

MINUTES

MEETING OF THE RECLAMATION BOARD November 16, 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 regular meeting (Open Session) of the Reclamation Board was held on November 16, 2007, beginning at 8:32 a.m. in the Resources Building Auditorium, 1416 Ninth Street, 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. Rose Marie Burroughs, Member
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. Stephen Bradley, Chief Engineer
Mr. Eric Butler, Senior Engineer
Mr. Dan Fua, Supervising Engineer
Ms. Nancy Finch, Legal Counsel
Ms. Lorraine Pendlebury, Staff Assistant

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

Mr. Paul Brunner, Three Rivers Levee Improvement Authority (TRLIA)
Mr. John Carlin, River Partners
Mr. Jay Chamberlin, California Resources Agency
Mr. Joe Countryman, MBK Engineers
Ms. Kim Davis, Senator Sam Aanestad
Mr. Daniel Efseaff, River Partners

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

Mr. Tom Ellis, Sacramento River West Side Levee District, self
Mr. Mark Hennelly, California Outdoor Heritage Alliance
Mr. Mike Inamine, Department of Water Resources
Ms. Ashley Indrieri, Family Water Alliance
Ms. Carolyn Langenkamp, self
Mr. Eric Larrabee, Levee District 3
Mr. Merrit Rice, Department of Water Resources
Mr. Thomas Rice, Rice River Ranch
Mr. Scott Shapiro, TRLIA, RD 2126
Mr. Mark Spannagel, Assemblyman LaMalfa
Mr. Patrick Tully, Sacramento River Property Association
Mr. Gregg Werner, The Nature Conservancy

1. **ROLL CALL**

General Manager Punia called the roll. President Carter noted that, just prior to this public meeting, the Board met in closed session to discuss litigation as described in Item 2 below.

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 MINUTES - August 17, 2007; September 11, 2007; September 21, 2007**

President Carter suggested the following changes to the August 17th Meeting:

On page 6, under Item 13, second paragraph, "Reclamation Board staff will conduct a similar symposium" be amended to read "Reclamation Board staff will attend a symposium on vegetation on August 29th."

Also under Item 13, seventh paragraph, which starts out "General Manager Punia further stated that" and then concludes with "... cross-canal and to TRLIA for the Feather River Levee setback Segments 1 and 3" be amended to read "... Feather River levee repairs, Segments 1 and 3."

President Carter also suggested the following changes to the September 21st Meeting:

On page 8, under Item 15, the first paragraph reads "General Manager Punia presented a briefing of the vegetation symposium and roundtable" be amended to read "General Manager Punia presented a joint communiqué from the participants of the levee roundtable."

Under Item 15, the second indented paragraph, currently reads “- In the meantime, the Corps will not decertify a levee for PL 84-99 while the plan is being developed” be amended to read “- In the meantime, the Corps will not decertify a levee for PL 84-99 due to noncompliance as a result of vegetation while the plan is being developed.”

Upon motion by Secretary Doherty, seconded by Vice President Hodgkins, the Minutes -- with the suggested changes -- were approved by the Board.

President Carter suggested the following changes to the September 11th Subcommittee Meeting:

That the sentence on page 4, fourth paragraph, which currently reads “Mr. Carter asked how many of the 1749 acres are being acquired under the due condemnation process” be amended so that the word due is stricken.

Upon motion of Secretary Doherty, seconded by Vice President Hodgkins, the Subcommittee Minutes -- with the suggested change -- was approved. (This approval was voted on by the Subcommittee Meeting members only -- Secretary Doherty, Vice President Hodgkins and President Carter.)

Following a request from Member Brown, President Carter asked that the record reflect that Member Brown did not vote on any of the items under Agenda Item 3, as he was not present for them.

4. APPROVAL OF AGENDA

*General Manager Punia stated that **Item 6: Report of Activities of Department of Water Resources**, will be presented by Mike Inamine instead of Keith Swanson.*

*He also recommended that **Item 11: Proposed Title 23 Regulatory Changes**, be postponed and brought back before the Board either at the December meeting or at a later date.*

Member Suarez asked, and Member Brown concurred, that the Board consider a separate briefing as soon as possible to get the record clear about what the situation is regarding the private levee that is part of the Atlas Tract.

President Carter responded that the Board intends to have that discussion, although, because of other more pressing items, it has been postponed.

Upon motion by Member Suarez, seconded by Member Burroughs, the Agenda, with the above changes, was approved.

5. PUBLIC COMMENT

Mr. Patrick Tully, representing Sacramento River Property Owners Association and the newly formed Garden Highway Association, asked that the scheduled November 29 SAFCA vote on the

Natomas EIR be tabled to allow a cooling off period for further review of the EIR document. In response to a question from Member Rie, General Manager Punia remarked that the Board is tentatively planning to bring SAFCA's application to the Board for its consideration in December. Ms. Carolyn Langenkamp echoed Mr. Tully's request, noting that they believed that an extended period for comment and discussion with SAFCA staff would allow for more adequate mitigation.

Mr. Scott Shapiro, appearing on behalf of Reclamation District 2126, gave a short presentation pursuant to the Atlas Tract situation, and requested that any investigation be addressed separately from the encroachment permit application. President Carter stated his appreciation to Mr. Shapiro for bringing the information to the Board's attention and reiterated that the Board will provide an opportunity to discuss, at length, the situation at a future Board meeting.

Vice President Hodgkins suggested that the Board consider forming a subcommittee to address the various Atlas Tract issues.

Mr. Tom Ellis, Sacramento River West Side Levee District, thanked the Board for completing the rework of the Tisdale Bypass Project. President Carter expressed the Board's thanks to all the locals for their continued support and persistence in getting the project done.

6. REPORT OF ACTIVITIES OF THE DEPARTMENT OF WATER RESOURCES (DWR)

Mr. Inamine, DWR, reported on the following:

- *He reiterated that the Tisdale Bypass work has been completed.*
- *The Levee Evaluations Program: on the urban portion of the Program --10 out of 12 areas have been identified; on the rural portion of the Program -- interviews have been completed for consultants to perform the work and contracts are being negotiated. They expect contracts to be executed in January of 2008.*
- *Flood fight inspections: DWR's Operations Branch has been conducting pre-flood season workshops and outlining what the vegetation policy is going to be for further inspections.*
- *Critical Repairs Program: all 2005 critical erosion repair sites (33 in total) have been completed. Of the 71, 2006 sites identified, 22 sites are targeted for completion by November 30th; the two Cache Creek sites are currently in negotiations; and the other 47 sites are completed. Six sites added by the Corps of Engineers will be completed in 2008. Also, the Corps has committed to doing work on 133 other sites (all Order 3, 4 and 5 sites); seven of those sites have been completed, and the remainder is scheduled for 2008.*
- *Regarding the Hamilton City levee: DWR is assisting the City in preparing a scoping document for a feasibility study.*

President Carter asked about the interim guidance that DWR was working on for vegetation management for the reclamation districts and the local maintaining agencies. Has that guidance been communicated to the agencies involved? Mr. Inamine responded that the guidance was communicated in a series of workshops that were conducted over the last month and formal communication will be out in the next 2-3 weeks.

Mr. Carter stated that the Board members would also like a copy of that communication.

General Manager Punia stated that they are waiting for formal notification of the policy from DWR and the Corps before communicating that to the agencies.

President Carter stated two things that need to be communicated to the agencies: 1. That the agencies will not be disqualified for not being compliant with the Corps standard on the vegetation piece of their inspection; 2. That there are guidelines on what they can and should be doing as far as levee vegetation management is concerned.

Member Burroughs asked Mr. Inamine if it would be possible to get a copy of the schedule of workshops to ensure there was attendance by all districts; Mr. Inamine said he would get the copies and include a copy of the actual information that was given.

7. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY (TRLIA) MONTHLY REPORT

Mr. Paul Brunner reported that:

- *The Segment 3 work, the building of a stability berm, has been completed.*
- *Two meetings have been scheduled with the Corps, DWR and representatives of the Rice property to work and complete a proposal concerning the issues on the Rice property.*

Mr. Thomas Rice, owner of the Rice property, stated that, in anticipation of proposal completion, he has begun the necessary work on his property to prepare for proposal implementation. He again asked the Board for their help and encouragement.

- *In response to a query from Member Rie about the 408 letter, Mr. Brunner stated that it has not yet gone out to the Corps.*
- *TRLIA has turned in their Early Implementation Project financial plan to the state and is awaiting the state's response. They hope to have a draft agreement returned to them by November 20th.*

REQUESTED ACTIONS

8. APPLICATIONS

Application No. 17659-A, River Partners, Glenn County

Consider Application No. 17659-A to plant mixed riparian forest, elderberry, woodland valley oaks savanna, and grassland on 136 acres within the Butte Basin.

Supervising Engineer Fua gave a presentation on the Application and requested that the Board consider approval of the encroachment permit to plant elderberry, mixed riparian forest, woodland, valley oaks savanna and grassland on the 136-acre parcel that River Islands owns in Glenn County.

He noted that River Partners has submitted much information and many support letters and has secured a safe harbor agreement, together with an incidental take permit. Mr. Dan Efseaff, a restoration ecologist with River Partners, Mr. Joe Countryman, MBK Engineers, and Mr. John Carlin, River Partners, provided additional information on project specifics.

Mr. Fua stated the staff recommendation -- to approve the draft permit subject to the amendment of section 10, item 3, of the safe harbor agreement, and section 5, the Federal Fish and Wildlife incidental take permit, to give the authority to the Reclamation Board, Levee District 3, the U.S. Army Corps of Engineers, and all successor agencies to authorize doing flood control management activities without being subjected to the regulatory restrictions of the Endangered Species Act.

Member Burroughs commented that more work needed to be done before she would be willing to vote for a positive planting of elderberries.

President Carter stated that he had documentation from DWR showing that DWR spent on the order of \$85,000 an acre for elderberry mitigation for the 33 erosion repair sites that they completed a year and a half ago.

Mr. Mark Spannagel, Assemblyman LaMalfa's office, stated that they hoped the Board would not approve the permit with the elderberries.

Mr. Mark Hennelly, California Outdoor Heritage Alliance and California Waterfowl Association; Mr. Jay Chamberlin, California Resources Agency, and Mr. Gregg Werner, The Nature Conservancy, stated their support for approval of the project.

Mr. Eric Larrabee, Levee District 3, stated that he did not oppose the permit, but asked that two conditions be added: 1. that no planting of elderberry be incorporated into the permit; and 2. that item 39 be placed back into the permit.

Ms. Ashley Indrieri, Family Water Alliance; and Ms. Kim Davis, on behalf of Senator Sam Aanestad, stated their opposition to the permit.

After much additional discussion, especially related to the planting of elderberries, Member Brown motioned, seconded by Member Suarez, and the Board voted on the following:

“To approve the permit for restoration on the 136 acres excluding elderberry plantings; and any restoration that occurs will be parallel to the flow of the flood waters; future consideration for elderberry plantings will come before the Board; the other stipulations from the staff recommendation, including naming the Reclamation Board, Levee District 3 and U.S. Army Corps of Engineers as part of the safe harbor, will be a part of this motion.”

The motion carried, 4-3.

9. FLOOD LEGISLATION IMPLEMENTATION

Consider delegation of authority for the Board president and vice president to negotiate and enter into agreements with the Department of Water Resources regarding administrative changes mandated by recent legislative changes to the Board, and to endorse legislative proposals by the Department to amend such legislation.

After extensive Board discussion, Member Brown motioned to grant the authority to Board president and vice president to negotiate and enter into agreements with DWR regarding administrative relations between the Board and DWR that are necessitated by the changes to the Water Code that will go into effect in 2008. Member Rie seconded the motion, with the caveat that, as the Board negotiates these agreements, they absolutely have independent counsel; i.e., the Board doesn't have DWR counsel representing DWR, and DWR counsel representing the Board, to enter into these agreements with DWR. This caveat was accepted by Member Brown.

After further discussion the Board approved the motion, with President Carter abstaining from the vote but accepting the responsibility implicit in the motion.

PROJECT OR STUDY AGREEMENTS

10. LOWER SAN JOAQUIN RIVER FEASIBILITY INVESTIGATION

Consider approval of a letter of intent to become the nonfederal sponsor of the Lower San Joaquin River Feasibility Study.

Mr. Merrit Rice, DWR Division of Flood Management, requested that the Board approve the writing of a letter of intent to the Sacramento District Corps of Engineers for the Lower San Joaquin River Feasibility Investigation.

Member Burroughs motioned to approve the letter, seconded by Member Brown, and the motion carried.

11. PROPOSED TITLE 23 REGULATORY CHANGES - PULLED

BOARD REPORTS

12. BOARD COMMENTS AND TASK LEADER REPORTS

Member Suarez asked if Member Rie would be willing to put together a template on how staff reports should be prepared and presented to the Board. Member Rie said she would be willing. President Carter asked if other Members had objections to this; there were none.

Vice President Hodgkins again mentioned his meeting with folks from San Joaquin County and their desire to set up a task force to consider flood control issues in their County.

Member Rie mentioned that Les Harder from DWR is putting together a framework document for early implementation projects. General Manager Punia stated that staff had a chance to review it and it will be discussed at a future meeting.

Secretary Doherty stated that she was asked at the Technical Advisory Meeting for the Sacramento River Area Conservation Forum -- regarding the M&T situation -- if the Board could override the decision of DWR to do nothing regardless of the written history relating to that situation? Legal Counsel Finch remarked that she didn't think the Board had the authority to override DWR decisions.

Member Burroughs commented that, while the Board may not have funding, she definitely thinks they have the authority to send a letter and give their viewpoint on the M&T, if the Board wishes to do so. She requested that this be on a future agenda.

President Carter remarked on the extensive discussions between Reclamation Board executive staff (Vice President Hodgkins and himself) and DWR executive staff regarding the organizational changes and shifts, and that those discussions are ongoing. Also, he will endeavor to have independent counsel representing them at the meetings.

President Carter discussed the October 12 levee roundtable. The meeting was a general discussion about the preplan and the plan for, in general, levee maintenance and management in the state of California. The scope has expanded beyond just vegetation to include all aspects of levee management in the Sacramento-San Joaquin Drainage District, primarily at the request of the Corps, who is very interested in more of a systematic or system-wide approach. The schedule for completion of the meetings has changed to April 1.

President Carter attended the recent meeting sponsored by the Nature Conservancy and the Sacramento River Conservation Area Forum about the Colusa Sub-Reach Study. Ayers and Associates presented a hydraulic analysis of the entire reach. One conclusion, supported by

actual data, historical data, is that the system in the Reach is not performing as assigned at design flows; in addition, no conclusions as to the cumulative impacts of the restoration sites along that stretch of the river have been made.

13. REPORT OF ACTIVITIES OF THE GENERAL MANAGER

General Manager Punia reported the following items:

- *The Board has received a letter from the Bethel Island Municipal Improvement District informing the Board that they are not under Board jurisdiction because they are no longer a reclamation district. Supervising Engineer Fua stated that the next step is to have Board legal counsel review the letter and make a formal assessment of the argument; i.e. whether counsel agrees or not on their assessment that they are not subject to the Board's oversight. That assessment will be presented to the Board next month.*
- *Staff has received a good response to their advertisement for additional staff and are going through the screening process and scheduling interviews for the coming week.*
- *Mr. Punia, President Carter and Vice President Hodgkins are working with DWR on developing the structure for the Central Valley Flood Protection Bulletin so the new flood legislation is ready to be implemented starting January 1st.*
- *The Corps has agreed to investigate the Levee District 1 relief wells, installed by the Corps. Staff is awaiting the outcome of that investigation.*
- *Regarding the Phelan Levee: DWR has concluded that it is not a critical site for them to undertake at this time.*
- *The Union Pacific Railroad Company bridge over the Bear River near Wheatland has been permitted.*
- *As mentioned previously, the Atlas Tract situation will be investigated and a report will be made to the Board after December 31st. After discussion of potential timing issues associated with the investigation, President Carter asked the staff to determine if in fact timing issues exist and to inform the Board of their conclusions at the next meeting.*

Mr. Eric Butler gave a short presentation on the Budget Change Proposal that staff is preparing to support the transition to the Central Valley Flood Protection Board from the State Reclamation Board. He summarized by saying it appears they will be requesting six new positions and approximately \$1.8 million.

14. FUTURE AGENDA

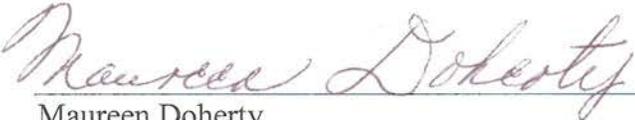
There will be a regular Board Meeting on December 21st, 2007. Meetings were tentatively scheduled, at discretion of the president, vice president and staff, for December 7 and

December 14. An attempt will be made to protect the meetings on the 7th and 14th for discussion of transition activities only.

15. ADJOURN

President Carter adjourned the meeting at 4:09 p.m.

Dated: 1-18-08



Maureen Doherty
Secretary

The foregoing minutes were approved:



Benjamin F. Carter
President