

**MINUTES**

**MEETING OF THE CENTRAL VALLEY FLOOD PROTECTION BOARD  
January 18, 2008**

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 Central Valley Flood Protection Board was held on January 18, 2008, beginning at 8:32 a.m., at 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  
Ms. Teri Rie  
Mr. John Brown  
Ms. Emma Suarez  
Senator Darrell Steinberg, also represented by  
Mr. Dennis O'Connor  
AssemblyMember Lois Wolk, also represented by  
Mr. Alf Brandt

The following members of the Board staff were present:

Mr. Jay Punia, Executive Officer  
Mr. Eric Butler, Senior Engineer  
Mr. Dan Fua, Supervising Engineer  
Ms. Virginia Cahill, Legal Counsel  
Ms. Jill Phinney, Support Staff

Department of Water Resources (DWR) staff present:

Mr. Tim Kerr  
Mr. Ricardo Pineda  
Mr. George Qualley  
Mr. Ward Tabor  
Mr. Dave Wheeldon

Also Present:

Mr. John Bassett, Sacramento Area Flood Control Association (SAFCA)  
Mr. Paul Brunner, Three Rivers Levee Improvement Authority  
Mr. Stein Buer, SAFCA  
Colonel Thomas Chapman, United States Army Corps of Engineers (Corps)  
Mr. Joe Countryman, MBK Engineers  
Mr. Paul Devereaux, Reclamation District 1000  
Mr. Thomas Foley, Concerned Citizens for Responsible Growth  
Ms. Leslie Harper  
Mr. Roger Henderson, Corps  
Mr. Reggie Hill, Lower San Joaquin Levee District  
Mr. Gibson Howell  
Mr. J.F. Schneider  
Mr. Scott Shapiro  
Ms. Judy Soutiere, Corps  
Mr. Paul Thayer  
Mr. Patrick Tully

**1. ROLL CALL**

*Executive Officer Punia called the roll. All Board Members were present.*

**2. CLOSED SESSION**

- A. To discuss litigation (Natural Resources Defense Council v. Reclamation Board; Case No. 06CS01228) pursuant to Government Code Section 11126 (e) (2) (A)**
- B. To consider the annual performance of the General Manager pursuant to Government Code Section 11126 (a) (1)**
- C. To consider the appointment of a new Chief Engineer pursuant to Government Code Section 11126 (a) (1), Personal Exception**

**3. APPROVAL OF MINUTES - October 18-19, 2007 & November 16, 2007**

*Following the Closed Session, President Carter introduced Mr. Gary Hester as the new Chief Engineer of the Board.*

*President Carter also introduced the new members of the Board -- Senator Darrell Steinberg and Assembly Member Lois Wolk -- who made introductory remarks.*

*The Minutes were not prepared as yet for October 18-19, 2007. Upon motion by Member Rie, seconded by Member Burroughs, the Board approved the November 16, 2007 Minutes.*

#### **4. APPROVAL OF AGENDA**

*Upon motion by Member Burroughs, seconded by Secretary Doherty, the Board approved the Agenda as published.*

#### **5. PUBLIC COMMENT**

*Mr. Reggie Hill, Manager of the Lower San Joaquin Levee District, extended an open invitation to Board members to visit his District.*

*Mr. Stein Buer, SAFCA, provided a quick update on comments he made at the December 21, 2007 Board Meeting, and concluded by expressing that SAFCA's goal continues to be the achievement of mutual benefit for both the urban and rural areas as they move forward with a program that includes both wise floodplain management and structural improvements to the urban levees. Vice-President Hodgkins commented on the significance of local agencies on opposite sides of the river coming together and moving forward in a partnership.*

*Colonel Chapman, representing the Army Corps of Engineers, stated that the Corps had finished its determination on the certifiability of the Natomas Basin levee system to the "three percent" or "33-year-level storm" and determined that the Corps is not able to currently certify the system. He further stated that the Corps is not saying they expect levee failure but rather that, based on the fairly rigorous Corps' standard, the risk of failure is unacceptable for the federal standard that the Corp has to apply. The levee system is better now than it was ten years ago; tremendous improvements have been made, yet risk remains.*

*Mr. Roger Henderson, the Corps, further clarified that there were underseepage issues at the Natomas Reach 1 area that did not meet Corps criteria.*

*Mr. Buer stated that notifications have been disseminated to people in the area describing the risk, including three major bulletins in the past year and a half. Further, he agreed with Colonel Chapman and reiterated that they are remaining vigilant and doing everything they reasonably can to raise awareness, to be ready to react, and to solve the problem. In addition, preparedness instructions, issued by the city, are available on the SAFCA website.*

#### **6. Transition to the Central Valley Flood Protection Board and new rules regarding this transition:**

**Evidentiary Hearings**  
**Ex parte Communications**  
**Relationship to DWR**  
**Terms and replacements**

*Legal Counsel Virginia Cahill gave a presentation on some of the implications of the transition from the Reclamation Board to the Central Valley Flood Protection Board. She discussed four transition issues:*

1. *The relationship of the new Board to the Department of Water Resources;*
2. *The new requirements for evidentiary hearings;*
3. *The limitation on ex parte contacts and what that means for Board Members and people that might want to contact them;*
4. *Determining Board Member terms and replacement.*

*Mr. Alf Brandt, one of the authors of the legislation forming the new Board, observed that the intent of the new legislation was that the new Board would remain a part of DWR but act independently. Further, the new Board would decide how to spend their funds -- the more technical issue being how to make that legal and clear.*

*President Carter remarked that, with regard to the evidentiary hearings, the Board needed to initiate a process to amend existing regulations to incorporate some of the requirements of the new legislation into their existing regulations. For the time being, the Board will follow existing regulations as well as the requirements of the new legislation, to allow the Board to safely go ahead and conduct business on permits and etc.*

*President Carter indicated that he would like a motion to direct staff to initiate the process to amend the regulations as appropriate to include known amendments that the Board would like to make as well as amendments that are a result of the new legislation. The first step would have the staff come back to the Board with a work plan and a listing of milestones for establishing expectations as to when the milestones could be implemented.*

*Vice President Hodgkins so moved and Ms. Rie made the second. The motion carried unanimously.*

## **7. REPORT OF THE DEPARTMENT OF WATER RESOURCES (DWR)**

*Mr. George Qualley reported on the following:*

- The Sacramento Valley water year index for median conditions is now categorized as "below normal;" it was previously categorized as "dry."*
- The San Joaquin Valley water year index is still categorized as "critical."*
- Levee Evaluations Branch -- drilling is currently going on in Stockton, Natomas and RD 17; bathymetric surveys are underway in the urban areas of the Sacramento and San Joaquin and are about 2/3<sup>rd</sup> completed.*
- Levee Repairs Branch -- work continues on four critical sites identified in the San Joaquin, two others along the San Joaquin River, and one in Chowchilla Bypass.*

- *Maintenance Support Branch -- Garmire Bridge Replacement is well under way.*
- *Tisdale Bypass -- design work is proceeding.*
- *DWR recently met with the Corps and Sutter County officials on the Sutter Basin Feasibility Study; they expect to get it fully underway in April '08.*
- *Floodplain Management Branch, Alluvial Fan Task Force, has had their initial meetings.*
- *FEMA Provisionally Accredited Levees (PAL) -- FEMA and Reclamation District 17 in San Joaquin County signed a PAL agreement on December 11<sup>th</sup>, 2007.*

*Ricardo Pineda, Floodplain Management Branch Chief, noted that implementation of the PAL agreements is going to be a long and arduous process, requiring extensive and ongoing discussion with FEMA.*

*Mr. Ward Tabor gave a brief status report on the Early Implementation Program, which is funded by Propositions 84 and 1E; they expect to see money flowing within the next couple of months.*

#### **8. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY (TRLIA) MONTHLY REPORT**

*Mr. Paul Brunner updated the Board, noting that:*

- *TRLIA's goal is to complete the project and achieve the 200-year flood protection level by the end of 2008.*
- *Progress is being made on the 408 permit, and they hope the 408 package will go out by the middle of February 2008.*
- *TRLIA's financial plan is being finalized and will most likely be turned in the last week of January 2008.*

*Mr. Thomas Foley, Concerned Citizens for Responsible Government, reiterated their request that the State of California take the project over.*

#### **REQUESTED ACTIONS**

#### **9. Sacramento River Bank Protection Project**

**Consider approving amendment to the Local Cooperation Agreement between the U.S. Army Corps of Engineers (Corps) and the State of California represented by the Central Valley Flood Protection Board (formerly The Reclamation Board) on the Sacramento River Bank Protection Project, increasing the authorized linear feet from 405,000 to 485,000.**

*Mr. Dave Wheeldon, DWR Division of Flood Management Critical Repairs Branch, provided some background on the project.*

*Upon motion by Secretary Doherty, seconded by Vice-President Hodgkins, the amendment was approved.*

## 10. HEARING AND DECISIONS

### A. Application No. 18159-2, Sacramento Area Flood Control Agency, Natomas Levee improvement Program, Natomas Cross Canal South Levee Phase 2 Improvement Project, Sutter County

**Hold hearing and consider approval of Draft Permit No. 18159-2 to place fill to raise and realign approximately 5.3 miles of levee, and to construct approximately 4.3 miles of seepage cutoff wall in the levee along the south (left) bank of the Natomas Cross Canal in Sutter County, in Reclamation District 1000.**

*Senior Engineer Eric Butler, Board staff, gave a presentation on the permit application, reviewing some of the key points involved, and summarized them as essentially three components:*

- 1. Placing about 5.3 miles of landside fill to provide additional freeboard;*
- 2. Placing waterside fill on approximately 9/10ths of a mile;*
- 3. Constructing 4.3 miles of cutoff wall.*

*Mr. Butler summarized SAFCA's plans: they want to get to 100-year protection as quickly as possible; to lay the groundwork to achieve 200-year protection over time; and to design the improvements to their basin levees that are anticipated to be included as components of the common features project currently under re-evaluation by the Corps.*

*Mr. Butler concluded by giving staff's recommendation, which is that the Board adopt the draft resolution, entitled "Findings and Decision Authorizing Issuance of Encroachment Permit No. 18159-2, etc."*

*President Carter, after summarizing the Hearing process, reminded everyone that a significant amount of comments and testimony were heard in the Board's December Meeting and are now a*

*matter of public record. He then asked that, in the interests of time, speakers should focus on any new issues or additional information during today's presentations.*

*Mr. John Bassett, SAFCA Director of Engineering, made brief comments that highlighted updates from his extensive initial presentation during the December '07 Meeting. Several speakers discussed the potential for a shifting of risk that may occur after completion of the changes to the Natomas Cross Canal (i.e. risk shifted from Natomas Cross Canal area to elsewhere in the system as a result of the construction of the landside fill, waterside fill and cutoff wall).*

*Mr. Paul Devereux, General Manager for RD 1000, urged the Board to follow staff's recommendation and approve the permit application.*

*Members of the public who live along the Garden Highway commented on their concerns about damage to the quality of their well water; the relocation of power lines from the land side to the water side of the levee (which will require removal of trees and other changes in landscaping); and other issues.*

*Mr. Bassett suggested the following minor changes to the draft resolution:*

*The document language should reflect throughout it the official title of the project - The Natomas Cross Canal South Levee Phase 2 Improvements.*

*The term "Flood Control Board" rather than "Flood Protection Board" should be consistently reflected throughout.*

*On the third "Whereas" on the first page, which describes what actions the SAFCA Board took at its meeting in November '07 and currently reads "Whereas, SAFCA, as lead agency, certified the EIR, adopted" -- add after those words the text "mitigation measures and a mitigation monitoring and reporting plan."*

*Further along the first page, at ". . . MMRP incorporated herein by reference and available at the Central Valley Flood Protection Board or at SAFCA" -- change the word "issued" to "approved findings" and then add after "findings" the following: "and a statement of overriding considerations pursuant to CEQA."*

*The entire last paragraph on page 6, which now begins "Approval of encroachment permits . . ." be stricken.*

*Upon motion by Member Suarez, seconded by Member Rie, the Board adopted the resolution -- with the minor changes suggested by the applicant above -- by a roll call vote of 6-1, with Member Burroughs dissenting.*

## **11. SECTION 408 AND 104 LETTERS TO THE U.S. ARMY CORPS OF ENGINEERS**

A. **Application No. 18159-3, Sacramento Area Flood Control Agency, Natomas Levee Improvement Program, Sacramento River East Levee Phase 1 Improvement Project, Reaches 1 through 4B, Sacramento and Sutter Counties**

Consider approval of a letter to the Sacramento District, U.S. Army Corps of Engineers, requesting Section 408 approval to alter the federal flood control project levee along the east (left) bank of the Sacramento River. The Project is located in Sacramento County and Sutter County between the Natomas Cross Canal and Elverta Road on the Garden Highway, in Reclamation District 1000.

*Mr. Butler gave a presentation and concluded by stating the staff recommendation that the Board approve sending a letter to the Corps requesting the 408 approval.*

*Upon motion by Member Burroughs, seconded by Member Brown, the Board approved sending the letter, which will follow the form of the previous 408 request letters.*

B. **American River Common Features Project**

Consider approval of a letter to the U.S. Army Corps of Engineers requesting credit under Section 104 of Public Law 99-662 on behalf of the Sacramento Area Flood Control Agency for flood control improvements in the Natomas Basin along the east levee of the Sacramento River and the south levee of the Natomas Cross Canal.

*Mr. Tim Kerr, the state's project manager representing the Board in the management of the American River Common Features Project, gave a presentation on the proposed improvements.*

*Upon motion by Member Burroughs, seconded by Secretary Doherty, the Board approved sending the letter to the Corps.*

**BOARD REPORTS**

**12. BOARD COMMENTS AND TASK LEADER REPORTS**

*Member Burroughs commented that she was advised not to attend any meetings until the Board has clarification about ex parte.*

*President Carter reported that the Levee Roundtable met and neither he nor Member Burroughs attended; Executive Officer Punia did attend on behalf of the Board.*

*President Carter reported that he and Vice President Hodgkins met with DWR executives earlier in the week regarding administrative and transition issues and discussion of the MOA. The timeline for completion of the issues and the MOA is March 1.*

### **13. REPORT OF THE ACTIVITIES OF THE GENERAL MANAGER**

*Executive Officer Punia reported on the following:*

- The Governor's budget release for Fiscal Year '08-'09 contains a \$2 million augmentation for the Central Valley Flood Protection Board. Staff is working on a budget change proposal identifying what the money will be used for.*
- As mentioned earlier, Executive Officer Punia attended the Levee Roundtable Meeting held on December 4<sup>th</sup>. At the meeting it was determined that DWR will prepare a plan in the middle of February '08 on how to manage the vegetation on levees. The plan will be presented to the Corps and other roundtable participants and then finalized on March 14<sup>th</sup>. In the meantime, the Corps will circulate a draft letter stating that they will extend the time to correct vegetation deficiencies until after the parties have had the opportunity to further discuss the issue.*
- A briefing was held at DWR regarding General Galloway's recent report on flooding in the Central Valley. Copies of the report will be circulated to the Board and the various recommendations presented at a future meeting.*
- The next meeting for the 408 Task Force is scheduled for January 22<sup>nd</sup>.*
- Staff has hired a new administrative assistant, Geoff Shumway, who will start work as soon as his paperwork has cleared.*

### **14. FUTURE AGENDA**

*An update on the Folsom project will be scheduled for the February meeting.*

*West Sacramento and SAFCA may have agenda items. Mr. Shapiro requested that the potential West Sacramento item be placed on the Agenda and stated that it is a 408 letter only, not a permit application.*

*Supervising Engineer Fua stated that two noncontroversial permit items may appear on the Consent Calendar.*

*Board Member Suarez asked if it were possible to get a legislative update from Mr. Casey Shimkey.*

*Member Suarez also asked the Board to agendize consideration for adopting an applicant's bill of rights, one similar to that of California EPA or other state agencies.*

*Members Burroughs and Brown suggested that a workshop day be scheduled to work on new Board policies, procedures and strategic plan, as well as other items that will come up during the transition period. President Carter suggested that outside help be found to assist with the details of setting up such a workshop.*

*Member Rie suggested a standard agenda item be placed on every future agenda for reporting ex parte communications for items not on the agenda. Further, that the item should probably be placed before public comments so the public can, in turn, comment on any of the ex parte communications as they see fit.*

**15. ADJOURN**

*President Carter adjourned the meeting at 5:58 p.m.*

Dated: March 21, 2008

  
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Maureen Doherty  
Secretary

The foregoing minutes were approved:

  
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Benjamin F. Carter  
President