days.

D. Resolution - staff's interpretation of projects ...

E. Consultant will be paid $20,000 per month until audit is complete for credit.

F. Consultant retains all contracts other than those listed herein.

G. Final payment to be that determined from the audit in an amount he . . . figured plus 15 percent up to the total maximum $2.5 million dollars.

WHEREAS, contracts which are to be terminated are:

A. Coordination Contracts
B. Orleans Avenue Canal Contracts
C. Highway 9011 Road Raising Contract
D. Citrus Lakefront Encroachments
E. All Lakefront Levee Crossing Except Canal Boulevard
F. Contract for professional services for South Shore Harbor Phase I, Phase II, Hurricane Protection and Capital Improvement Projects.
G. Field yard Administration Operations Building
H. New Orleans Lakefront Airport retaining wall

BE IT THEREFORE RESOLVED, that the Board of Commissioners hereby approve termination of the contracts for Design Engineering, Inc. as listed above and all provisions provided herein.

BE IT FURTHER RESOLVED, that the President, Director, Chief Engineer and General Counsel are hereby authorized to take any and all actions required to implement the above.

Com. Boissiere - Second.

Com. Rodney - A point of clarification, this is my motion. I believe that the South Shore Harbor I and II was not to be included in the contracts for which Design Engineering was terminated, so that if I am submitting this motion, I am submitting it with that change in it, with the elimination of South Shore Harbor I and II from the listing of the contracts to be terminated. That is, in fact, my motion.

Mr. Lansden - Point of clarification Commissioner, that is an all inclusive contract which contains hurricane protection and control, that is a consultant contract, not a design contract. It is a contract that provides that the consultant will review proposals and limitations, other actions considered by the Board for all projects contained within South Shore Harbor Phase I and South Shore Harbor Phase II, hurricane protection and ~~consolidation.~~ leave in ??

Com. Rodney - Mr. Lansden, I understand what it is. It's not my motion to include it. Now if somebody wants to offer an amendment to that, that's fine; but my motion does not include it and I want the record to be clear that my motion doesn't include it.

Com. Ramelli - Basically Commissioner, you want to remove South Shore Harbor Phase I and Phase II?

Com. Rodney - Yes, Mr. Ramelli. That's the only changes that I'm making.

Com. Harris - Did you get a second on this?

Com. Ramelli - I'm trying to get clarification. The flood protection part we can keep into it, we're just eliminating the South Shore Harbor I and II?

Com. Rodney - Right, just eliminating the consulting agreement as to South Shore Harbor I and II. I understand that is considered part of our flood protection system and I don't have any problems with that. It's not a project in which Mr. Baudier's involved directly with the Corps of Engineers which was also part of our understanding. So to be absolutely clear, the motion as read by Mr. Lansden is my motion with the exception that South Shore Harbor I and II is not included in the list.

Com. Ramelli - From what I understand about that, that itself is a coordination contract in itself. Is that your intent to leave a coordination contract still pending?

Com. Rodney - No, that's not my intent.

Com. Ramelli - That is what that contract consists of.

Com. Rodney - Well, my intent was to leave onto - - as all of these projects that are listed are covered in part by the coordination contract, my intent as it is to all of them is to exclude that portion of it which allows him to be the consulting engineer of South Shore Harbor I and II.

Com. Ramelli - That's the catch-all contract that Design Engineering has with the Board, that catches everything that was left out of the original coordination contract, Commissioner.

Com. Rodney - Okay. Well then, you should offer an amendment Mr. Ramelli.

Com. Ramelli - Okay. I offer an amendment to the motion ... (interrupted by Com. Boissiere)

Com. Boissiere - Please, before you offer an amendment, I was trying to get clarification on or part of the clarification I had in mind that South Shore Harbor I and II - South Shore Boulevard and Lakeshore Drive would also not be included in the scope of this resolution?

Pres. Harvey - Lakeshore Drive, South Shore Harbor Boulevard, those are actually the only two we eliminated.

Com. Boissiere - Well just now we discussed South Shore Harbor I and II as alternates and not being a part of it.

Pres. Harvey - Well that wasn't part of the resolution, but we are going to get an amendment to it.

Com. Boissiere - Now what is the problem with I and II? You're saying I and II (interrupted by Com. Ramelli).

Com. Ramelli - The actual contract that we have now is a catch-all contract which covers anything that is missed in the original coordination contract is caught in South Shore Harbor Phase I and Phase II Coordination Contract. So basically, if you don't eliminate that, you've done absolutely nothing.

Com. Boissiere - The Corps of Engineers is involved with I and II?

Com. Ramelli - Yes, sir; because it is flood protection. The actual contract to do South Shore Harbor Phase I and Phase II, I have no problem with, but this contract I do have a problem with because it is strictly a coordination contract.

Com. Boissiere - Are you saying you are going to rewrite a contract for South Shore I and II?

Com. Ramelli - If that's the pleasure of the Board we can do that, but we have to terminate this contract.

Com. Boissiere - Well, hey, this resolution is going to have to cover a lot of things. You're saying you would rewrite a contract for South Shore I and II which include work other than coordination on all other projects?

Com. Ramelli - I have no problem with doing that.

Com. Boissiere - Then I have to hear the reading of that amendment.

Com. Ramelli - My amendment to Mr. Rodney's amendment would be to bring back in the existing contracts for South Shore Harbor Phase I and II flood protection and capital improvement projects, correct Baylor?

Mr. Lansden - Right.

Com. Ramelli - Then if you want to add to my amendment to reissue a contract for construction and engineering for South Shore Harbor Phase II, I believe, because Pepper you have Phase I don't you?

Mr. Pepper - Yes.

Com. Ramelli - So Phase II, I have no problems with that, but to keep this contract in we have done absolutely nothing here tonight, gentlemen.

Com. Rodney - Well, I don't agree that we have done absolutely nothing. I think that you know my motion is clear and it's stated the way in which I wanted it. I think that what we have done is that we have terminated the services of Design Engineering from the Orleans Canal, and that's absolutely clear. That's something. We have terminated the services of Design Engineering in all aspects of his coordination projects.

Com. Ramelli - No, sir; you haven't.

Com. Rodney - Well I disagree with you on that. I disagree with you.

Com. Ramelli - Can we hear from Counsel, he's the one who should know. Counsel, what's your opinion on that?

Com. Rodney - Anything -- provisions that are contained in the South Shore Harbor Phase I and II plan which ties into the original coordination contract, that is not my intention, Mr. Ramelli. My intention is to allow Design Engineering to complete the job that they have done in terms of coordinating our new development that we are having on South Shore Harbor for Phase I and II. Now, if you can state that in another way, then we might not have a disagreement. If you're saying to me, Mr. Ramelli, that this ties us back into the original coordination contract, I agree with you I do not wish to do that.

Com. Ramelli - Well that's what we are doing if we don't terminate this contract.

Com. Rodney - I think that's your opinion.

Com. Boissiere - Shouldn't the auditor also have some say as to what's in I and II subject to the motion? Are we hiring an engineer or accounting firm to review this?

Com. Ramelli - We also previously voided this contract out at one point. Did we buy it out again?

Pres. Harvey - We are buying this contract . . . (several interruptions)

Com. Ramelli - I understand, but this is being eliminated out of the agreement.

Com. Boissiere - But you have another thing that you accepted that from, right?

Com. Ramelli - What I'm saying is we need to terminate the contract for South Shore Harbor Phase I, Phase II hurricane protection and capital improvements projects. If you want to give him a contract to do South Shore Harbor Phase II, that's a different contract all together, but this contract is the one that had to do with flood protection, it is a catch-all contract that covers anything that was missing. The original overview contract is caught in this contract. So you haven't eliminated anything. If ya'll were to give him a contract back for South Shore Phase II, I'd agree. We'll give him a contract to continue to work on South Shore Harbor Phase II.

Pres. Harvey - Commissioner, I think we should purchase that contract. We paid, if I remember correctly, $100 to 346,000 for work done and to terminate that contract in the year 1993 or 1994.

Com. Huey - 1995.

Pres. Harvey - And that was for Phase II. We paid for that. Now what we are doing is we are taking and giving him back the contract that we bought out. We paid for what is existing already. All we have to do is take it out in this resolution and leave it out.

Com. Boissiere - Isn't that subject to an audit?

Com. Ramelli - Ya'll want to remove it from this agreement, we want to leave it in the agreement and if we're right, we're right, the auditors will bring it out. Don't remove it from the agreement. Leave it in the agreement and if the auditors say we haven't paid him for it we will pay him for the contract.

Pres. Harvey - I believe we have an agreement, we paid $346 some odd thousand dollars to get rid of that contract.

Com. Huey - No, not to get rid of it.

Pres. Harvey - Yes, we did.

Com. Huey - 1995 it terminates. I was in the meeting and I think the Counsel was in the meeting.

Pres. Harvey - What did you pay him for?

Com. Huey - The equalization of it, what was owed him and it was agreed that the timing was in there that it would not be terminated until '95.

Pres. Harvey - We don't need this to take it out of agreement, it's already existing in the agreement that we have.

Com. Huey - I tell you, you're nagging on a previous agreement we made, which is done everytime on this Board.

Com. Boissiere - I second Mr. Rodney's motion as he so corrected it.

Com. Rodney - Add an amendment that states that this does not include any matters as to South Shore Harbor I and II previously settled with the Board.

Com. Boissiere - Let's get the first amendment straight, the first motion cleared up that Rodney has on the floor.

Com. Rodney - I think it's clear Councilman. I think it's clear that the motion . . . (interrupted by Com. Boissiere)

Com. Boissiere - All contracts except South Shore Harbor I and II, South Shore Boulevard and Lakeshore Drive.

Com. Rodney - As was read by Mr. Lansden.

Com. Boissiere - You know why I'm saying this - because sometimes the tape skips certain things that I say, so I'm going to say it again to see how many the tape will skip tonight.

Com. Rodney - Do you want to say it one more time?

Com. Boissiere - I'll say one more time. All contracts except those identified as South Shore Harbor I and II, South Shore Boulevard and Lakeshore Drive.

Pres. Harvey - That's the amendment that's on the table?

Com. Rodney - Yes, sir.

Com. Ramelli - Is that including the contract that we have paid for already?

Com. Rodney - No. This is the amendment that will be offered by the President to clarify the situation.

Com. Ramelli - Now, I offer an amendment to your amendment that says that we add the contract from South Shore Harbor Phase I and Phase II that have previously been paid and settled by the Board to the original agreement to terminate. Do I have a second?

Com. Sackett - Sure, I'll second it. Let's get it on the floor so we can discuss it. Has the other amendment been accepted, point of information?

Pres. Harvey - It's been seconded, but we have a substitute amendment.

Com. Sackett - I don't know if you can a substitute amendment. I know about a substitute motion. But, I don't know if you can substitute an amendment.

Com. Boissiere - Can you amend a substitute motion, Mr. Parliamentary?

Com. Sackett - Well, I was going to ask the Parliamentary three questions as a point of information. One is that I understand a substitute motion takes precedence over an existing motion and that there is an amendment on the floor to a substitute motion which is treated as a regular motion once it has become entered. Has that amendment yet been passed?

Com. Rodney - No.

Com. Sackett - Can we amend an amendment before it is passed?. I don't think so sir. I think you have to pass the amendment first, then you can amend the motion again. I don't think you can amend an amendment.

Mr. McGinity - The amendment was in addition to the amendment. It wasn't trying to substitute an amendment, is that correct?

Com. Sackett - It was a different originator and a different . . . sir.

Com. Boissiere - Rodney's was a substitute amendment. The first motion was read before we went into executive session. We went in executive and we came out - Mr. Rodney offered a substitute motion to the one that had been read. It has been properly seconded. There is an amendment hoping to be made to amend the substitute motion. Can an amendment be introduced to a substitute motion that has not been voted on?

Com. Sackett - Well, I'm hearing a number of amendments come up.

Mr. McGinity - This is the second amendment.

Com. Boissiere - Commissioner Rodney is amending the language, I understand now.

Mr. McGinity - So we got an amendment on the floor and we have an amendment to add on to the amendment.

Com. Boissiere - Might I suggest Mr. Rodney, will you withdraw the first substitute motion and read the new substitute motion.

Com. Boissiere - I will Mr. Boissiere, although I don't think that's necessary. All I was trying to do was to clarify my motion as read. I was not offering an amendment to the motion, I was attempting to clarify and I think I asked for a point of clarification and asked Mr. Lansden to read my amendment now as I the mover was clarifying.

Mr. McGinity - Then the commissioner had stated that the substitute motion as read contained an error that he was correcting. Now we have only a substitute motion on the floor, less removing the error which he has the right to do since it is his motion to begin with.

Com. Rodney - Correct.

Mr. McGinity - I believe that was item J or E that was removed from the substitute motion.

Mr. Lansden - Item F - For professional services for South Shore Harbor Phase I and II hurricane protection and capital improvements.

Mr. McGinity - Stands as the correction to the substitute motion read.

Com. Sackett - Point of personal privilege by me. In order to avoid future conflicts, may I recommend that we look for a second for this motion now and proceed.

Mr. McGinity - We have a second to the substitute motion as corrected.

Com. Sackett - Let's reconfirm that with the correction. Who is the second?

Com. Rodney - Boissiere is the second.

Com. Sackett - Lambert will you reconfirm the second with this change?

Com. Boissiere - I didn't hear the change, I'm sorry.

Com. Huey - The original change.

Pres. Harvey - The original change of dropping "F".

Com. Ramelli - Dropping the South Shore Harbor statement.

Mr. McGinity - The second is to the substitute motion as corrected.

Com. Ramelli - Reconfirm your second with the correction so there is no objection to the meeting down the road.

Mr. McGinity - The motion that has been seconded is now open for motions.

Com. Ramelli - I would like to place a substitute amendment to that motion to read - What is it going to read again, Richard? I forgot now. That the South Shore Harbor Contract Phase I, Phase II hurricane flood protection and capital improvement projects that has already been agreed upon, is settled and paid for will go back into the termination - that contract be terminated.

Com. Sackett - I will second that so that that amendment can get on the floor for discussion.

Com. Rodney - For discussion - I think Mr. Ramelli we can have an amendment that accomplishes your goal, but I think the language that you're using here is overbroad. If you simply want to eliminate from consideration those portions of the South Shore Harbor I and II covered by the agreement which has already been resolved, then why don't you simply say that; as opposed to saying "Now let's eliminate all of I and II, because I think everybody here is clear that there is work remaining under the South Shore Harbor I and II contract.

Mr. McGinity - Commissioner Ramelli, the intent of Commissioner Ramelli's amendment was to delete from the South Shore Harbor Phase I and Phase II any provisions pertaining to hurricane flood protection and capital improvement projects which was included in the contract of November 18, 1987, so let everything involving South Shore Harbor Phase I and II remain, but delete the hurricane flood protection and capital improvement projects, subject to prior agreement.

Com. Boissiere - Why does it have to be included in this motion if it has already been addressed?

Pres. Harvey - It's not exactly what's been addressed, he just deleted the hurricane flood protection, what we're dealing with -- (South Shore Harbor Phase I and II subject to previous agreement) that answers all of the questions.

Com. Boissiere - Why does it have to come up at this time?

Pres. Harvey - Well, we're clarifying it, just to make sure everyone understands what we're voting on.

Com. Boissiere - I'm not that clarified and I'm going to vote against it --- I vote against it.

Mr. Lansden - Mr. President, it may be helpful to read part of that contract -- this is a separate and distinct contract, it has nothing to do with the coordination of South Shore Harbor Phase I and II as we have known in the past or what was going on before construction.

Com. Boissiere - Does it have anything to do with the Corps of Engineers?

Mr. Lansden - It has to do with hurricane flood protection ...

Com. Boissiere - Does it have anything to do with the Corps of Engineers?

Mr. Lansden - It could very well be.

Com. Boissiere - Does it have anything to do . . .

Mr. Lansden - Yes, it does.

Com. Boissiere - That's what I want to hear, just tell me, don't tell me other things that you want to tell me - tell me what I ask you.

Mr. Lansden - Do you want me to read it?

Mr. Harvey - Do you want the contract read? Why don't you read the part that you refer to.

Mr. Lansden - This will be therefore resolved Design Engineering shall be engaged on a continuing basis for the conclusion of South Shore Harbor Phase I and Phase II and the hurricane flood protection and capital improvement projects to review and make recommendation to the Board pursuant to adopted policies of the Board stated September 24, 1986 Resolution and in a letter . . . August 28, 1986 by Design Engineering . . . to consult or review and recommend on the following progress schedules showing anticipated completion dates, proposed progress of construction proposed cash flow or drawn out schedule relative to

project cost, current progress and source of . . . funds recommendation results of any alterations, any conceptual design necessary to complete the anticipated . . . project that varies on the originally employed plan used as a basis for the estimated project cost and/or revenues statements regarding the U.S. Army Corps of Engineers for the Louisiana Lake Pontchartrain and Vicinity Hurricane Protectio Project permit that may be effected by teh proposed construction of the . . . consultant may deem it necessary to assist the Board during the decision-making process . . .

Com. Boissiere - That motion is more detailed than the motion we are dealing with that effects the work with the Corps. It raises my antennas as to what you are really trying to do. The problem we are facing today, was to resolve the question between the Corps of Engineers and Design Engineering. The Corps has been up here, we have asked the Colonel to come, he has demonstrated his concerns. You are now stretching his concerns into other matters that this Board has . . . but has nothing to do with the Corps of Engineers except the terminating of South Shore Harbor I and II projects. That's not what the Corps was up here complaining about. I think you have now extended what we were trying to do in good faith into other areas this Board has questions on. I suggest the members vote against that amendment.

Mr. Ramelli - Mr. McGinity, in your opinion, what is this contract...

Mr. McGinity - Well, I don't know because the contract has never been engaged with this discussion we have had at length about the settlement negotiations that we are engaged in.

Com. Rodney - Mr. McGinity, you can stop there if you don't know. Let me tell you what I think the problem is. The problem is when we went, we've been meeting -- it's 10:45 and Colonel Diffley came here and talked to us. We talked to our consultant engineers. We have given all due respect and accepted in essence the position of the Corps of Engineers with regard to flood protection. We have discussed the performance of the engineer on that for hours on end. We had not made any determination that the work that the engineer has done for the Levee Board has been anything less than exactly what we asked for, so that is why we are not removing the engineer until that determination is made or could be made. Now, when that determination is made that he has not performed up to our standards, on our work, then we will deal with that then. Today we

are dealing with what it was that the Corps of Engineers' complaint was and what it was that our review of his actions in executive session revealed to us.

Com. Harris - I would like to call for the question on Commissioner Rodney's amendment.

Mr. McGinity - It's Commissioner Ramelli's amendment.

Com. Rodney - Commissioner Ramelli, I ask you to withdraw your amendment or let's vote on it.

Com. Harris - Let's vote on it.

Com. Ramelli - I'm going to lose, I might as well withdraw it.

Com. Rodney - Thank you very much.

Com. Ramelli - Will Sackett withdraw his second.

Com. Sackett - If Ramelli withdraws it, I will withdraw the second.

Com. Boissiere - Call for the question on Commissioner Rodney's amendment.

Com. Sackett - I would like some discussion please on the motion.

Com. Boissiere - What are the rules on that, I have called for the question.

MOTION:

RESOLUTION:

BY:

SECONDED BY:

March 19, 1993

R E S O L U T I O N

WHEREAS, the Board entered into certain contracts with Design Engineering, Inc. (D.E.I.), for flood protection and capital improvements and the coordination thereof, and

WHEREAS, circumstances now prevail which dictate the termination of certain of these contracts, and

WHEREAS, in order to provide the consulting engineer, D.E.I., with fair compensation for work done, it is considered that these additional actions/procedures should be followed:

1. A Big Six financial firm be retained to audit completely all work, invoices, payments and claims as may be necessary to determine equitable compensation for work done on those contracts terminated herewith.
2. Delivery of all drawings and information on design of the Orleans Avenue Outfall Canal not later than Monday, March 22, 1993.
3. Delivery within 15 days of all work done for which D.E.I. has been paid or expects to be paid.
4. Resolution of staff and consultant differences of opinion as to project definition and other matters, after the aforesaid audit.
5. D.E.I. to be paid $20,000 per month until the audit is complete, the total paid to be credited to the Board and deducted from any amount determined by audit to be due Design Engineering, Inc.

7. Final payment to be that determined from the audit in an amount equalling the audited figure plus 15% up to a total maximum of $2.5 million, less any credits as provided herein.

8. Committee retains all contracts other than those listed herein.

WHEREAS, the contracts which are terminated are:

a. Coordination Contracts

b. Orleans Avenue Canal Contracts

c. Highway 90/11 Road Raising

d. Citrus Lakefront Encroachments

e. All Lakefront Levee Crossings except Canal Boulevard

f. Field Yard Administration and Operations Building

g. New Orleans Lakefront Airport Retaining Wall

h. Engineering agreement for Professional Services for South Shore Harbor Phase I and Phase II and the Hurricane Flood Protection and Capital Improvement Projects of Nov 18, 1987, less and except that part that provides for coordination services through the conclusion of S—S— H— Phase I and Phase II,

BE IT HEREBY RESOLVED, That in accordance with the prevailing circumstances, the Board of Commissioners does hereby terminate the above listed contracts with Design Engineering, Inc.

BE IT FURTHER RESOLVED, That the President and/or the Director, the Chief Engineer and the General Counsel are hereby authorized to take any and all action required to implement the above.

AYES:

NAYS:

ABSENT:

RESOLUTION ADOPTED:

THE FOREGOING IS CERTIFIED TO
BE A TRUE AND CORRECT COPY.

_____

H. B. LANSDEN, SECRETARY
THE BOARD OF COMMISSIONERS OF
THE ORLEANS LEVEE DISTRICT