

MINUTES

MEETING OF THE RECLAMATION BOARD October 19, 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 October 19, 2007, beginning at 10:06 a.m. in the Yuba County Government Center, 915 Eighth Street, Marysville, 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. Dan Fua, Supervising Engineer
Mr. Scott Morgan, Legal Counsel
Ms. Lorraine Pendlebury, Staff Assistant

Department of Water Resources (DWR) staff present:

Mr. Jeff Fong
Ms. Olivia Guebara
Mr. Christopher Huitt
Mr. Keith Swanson

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

Mr. John Bassett, SAFCA
Mr. Paul Brunner, Three Rivers Levee Improvement Authority (TRLIA)
Mr. Joe Countryman, MBK Engineers
Mr. Tom Eres, Hofman Ranch
Mr. Tom Foley, Concerned Citizens for Responsible Growth
Mr. Jim Giottonnini, City of Stockton
Mr. Chris Neudeck, Reclamation District (RD) 2125, Atlas Tract
Mr. Ric Reinhardt, TRLIA
Mr. Thomas Rice, Rice River Ranch
Mr. Jim Sandner, U.S. Army Corps of Engineers (Corps)
Mr. Don Schrader, Yuba County
Mr. Scott Shapiro, TRLIA, RD 2126
Mr. Raj Sharma, self

1. **ROLL CALL**

President Carter called the meeting to order at 10:06 a.m. and welcomed newly appointed Board Member John Brown.

President Carter noted that a Closed Session, as agendized, did occur the previous day (10-18-07), to discuss litigation (Natural Resources Defense Council v. Reclamation Board; Case No. 06CS01228) pursuant to Govt. Code § 11126 (e)(2)(A).

President Carter subsequently thanked the citizens and local government of Yuba County and expressed his appreciation, on behalf of the Board, for allowing them to have their meeting at the Government Center.

2. **APPROVAL OF MINUTES - August 17, 2007; September 11, 2007; TRLIA Subcommittee**

Item 2 was tabled until the next Board Meeting.

3. **APPROVAL OF AGENDA**

General Manager Punia made the following recommendations:

- that Item No. 7, Levee Maintenance Easements for Kimball Hill Homes, previously under **Consent**, be put under **Action**, as advised by the Reclamation Board legal counsel;*
- that Item No. 8, Modification of Lease Agreement with ASTA, in the City of Rio Vista, be removed from the agenda.*

Mr. Punia also noted that Item No. 9, Board Order 07-01, Amendment of Pipe Authorized by Permit No. 263, Maintenance Area 9, will be presented by Mr. Chris Huitt rather than Mr. Mark Herold; and Item No. 10, Applications, 10.A., TRLIA, Application 18227, will also be presented -- in addition to Mr. Steve Bradley -- by Mr. Punia and by Mr. Keith Swanson, DWR.

Upon motion of Secretary Doherty and seconded by Member Rie the agenda, with the suggested changes, was approved.

4. PUBLIC COMMENT

Mr. Don Schrader, Supervisor, Yuba County, expressed the County's concern about the effect of Union Pacific Railroad's filling up one of their trestles along 2103 and 1001 in the south part of the County (in the Wheatland area) and their concern over what effect that will have on the hydraulic flow in the river channel.

*Mr. Punia noted that staff is prepared to brief the Board on this subject as part of the **General Manager's Report, Item 14** (page 10). President Carter suggested the item be discussed further at that time.*

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

Mr. Keith Swanson, DWR, reported on the following:

- *DWR is now starting to lay the groundwork on its overall program development and they see significant roles for their various partners -- the Reclamation Board, the Corps of Engineers, the Central Valley Flood Control Association, the resource agencies and the local flood control agencies.*
- *DWR is starting to make preparations for the coming flood year by conducting coordination meetings and field methods training throughout the state.*
- *Maintenance activities are ongoing and will probably continue into December.*
- *Fall levee inspections are starting now as well as evaluations of the level of maintenance that is completed.*
- *DWR is out to bid for some contracts to develop conveyor facilities in three locations in the delta, which is the first step of a more comprehensive delta emergency operation plan that DWR will be developing over the course of the next year to year and a half.*
- *DWR will present an in-depth presentation on their overall flood preparation to the Board at the December Meeting.*

- *Meteorologist Elissa Lynn will give a presentation regarding National Weather Service predictions at the November Board meeting.*
- *Regarding the DRMS study: there is some controversy on the Phase 1 report that was released in August and DWR is now working with their consultant, URS, to revise the report; the revised report is scheduled for release in March 2008.*
- *The Urban Levee Evaluation Program has started again.*
- *The Tisdale Bypass Sediment Removal Project is out to construction and the earthwork will be finished by November 1st, with planting done by November 15th.*
- *The 2005 Ayers erosion site work is nearly completed.*
- *The 2006 Ayers critical erosion repairs are also winding down, with the exception of two sites on Cache Creek. Phase 2 planning has commenced on 22 sites and will be completed in November.*
- *The 2006 PL 84-99 Rehabilitation Assistance Program is moving forward.*
- *Repairs will be completed on Butte Creek Unit One Levee Mile .8 by November 1st. This is the last of the Butte Creek sites.*
- *Six Order Two sites recently picked up by the Corps will be worked on next year, along with 62 smaller sites the Corps is currently working on. They anticipate that seven will be completed this year and the rest will be rolled over until next year.*
- *The Hamilton City levee interim repair is moving forward. DWR is working with Glenn County and Hamilton City on cost share funding through the Local Levee Erosion Repair Grant Program.*
- *Some interim repair work is being done at the gauge station just upstream of Fremont Weir to ensure a functioning gauge through the flood season. Staff has been talking with Butte County about what a feasibility study would need to consist of for the 3BS overflow area.*
- *Mr. Swanson provided a history of activities at the Phelan Levee and the challenges there. He stated that DWR recently mailed a field action report prepared by the critical erosion repair program personnel that looked at the site; the report concludes that the site is currently not critical because of the amount of berm still left there. It also concludes that the river is unlikely to change course and migrate over into the Butte Basin.*

He reiterated that the Phelan Levee is a private levee and thus much controversy exists over who has the funding responsibility for it. DWR is attempting to establish a

consensus of the roles and responsibilities of the various groups in the area and determine what the funding responsibilities are for work done on the levee. They will then document their final decision regarding which group(s) is responsible.

Vice President Hodgkins noted that, regarding the history of Phelan Levee, a conclusion was never reached and thus no agreements made on who is responsible for its maintenance. He suggested that, as no formal decision has ever been reached, a letter be sent to the Corps setting forth the Board's understanding of where they are now and asking the Corps to either acknowledge that the Levee is a combined state and federal interest, or ask the Corps to a future Board meeting to explain to the Board why the Corps has no role. President Carter considered this a reasonable suggestion and Vice President Hodgkins will assist the staff in drafting such a letter.

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

Mr. Paul Brunner, TRLIA, provided the monthly report and answered Board Member questions. He first presented a plaque to the Board as a "thank you" for the Board's continued efforts and support on TRLIA's behalf. President Carter thanked him for the plaque and the recognition it represents. Mr. Brunner also provided written responses of questions directed to TRLIA during the September 11 Subcommittee Meeting.

Regarding the monthly report:

- On 1.a.2. -- the referenced power pole work has been completed and the power pole was subsequently removed.*
- On 1.c.1., (piezometers), the work was completed as discussed.*
- On 1.d.2.a. -- construction was completed on Segment 3 and put out to bid; a portion of the work has been awarded. They anticipate being finished with the levee work and off the levee this month (October '07). In addition, on the slurry wall portion of the work, about a 100-foot section collapsed. In response to Member questions, Mr. Brunner stated that the cause has not yet been identified. In the short term the slurry wall leveled out in the collapsed area; longer term they are aware it is a problem requiring a solution and they are working towards the right solution.*
- On 1.d.3.e. -- Segment two has gone out for bid.*
- A financial plan has been put together that speaks to what is being done with the Prop 1E funding.*
- President Carter inquired about a requested audit on the financials for TRLIA; Mr. Brunner stated that the audits are complete for the last three operating years and is now on their web page and that the audit found no deficiency; i.e., it was an unqualified okay.*

- *Member Rie asked whether TRLIA had anticipated the costs for Segments 1 and 3 increasing because of the delay in starting work in 2008; Mr. Brunner said there will most likely be some price increase.*
- *Member Rie asked DWR if it was feasible to come up with a funding agreement for the proposition money by the end of November; Mr. Swanson responded that DWR has not yet committed to a specific date, although the current agreement identifies the middle to late November time period for completion. Chief Engineer Bradley, has been inquiring about what will happen if the project goes over budget and stated that DWR has not specifically responded to that question as yet. Mr. Brunner stated that TRLIA is aware that cost overruns may occur and identified additional potential revenue options should that occur. Mr. Scott Shapiro, TRLIA, expanded on the additional options.*
- *Mr. Rice, Rice River Ranch, thanked the Board for their participation in the work that culminated in a working compromise agreement now pending between TRLIA and Rice River Ranch. He asked the Board to encourage TRLIA to commit to moving forward on the agreement and its timelines.*
- *Mr. Eres, Hofman Ranch, suggested that the Reclamation Board inject itself into the discussion between the Corps and TRLIA regarding the Section 408 permit. He also recommended that the Board look closely at the TRLIA financial plan presented to them, as well as the paperwork submitted as part of the recent audit.*

CONSENT

7. **CONSENT CALENDAR**

Levee Maintenance Easements - Kimball Hill Homes, Inc. and Access Easement to River Walk Homeowner's Association, San Joaquin County -- REMOVED FROM CONSENT (see REQUESTED ACTIONS, below)

8. **Modification of Lease Agreement with ASTA in the City of Rio Vista -- PULLED**

REQUESTED ACTIONS

7. **(continued from above) Levee Maintenance Easements - Kimball Hill Homes, Inc. and Access Easement to River Walk Homeowner's Association, San Joaquin County**

Ms. Olivia Guebara, DWR, gave a presentation describing the easements and asked the Board to accept both.

Upon motion of Member Rie, seconded by Secretary Doherty, the Board accepted both easements.

9. Board Order 07-01 -- Abandonment of Pipe Authorized by Permit No. 263, Maintenance Area 9, Sacramento County

Mr. Christopher Huitt, Reclamation Board, gave a presentation on the background and procedures to be utilized for decommissioning and abandoning the pipeline. He stated the staff recommendation -- to issue Board Order 07-01 directing DWR to abandon the pipe in accordance with the standards of Title 23 and to close Reclamation Board Permit 263.

Upon motion of Vice President Hodgkins, seconded by Member Rie, the motion carried.

10. Applications

A. Three Rivers Levee Improvement Authority, Application No. 18227, Yuba City

Chief Engineer Bradley gave a presentation, asking the Board to consider delegation of authority to the General Manager to send a letter to the Sacramento District, U.S. Army Corps of Engineers, requesting Section 408 approval to alter the federal flood control project associated with this Application.

Mr. Bradley clarified that the Board will have to agree that, ultimately, if the project is built, it will be accepted by the state as a part of the new plan of flood control, and that the state will then hold the federal government harmless, as it did with the original plan of flood control.

Legal Counsel Morgan added that the request for the 408 approval does not limit the Board's authority in making changes to the project as appropriate.

Mr. Bradley cautioned that, although he felt this was actually a great project, absolute clarity does not yet exist as to precisely, technically, what the project entails.

General Manager Punia acknowledged that there are technical issues that need to be resolved yet still recommended that the Board approve the letter, as the overall timelines involved are lengthy and Board approval of the letter would help maintain appropriate timeframes. Mr. Swanson, DWR, supported Mr. Punia's suggestion.

Mr. Jim Sandner, the Corps, stated that he didn't see a real problem. Although the Corps would always prefer that the project package be complete, if the letter was sent and the Board later decided it didn't want to hold the federal government harmless and/or they are not happy with the project, there is nothing to stop the Board from sending another letter to the Corps and withdrawing their request to alter the project. Mr. Sandner further stated that the project could not be built and then receive 408 credit after it was built; the permit must be in hand first before starting or awarding construction.

Mr. Shapiro, TRLIA counsel, stated their belief that if the letter isn't issued, it significantly decreases their chances of completing construction in 2008.

Mr. Eres, Hofman Ranch, strongly recommended that the Board decline at this time to issue the 408 letter; that, because of the technical issues referenced earlier, it is too soon.

Mr. Swanson added that time is of the essence and that, ultimately, if the Board is not satisfied it need not issue the permit.

After further discussion, Vice President Hodgkins motioned, seconded by Member Suarez, the following:

“to approve the delegation of the authority to the general manager to send a letter to the Sacramento District Army Corps of Engineers requesting Section 408 approval to alter the federal flood control project by constructing 5.7 miles of setback levee and degrading the existing federal levee replaced by the setback levee after the setback levee has been accepted as part of the project levee by the Corps, with the stipulation that the letter be sent when the application package is complete and that the general manager shall make findings that the improvements are not injurious to the Sacramento Valley plan of flood control, supported by evidence on the record.”

The motion carried.

B. Atlas Tract (RD 2126), Application No. 18257, San Joaquin County

Mr. Shapiro, now acting in his role as counsel for RD 2126, gave a presentation on the application, which asks the Board to consider approval of a letter to the Corps' Sacramento District, requesting Section 408 approval to alter the federal flood control project levee between Bear Creek and Mosher Slough, within the City of Stockton, by moving the general alignment of the existing project levee approximately 40 feet to the west to allow construction of the county road and to provide for residential development of Atlas Tract.

Mr. Jim Giottonnini, City of Stockton, provided details on the transportation benefits of the application.

Mr. Chris Neudeck, RD 2126, discussed the specific standards used to design the new levee and provided some specifics on why the existing levee is deficient.

Mr. Bradley, Reclamation Board staff, stated that his biggest opposition to the application is that it's not really flood control that the Board is dealing with; to his knowledge there is no deficient levee there. Thus, a separate, different type of permit should be required for the work. In addition, approval of the request by the Reclamation Board appears to be in conflict with the state executive order.

After much discussion, President Carter noted that the issue before the Board was whether or not to send a letter to the Corps requesting 408 approval to modify the federal project and that the issue had been clouded by the fact that there is a private levee that may or may not have encroached upon the project levee. In addition, he considered it beyond reason that an applicant would work at improving the private levee and not think a permit would be required when the private levee improvements clearly affect the public levee alongside it.

Member Suarez motioned for approval, seconded by Member Rie. After calling the roll, the motion carried 4-3.

11. Property Management

Renewal and Amendment of Agricultural Lease No. 94-2 in Yuba County

Ms. Guebara, DWR, requested a motion for Board approval of a five-year lease extension, beginning November 1st.

Upon motion by Secretary Doherty, seconded by Member Suarez, the motion carried.

INFORMATIONAL BRIEFINGS

12. Status of the Natomas Levee Improvement Program Draft Environmental Impact Reports

A. Landside Improvements Project

B. Bank Protection Improvements

In the interests of time both items were combined and Mr. Bassett, SAFCA, and Mr. Countryman, MBK Engineers, presented the board an update on the status of the EIR's. They anticipate coming before the Board in December to ask for 408 or 104 approval.

BOARD REPORTS

13. BOARD COMMENTS AND TASK LEADER REPORTS

Staff Counsel Morgan gave a short presentation on a variety of bills recently signed by the Governor that affect Reclamation Board activities. Of immediate concern is that one of the new bills removes the Board from DWR; thus, the Board will become independent as of January 1, 2008. The implications of that will be assessed in the coming months.

14. REPORT OF ACTIVITIES OF THE GENERAL MANAGER

General Manager Punia reported the following items:

- *The Corps recently responded to a letter sent by the Board on September 12, requesting two things from the Corps -- 1. Form a task force with the Board to streamline the 408 process; and 2. Delegate authority to the division and the district. The Corps agreed to establish a task force for the purpose but did not respond to the second request.*
- *The California Levee Roundtable had its second meeting on October 12th. The main decision was to develop a basic plan to address O&M-type issues on the levees. The plan will be shared with the Board after it is developed.*
- *DWR has initiated internal workshops with Board staff to discuss implementation factors for the Props. 1E and 84 FloodSAFE Program.*
- *The Board will require that permits be issued for older pipes (50-60 year old) if modification of the older pipe is requested; an engineer needs to inspect and certify that the pipe is structurally safe after modifications are made.*
- *An additional staff service analyst position, recently approved through a budget change proposal, has been advertised for and a candidate pool established.*
- *The Board has responded to the City of Folsom, Roseville and San Juan Water District that, based upon counsel's advice, at this time the Board cannot entertain their request to post-modify the Project Cooperation Agreement between them and the Board to include the water supply project in the Folsom Joint Federal Project.*

Supervising Engineer Fua presented a short history of the Union Pacific Railroad's bridge replacement project across the Bear River in Placer County, east of Highway 65. The project recently stopped work at the Board's request. UPR felt they could legally move ahead with the project whether they had DWR, Board and Corps permission or not; the Corps said no, this is a 408 project and therefore needs Corps approval. As of today, UPR has not restarted work. DWR and the Board are not acting until the Corps makes their determination that the project is okay. President Carter asked staff to follow up in the meantime and assess the public safety risk at the project site.

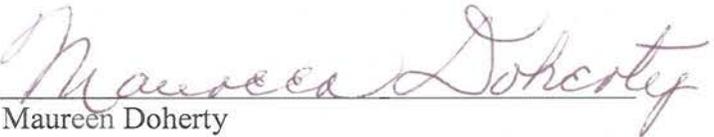
15. FUTURE AGENDA

President Carter and Mr. Punia will integrate Member suggestions to formulate and finalize the November Meeting agenda, now in draft form.

16. ADJOURN

President Carter adjourned the meeting at 6:02 p.m.

Dated: MARCH 17, 2008



Maureen Doherty
Secretary

The foregoing minutes were approved:



Benjamin F. Carter
President