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DEPARTMENT OF JUSTICE
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BATON ROUGE
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OPINION 15-0065

88-POLICE JURIES-In General

Kim M. Torres
Secretary-Treasurer
Assumption Parish Police Jury
4813 Highway 1
P.O. Box 520
Napoleonville, LA 70390

La. Code Civ. Pro. Art. 2047.
La. R.S. 29:723; 730.3.

There is a distinction between a voluntary and mandatory evacuation order for purposes of evacuation assistance payments pursuant to the conditions in Texas Brine's permit application for the Napoleonville Dome. When an evacuation is mandatory it is considered "required" and would authorize assistance payments, whereas, when an evacuation is voluntary, it is not "required," and no such payments are authorized.

Dear Ms. Torres:

You have requested an opinion from this Office regarding whether a distinction should be made between a "mandatory" evacuation versus a "voluntary" evacuation as it relates to Texas Brine Company, LLC ("TBC") evacuation payments as ordered by the Department of Natural Resources, Office of Conservation ("Conservation") and referenced in TBC's permit application.

This question arises out of a dispute over the proper interpretation of the assurances given by TBC to Conservation regarding evacuation assistance payments during a catastrophic subsidence event (more commonly referred to as sinkhole formation).

Background

TBC's permit application for the Napoleonville Dome (#2605), which was deemed administratively complete in Order No. SM 87-4 issued April 22, 1987, contains the following language:

While mining is controlled, it is possible for acute subsidence (sinkhole formation) to occur from other causes. Natural solution processes in the dome may cause salt removal and collapse. In the event of the appearance of symptoms of acute subsidence, i.e. sinkhole formation, the following steps will be taken:

1.0 Operations in the immediate area will be suspended and the area of collapse isolated. If the area of collapse appears to threaten any residences, the occupants will be **assisted if evacuation is required.**¹

¹ P. 12. (emphasis added).

As you are aware, in or around August of 2012, a sinkhole formed in Assumption Parish and on August 3, 2012, the Assumption Parish Police Jury, Office of Homeland Security and Emergency Preparedness, issued a *mandatory* evacuation order. The evacuation area was “from the home of Randy Rousseau south to all residents within the Bayou Corne Community.”²

On August 16, 2012, TBC announced the creation of a housing assistance fund for residents living around the Bayou Corne community who were under the mandatory evacuation order. The financial assistance was set to begin on August 17, 2012. However, on August 17, 2012, Conservation issued Compliance Order No. IMD 2012-016, which required TBC to provide assistance payments retroactively to the date that the mandatory evacuation was ordered.

Pursuant to the Compliance Order and to TBC’s assurances contained in its original permit application, TBC continued to make \$875 weekly payments to all residents covered under the mandatory evacuation order.

Then, on or about December 4, 2014, Assumption Parish Police Jury, Office of Homeland Security and Emergency Preparedness, re-designated an area (to the east of Grand Bayou along Highway 70) previously included in the mandatory evacuation as a *voluntary* evacuation area. This re-designation led to the current question regarding whether evacuation is considered *required* under TBC’s permit application and Compliance Order No. IMD 2012-016, thus necessitating assistance payments for those portions of the previous mandatory evacuation order that are now considered voluntary evacuations.

Statutory Guidance

The Assumption Parish Police Jury derives its power to issue evacuation orders from La. R.S. 29:730.3, which provides prerequisites for and clear distinctions between *voluntary* and *mandatory* evacuation orders.

Voluntary evacuation orders may issue “when the threat to lives is not yet imminent but conditions exist or such circumstances may exist in the near future.”³ In such orders, residents are “advised to leave the area and relocate to safer locations...” and while “personal discretion is allowed...”, remaining is not advised.”⁴

Mandatory evacuation orders on the other hand, “may be issued when danger is imminent and conditions exist that seriously imperil or endanger the lives of those

² http://classic.edsuite.com/proposals/proposals_280/press_release_10_fi_344.pdf (last accessed June 15, 2015).

³ La. R.S. 29:730.3 (C)(1).

⁴ La. R.S. 29:730.3 (C)(2).

in a defined area.”⁵ In a mandatory evacuation, if a person refuses to comply, they “may not be rescued or provided other lifesaving assistance...” and “all public services are suspended.”⁶

The statute also contemplates a “forced evacuation,” but such an order was not issued in the current matter, nor was it referenced in the opinion request. However, we note that a forced evacuation is a means of last resort and the government may “direct and compel” persons to relocate a defined area.

Louisiana Revised Statute 29:723 further defines the three types of evacuations and makes clear that a voluntary order is effectively a strong recommendation from the government; a mandatory order is quite literally an *order*, not a suggestion, as “[p]ersonal discretion is not to be considered a deciding factor.”

Distinction between voluntary and mandatory *vis-à-vis* TBC’s required assistance

Your opinion request implores this office to review the three terms at issue (voluntary, mandatory and required) and determine whether a distinction should be made between *voluntary* and *mandatory* evacuations as they relate to the applicability of the evacuation assistance payments in TBC’s permit application and Compliance Order No. IMD 2012-16.

The term *required* is not defined in either Title 29 of the Revised Statutes or TBC’s permit application. However, we are instructed by Louisiana Civil Code Art. 2047 to use the “generally prevailing meaning” of words in a contract and since “[d]ictionaries are a valuable source for determining the ‘common and approved’ usage of words,”⁷ we seek their guidance. To require is “to impose an obligation on: Compel,” or “to command: order.”⁸

Therefore, looking at the three terms at issue and applying their statutory and commonly used definitions, it is the opinion of this office that voluntary and mandatory must be distinguished as they relate to TBC’s evacuation assistance payments. The Louisiana Revised Statutes and common usage make clear that these two types of evacuations are distinguishable and voluntary evacuations should not be considered “required.” A required evacuation, as contemplated by TBC’s permit application, must be understood as either a mandatory or forced evacuation pursuant to Title 29. A voluntary evacuation is permissive and merely a suggestion or recommendation by the government. Conversely, mandatory

⁵ La. R.S. 29:730.3 D. (1).

⁶ La. R.S. 29:730.3 D. (2).

⁷ *Louisiana Horsemen’s Benevolent and Protective Assoc. 1993, Inc. v. Fair Grounds Corp.*, 845 So. 2d 1039, 1042 (La. 4/9/03).

⁸ Merriam-Webster’s II New Collegiate Dictionary, 942 (2001).

evacuations could just as easily be re-named required evacuations as they remove the element of personal discretion.⁹

We hope this sufficiently answers your inquiry; however, if we may be of further assistance please do not hesitate to contact our office.

Sincerely yours,

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JDC/SBJ

⁹ This conclusion is consistent with the Office of Conservation's decision No. TBC-15-001, dated February 27, 2015.