

# MINUTES

## MEETING OF THE RECLAMATION BOARD

June 18, 2004

A regular meeting (Open Session) of The Reclamation Board was held on June 18, 2004 beginning at 1:00 p.m. in the Resources Building Auditorium, 1416 Ninth Street, Sacramento, California.

The following members of the Board were present:

Betsy Marchand, President  
Tony Cusenza, Vice President  
Burt Bundy, Member  
Bill Edgar, Member  
Jeff Mount, Member  
Floyd Weaver, Member

The following members of the staff were present:

Peter Rabbon, General Manager  
Stephen Bradley, Chief Engineer  
Scott Morgan, Counsel  
Lori Buford, Staff Assistant

Department of Water Resources staff present:

Duane Cornett  
Steve Dawson  
Jeff Fong  
Dee Dee Jones  
Tim Kerr  
Dave Lane  
Rod Mayer  
Maurey Roos

Also present (according to sign-in sheet and cards):

Ramon Batista, River Islands at Lathrop  
Mark Ellis, Corps  
T. Foley, CCR6  
Tony Mallery, Resident, Butte Creek Estates  
Jayne Mulkey, Landowner, Butte Creek Estates

**1. ROLL CALL**

*President Marchand brought the meeting to order at 8:30 am. All Board members were in attendance except for Gloria Morales.*

**2. CLOSED SESSION to discuss the status of pending litigation (Government Code section 11126 (e))**

*The Board adjourned to a "Closed Session" at 8:35 am to discuss various legal issues. Ms. Morales arrived and attended part of the "Closed Session".*

**3.\* APPROVAL OF MINUTES - - May 21, 2004**

*Upon motion by Mr. Cusenza, seconded by Mr. Edgar, and unanimously carried, the Minutes for May 21, 2004 were approved as presented with corrections to items 4 and 15.*

**4.\* APPROVAL OF AGENDA**

*Upon motion by Mr. Mount, seconded by Mr. Bundy, and unanimously carried, the April 26, 2004 Agenda was unanimously approved with the removal of Item No. 12.*

**5. PUBLIC COMMENTS**

*There were no public comments.*

**6. REPORT OF ACTIVITIES OF THE DEPARTMENT OF WATER RESOURCES  
(Stein Buer)**

*Mr. Rod Mayer, Chief of the of the Flood Projects Office in the Division of Flood Management, presented the Department's report of activities. (The report is attached hereto and made a part of these Minutes.)*

## CONSENT

### 7.\* CONSENT CALENDAR

A. Interagency Agreement (Jeff Fong)

Consider approval of Resolution No. 04-13 to renew an interagency agreement with the State Lands Commission for technical and consulting services on oil and gas matters and authorize the General Manager to execute the agreement.

B. Application No. 17796, City of Stockton, Pixley Slough and Bear Creek, San Joaquin County (Mike Mirmazaheri)

Consider approval of Application No. 17796 to construct a 12,690-foot long, by 8-foot wide asphaltic concrete bike trail on the right (north) levee crown of Bear Creek and the left (east) levee crown of Pixley Slough; and install hinge type bollards. The project is located in the City of Stockton, San Joaquin County.

***Upon motion by Mr. Edgar, seconded by Mr. Cusenza, and unanimously carried, the Board approved the Consent Calendar as presented.***

## REQUESTED ACTIONS

### 8.\* PROJECT OR STUDY AGREEMENTS

A. American River Watershed Common Features Project (Tim Kerr)

Consider approval of Resolution No. 04-15 to approve a Schedule and Cost Change Request issued by the U.S. Army Corps of Engineers to increase the total project cost.

*Mr. Tim Kerr, State Project Manager for the American River Common Features Project, presented this item to the Board. Mr. Kerr provided funding information for the project and requested the Board to approve Resolution No. 04-15. (NOTE: The Corps issued a SACCR to the Board on October 24, 2001 to raise the project costs to just below the 902 limit of \$120.6 million. Since then, the costs have gone up due to increases in construction and design costs, primarily attributed to the unanticipated use of jet grout technology and increase in slurry wall depths.)*

***Upon motion by Mr. Edgar, seconded by Mr. Weaver, and unanimously carried, the Board approved Resolution No. 04-15.***

B. Butte Creek (Steve Bradley)

Consider approval of Butte Creek Unauthorized Encroachment Removal Plan.

Mr. Steve Bradley, Chief Engineer for the Board presented this item to the Board, which included an overhead presentation. Mr. Bradley presented the staff's recommendation which is to remove all unauthorized encroachments from the State owned easement. The Board also heard testimony from Mr. Tony Mallery on behalf of the Butte Creek landowners requesting notification prior to State removal of encroachments; and Ms. Jayne Mulkey, landowner.

***President Marchand requested this item be brought back to the Board in 30 days and a resolution be prepared for the Board to adopt that will outline the removal plan.***

**9.\* PROPERTY MANAGEMENT**

None.

***There were no Property Management items.***

**10.\* APPLICATIONS**

None.

***There were no Application items.***

**11.\* ENFORCEMENTS**

None.

***There were no Enforcement items.***

**12\* STATE MAINTENANCE AREA NO. 3 (Keith Swanson)**

Consider approval of Resolution No. 04-12 to dissolve State Maintenance Area No. 3 and transfer operation and maintenance responsibility to Levee District No. 1 of Sutter County.

*Mr. Keith Swanson, DWR, provided background information on this issue and requested the Board to approve Resolution No. 04-12. The Board also heard testimony from Scott Morgan, Reclamation Board Legal Counsel, who clarified the Water Code's policy on dissolution of maintenance areas, and stated it would not be in the best interest of the State to execute this agreement if an indemnification (hold the State harmless) agreement is not included in the assurance agreement. Mr. Duane Oliveira, Legal Counsel for Levee District No. 1, Sutter County, stated they cannot agree to hold the State harmless from damages related to construction, operation and maintenance issues that may have occurred during the 50 years prior to them taking over on July 1, 2004. Their responsibilities should start on the day they take over operation and maintenance.*

***Upon motion by Mr. Weaver, seconded by Mr. Cusenza, and unanimously carried, the Board did not approve Resolution No. 04-12. It was requested that this issue be brought back to the Board once the Attorney General's opinion has been received and the attorneys have come to a resolution/compromise.***

## **INFORMATIONAL BRIEFINGS**

**13. UPPER JONES TRACT LEVEE FAILURE**

Briefing.

*Mr. Jay Punia, DWR, presented an overview (including an overhead presentation) of the levee break at the Upper Jones Tract and provided the status of the department's ongoing efforts at the break site. Mr. Steve Dawson, DWR, provided some additional information on the levee break.*

## **BOARD REPORTS**

**14. REPORT OF ACTIVITIES OF THE GENERAL MANAGER**

*Mr. Rabbon reported on a number of upcoming issues and meetings: 1) Maintenance Area 3 – Scott Morgan spoke to the Attorney General's Office regarding the hold-*

harmless issue. The AG's Office recommended Mr. Morgan provide a stronger and more stringent clause. LD 1 will not accept it, however, they want to continue discussions;

2) Deficient Operations and Maintenance on Levees – a letter was received from the Corps stating they are not going to have these particular areas be eligible for PL 84-99 assistance or rehabilitation assistance if it would be needed in the future because of the lack of maintenance. Additionally, consistent with Paterno, the Corps is now starting to identify areas of deficiencies that we need to have resolved.;

3) Safe Harbor Agreements – This is a mechanism used by the U.S. Fish & Wildlife Service to allow private landowners or other public entities to provide safe harbor for existing species and allow the landowners to use their property in other ways. We have been trying to get a Safe Harbor Agreement for many years and we have recently learned that this concept has now been deemed illegal. Mr. Steve Bradley also provided information on this issue;

4) AB 1983 – the Administration has not yet taken an official position. The bill is currently on the Senate side and is scheduled for a hearing next week;

5) LRD 784 (Plumas Lakes Area) – they have identified an approximate 3,000 foot long area along the Yuba River that the local geotechnical consultant recommend be repaired before this coming fold season. They have deemed this an emergency levee fix. The locals are willing to spend their own money to do this; and

6) River Islands – Mr. Steve Bradley, Chief Engineer for the Board provided the status of the River Islands Project.

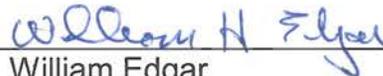
#### 15. BOARD COMMENTS AND COMMITTEE REPORTS

There were no Board comments or committee reports.

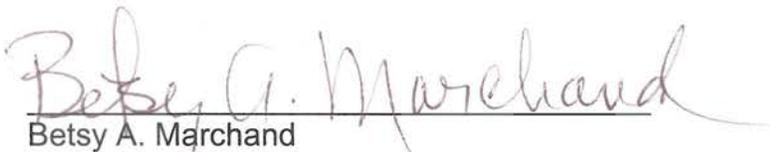
#### 16. ADJOURN

**Upon motion by Mr. Edgar, seconded by Mr. Weaver, and unanimously carried, the meeting was adjourned at 3:50 p.m.**

Dated: September 17, 2004

  
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William Edgar  
Secretary

The foregoing minutes were approved:

  
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Betsy A. Marchand  
President