

MINUTES
MEETING OF THE RECLAMATION BOARD
December 7, 2007

NOTE: THE BOARD WILL CONSIDER TIMED ITEMS AS CLOSE AS POSSIBLE TO THE LISTED TIME, BUT NOT BEFORE THE TIME SPECIFIED. UNTIMED ITEMS MAY BE HEARD IN ANY ORDER. MINUTES ARE PRESENTED IN AGENDA ORDER, THOUGH ITEMS WERE NOT NECESSARILY HEARD IN THAT ORDER.

A special meeting (Open Session) of the Reclamation Board was held on December 7, 2007, beginning at 9:37 a.m., at The Reclamation Board, 3310 El Camino Avenue, Room 1140, Sacramento, California.

The following members of the Board were present:

Mr. Benjamin Carter, President
Mr. Butch Hodgkins, Vice President
Ms. Lady Bug Doherty, Secretary
Ms. Teri Rie, Member
Mr. John Brown, Member
Ms. Emma Suarez, Member

The following members of the staff were present:

Mr. Jay Punia, General Manager
Mr. Eric Butler, Senior Engineer
Mr. Scott Morgan, Legal Counsel
Ms. Lorraine Pendlebury, Staff Assistant

Also present:

Ms. Virginia Cahill, Attorney General's Office
Mr. Dennis O'Connor, Senate Natural Resources and Water Committee
Mr. Scott Shapiro

1. ROLL CALL

General Manager Punia called the roll. All Members except RoseMarie Burroughs were present.

2. **CLOSED SESSION to discuss litigation (Natural Resources Defense Council v. Reclamation Board; Case No. 06CS01228) pursuant to Govt. Code § 11126 (e)(2)(A).**

3. **APPROVAL OF AGENDA**

Upon motion by Member Suarez, seconded by Member Rie, the Agenda was approved.

4. **To Consider and approve proposals for interagency cooperation between the Board and the Department of Water Resources and recommend legislative changes related to the transition of the Reclamation Board to the Central Valley Flood Protection Board.**

President Carter stated that the major objective of the day's meeting is to address the Board's concerns and plans in terms of the transition resulting from the new legislation that was recently enacted. He described the main concerns as:

- *The impacts of the legislation in the areas of the evidentiary hearing process, ex parte communications, and conflict of interest.*
- *The implications in terms of organization and staffing -- staffing for existing needs as well as future needs.*
- *The challenges of creating a Memorandum of Agreement (MOA) between Department of Water Resources (DWR) and the Central Valley Flood Protection Board that is consistent with the intent of the legislation; this task includes trying to fully understand what the intent of the legislation is.*

President Carter mentioned that Deputy Attorney General Virginia Cahill is helping the Board during this transition period and will continue in that capacity through June 2008 or longer. Scott Morgan remains Chief Counsel through the end of 2007.

President Carter stated that Vice President Hodgkins, General Manager Punia and he have had several meetings with DWR, including with the Secretary of Resources and executive staff, to discuss the transition, the intent of the legislation and any cleanup legislation that may be needed, and the MOA.

Vice President Hodgkins added that an additional objective is their attempts to minimize the potential impacts on early implementation projects (projects scheduled for implementation during the transition period) and how best to move forward on those.

Mr. Dennis O'Connor, Senate Natural Resources and Water Committee, answered Member questions on various issues regarding the new legislation. He first provided a brief synopsis of the legislative process that culminated in SB 17, and discussed the intent of the Legislature (revealed as the bill went through the amendment process). Some other comments:

- *Mr. O'Connor stated that the Legislature's intent was that the Board operate as if it were independent and autonomous, yet remain within the DWR bureaucratic structure to take care of things like personnel changes.*
- *In response to a query from Member Rie, Mr. O'Connor stated that one challenge of the new structure would be how to allow the Board to make its own budgetary decisions. One mechanism proposed would be to essentially create a line item in the budget for the Board (separate from DWR) with control language saying that the Board would make its own decisions on budgetary items. The specifics of the budgetary issues will probably need time and iterations before they are worked out satisfactorily.*

Member Brown stated that he hoped and visualized that a strategic plan could be developed where ultimately there would be a full separation between DWR and the Board. A planning process similar to the Porter-Cologne Act might be considered in drafting a plan for the Board to achieve this purpose.

President Carter mentioned another issue they are grappling with -- trying to determine which functions directly support the Board in helping them decide, consider and establish policies and how to make those functions independent of DWR; and what functions should remain primarily within the DWR bureaucratic structure.

Member Brown suggested creation of pictures or graphs identifying the task items and issues that confront the Board and who performs those tasks currently -- is it the Board directly, along with DWR, or is it done through a contract; i.e., creation of a visual representation of, collectively, all the task items that confront the Board and staff?

President Carter discussed the concept that employees within the newly created, independent Board will probably want to remain DWR employees, particularly those in administrative support positions. Member Rie echoed that, noting that current DWR employees probably want to remain DWR employees to retain their mobility for pay raises, promotions and etc.

General Manager Punia elaborated further, stating that they are trying to augment existing staff through Budget Change Proposals (BCP), and augmentation will probably not occur until July 2008.

President Carter summarized the executive committee's near term of approach of trying to establish an organization within DWR where this Board has direct control over the functions that are critical to policy making and technical analysis yet, still retains administrative support from DWR.

President Carter stated that at this point they are essentially adopting a strategy of drafting a bridge MOA that acknowledges that there is new legislation and that there are new responsibilities that the Board has. In addition, it will acknowledge that the Board has existing agreements with DWR that delegate some authority to DWR and empowers DWR to support the Board in certain ways. The intent of the bridge MOA is to essentially allow everyone to hit the

ground running on January 1, 2008. It will also state that ultimately a new agreement will be put in place, and hopefully define a timeline for completion of the new agreement.

Board Members offered perspectives on the implications of evidentiary hearings and how to handle those, and, whether or not the existing process satisfies the intent of the new legislation regarding such hearings.

Board Members, counsel and Mr. Shapiro discussed their current understanding of the new legislative intent regarding rules for ex parte communication.

Senior Engineer Butler gave a short presentation on the current thinking of DWR Budget Office staff and Board staff on the status of the BCP, based on direction from the Department of Finance. No availability exists for augmenting current funding; thus, additional funds will become available July 1, 2008 at the earliest.

President Carter asked if members of the public wished to address the Board; none responded.

General Manager Punia announced that the Board meeting scheduled for December 21st has been split into two meetings -- first on the 20th, then on the 21st, both at the Resources Auditorium downtown.

15. ADJOURN

President Carter adjourned the meeting at 11:33 a.m.

Dated: 3/10/08


Maureen Doherty
Secretary

The foregoing minutes were approved:


Benjamin F. Carter
President