

## MINUTES

### MEETING OF THE CENTRAL VALLEY FLOOD PROTECTION BOARD November 21, 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 November 21, 2008, beginning at 8:37 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. Francis "Butch" Hodgkins, Vice President  
Ms. Maureen "Lady Bug" Doherty, Secretary  
Mr. John Brown, Member  
Ms. Teri Rie, Member  
Ms. Emma Suarez, Member

The following members of the Board staff were present:

Mr. Jay Punia, Executive Officer  
Ms. Virginia Cahill, Legal Counsel  
Mr. Dan Fua, Supervising Engineer  
Mr. Gary Hester, Chief Engineer  
Ms. Lorraine Pendlebury, Staff Analyst

Department of Water Resources staff present:

Mr. Steve Bradley, Chief, Statewide Flood Planning Office  
Mr. Mark Cowin, Deputy Director, Regional Water Planning and Management  
Ms. Nancy Finch, Legal Counsel  
Ms. Myra Galvez, Staff Services Manager I  
Mr. Ricardo Pineda, Chief, Floodplain Management Branch  
Mr. George Qualley, Chief, Division of Flood Management  
Mr. Keith Swanson, Flood Maintenance Office  
Mr. Jon Yego, Chief, Floodway Protection Section

Also Present:

Mr. Dick Akin, Akin Ranch  
Mr. Fran Borcalli, FloodSAFE, Yolo County  
Mr. Paul Brunner, Three Rivers Levee Improvement Authority (TRLIA)  
Mr. Stein Buer, Sacramento Area Flood Control Association  
Mr. Stanley Cleveland, Sutter County Board of Supervisors  
Mr. Mark Connelly, San Joaquin County Public Works  
Mr. Paul Devereux, RD 1000  
Mr. Tom Eres, Hofman Ranch  
Mr. Ron Erickson, Sutter County  
Mr. Jim Giottonini, City of Stockton  
Ms. Janelle Gray, Sacramento City Treasurer's Office  
Mr. Gregg Herrington, Unger Riverfront Property  
Mr. Paul Hight, County of Sacramento  
Mr. Brain Holloway, American River Flood Control District  
Mr. Ken Ruzich, RD 900  
Mr. Scott Shapiro, TRLIA, Central Valley Flood Control Association  
Ms. Debbie Smith, Deputy Attorney General, California Attorney General's Office  
Mr. Tim Washburn, Sacramento Area Flood Control Association

## **1. ROLL CALL**

*Executive Officer Punia called the roll.*

## **2. APPROVAL OF MINUTES - September 18-19, 2008**

*Upon motion by Member Suarez, seconded by Secretary Doherty, the Board unanimously adopted the September 19, 2008 Meeting Minutes. The September 18, 2008 Minutes will be addressed at a future Meeting.*

## **3. APPROVAL OF AGENDA**

*At the request of the Applicant and DWR, Executive Officer Punia recommended that Item 13 be postponed.*

*Upon motion by Secretary Doherty, seconded by Member Brown, the Board unanimously approved the Agenda, with the change suggested above.*

## **4. PUBLIC COMMENT**

*Mr. Keith Swanson, DWR, commented on fences and gates. He implored the Board to really think about these as they come forward in the future and really limit them, based on the need to control vehicular traffic. DWR pushes its staff to conduct maintenance in the most efficient*

*manner and having to deal with fences and gates negatively impacts that and thus does not typically contribute to public safety.*

*Mr. Gregg Herrington, Unger Riverfront Property project manager, commended Board staff for their collaborative efforts with DWR, the U.S. Army Corps of Engineers (the Corps) and the West Sacramento City staff for their work to define a levee in the project area. He also stressed the urgency that the property owners feel in bringing this issue before the Board, as they have recently received \$23 million from the Prop 1(c) infrastructure funding and need to have a financing plan in place to receive the money (the financing plan being contingent upon, among other things, defining a levee in the project area).*

*Mr. Tom Eres, Hofman Ranch, speaking in response to Mr. Swanson's comments about fences and gates, asked the Board to consider the distinction between fences in rural and urban areas. Fences in rural areas are extremely important in farming and ranching.*

## **5. REPORT OF ACTIVITIES OF THE DEPARTMENT OF WATER RESOURCES**

*Mr. Mark Cowin, Deputy Director, DWR, introduced himself to the Board. Mr. Cowin will oversee the activities of the Division of Flood Management and the FloodSAFE Program.*

*Mr. George Qualley, DWR Division of Flood Management Chief, reported on the following:*

- *Water conditions are virtually unchanged from the previous month and multipurpose reservoirs are now the lowest they have been in the last 14 years.*
- *Flood Operations Branch: staff are continuing to participate in emergency action plan meetings. Also, they are working with RD 2039 to continue to closely monitor the Upper Jones Tract.*
- *During the summer Inyo County had a series of fires, followed by severe thunderstorms, that created excessive mud and debris flows on the local watershed. The County appears to qualify for some grants from the Department of Forestry to do remedial work on the burn areas.*
- *Local emergency preparedness and response: DWR is working on a new kind of services agreement with the Corps that will give them access to Corps mapping of certain Delta-specific areas. Also, they continue to work on three types of emergency action plans for the Delta -- to deal with the response to catastrophic failure; to develop an overall response plan for the Delta (this is tied to SB 27); and to plan how all the different agencies will coordinate together on a Delta response.*
- *Flood system analysis: DWR is working on improving their tools to more consistently rate the different levees. They are also working with local counties on inundation maps.*

- *State Emergency Assessment Teams (SEAT) worked with DWR on seven SEAT Reports that were put together following the 2008 wildfires.*
- *Emergency Response and Security Section is updating their communication plan for emergency response in order to clarify the current process and to identify potential needs for additional communications.*
- *A tabletop exercise will be conducted on December 10<sup>th</sup> to test the new Delta Emergency Operations Plan.*
- *DWR is looking at additional site facilities for stockpiling materials that can be acquired with the funds made available through SB 2X1.*
- *DWR participated in the recent Golden Guardian exercise, which focused on southern California response to earthquakes.*
- *Flood Maintenance Office: DWR and Board staff have been meeting on a variety of issues relating to the Sutter Bypass.*
- *Flood Project Modifications and Permits Branch: the only early implementation project still active is the setback levee project (TRLIA) in Yuba County. Several meetings have been held to address the crack that appeared in Segment 1 and to determine what potential failure mechanisms and risks there are in developed monitoring mechanisms and emergency plans.*
- *Local Levees Program has made some decisions on applications that came in, and are looking to see if there's interest in a second funding solicitation for the Local Levee Evaluation Program.*
- *Floodplain Management Branch: dialogue is ongoing with the City of West Sacramento on their efforts to acquire a PAL from FEMA.*
- *Levee Repairs Branch work is progressing.*
- *Sacramento River Bank Protection Project sites: 127 sites on the PL 84-99 have been repaired thus far, including the three-mile-long slurry wall in Chowchilla Bypass.*
- *Urban levee evaluations are moving along. Non-urban levee evaluations are just starting, and the project management plan is underway.*

*Mr. Steve Bradley, Chief of the Statewide Planning Office, then gave a presentation on flood protection planning activities in the Central Valley -- on staffing, funding, projects and programs. He concluded by discussing his current perceptions of Board involvement in the various activities and answered Member questions. He also noted that public outreach on the proposed plans will begin in mid-to-late January.*

*Member Teri Rie arrived.*

*President Carter noted that flood protection planning activities are obviously an important issue for the Board. A subcommittee has been formed -- with Vice President Hodgkins and Member Brown representing the Board -- that will be working closely with Mr. Bradley and his staff. Monthly or bi-monthly updates will be provided to the full Board of the subcommittee's activities.*

*Mr. Mark Connelly, San Joaquin County Public Works-Flood Management, stated his county's support for bi-monthly updates on the Plan. They consider outreach to be critical and their input in development of the Plan imperative, and eagerly look forward to discussing the issue further.*

*Ms. Myra Galvez, DWR, provided a status update on Board Member salaries and benefits.*

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

*Mr. Paul Brunner, TRLIA Executive Director, reported on the following:*

- *The hydraulic analysis, required as part of levee design and construction work, has been completed and submitted to the Corps and DWR for review.*
- *Work on Segment 1 is essentially completed for the current construction season. The crack in Segment 1 is being monitored and is now covered with a visquine plastic. An emergency response plan has been completed and given to DWR, RD 784 and others for review and feedback. They are prepared to respond, if needed, to changes in the crack during the rainy season. They will continue to monitor the situation throughout the winter. Monitoring will increase over time and other assessments taken to determine what the final fix should be. They expect to install the fix next year, hopefully in the May-June time period.*
- *Segment 3 is wrapping up and the levee work is completed.*
- *Segment 2 has seen tremendous progress. A potential issue arose when a jawbone and some Indian tribe burial bowls were uncovered as trees were being removed. They have been working extensively with the Indian tribe and the Corps to work through the issues associated with this discovery.*
- *They have been working with the Corps on getting the federal permits necessary to accomplish the tie-in work. The Corps' EIS is scheduled to go final on November 24<sup>th</sup> and the Corps has indicated that they are preparing the Record of Decision to be signed in the first week of December. When the EIS is finalized the Corps will issue the 408 approval letter, and final approval will occur on December 3.*

*Mr. Tom Eres, Hofman Ranch, commented that they were very concerned about the crack in Segment 1 and suggested the need for more rigorous involvement of Board staff, in the best interest of public safety, with respect to trying to track the assumptions that go into the hydraulic modeling.*

**7. CONSENT CALENDAR - None**

**8. HEARINGS AND DECISIONS - None**

**REQUESTED ACTIONS**

**9. TITLE 23 PROPOSED AMENDMENTS**

**To consider proposed amendments to Title 23 regulations and direct staff to forward the proposed amendments to the Office of Administrative Law (OAL) for publication in the California Regulatory Notice Register.**

*Ms. Debbie Smith, Attorney General's Office, presented the final drafts of the proposed amendments to the Tier One regulations. Board Members then commented on various aspects of the proposals and suggested some modifications and deletions to the Tier One regulations language.*

*Upon motion by Member Suarez, seconded by Vice President Hodgkins, the Board unanimously adopted the proposed amendments, including the Member's suggested modifications and deletions, and directed staff to forward the proposed amendments to the OAL for publication.*

**10. BOARD DISCUSSION OF LOCAL PROJECT COOPERATION AGREEMENTS INVOLVING JOINT POWERS AGENCIES**

**Consider whether the Board will require assurances regarding operation and maintenance and indemnity from the members of a joint powers agency as well as from the joint powers agency itself.**

*Legal Counsel Cahill provided definitions of Local Project Cooperation Agreements (LPCA's) and Joint Powers Agencies (JPA's), as well as a history of previous Board requirements for LPCA's.*

*Vice President Hodgkins noted that JPA's are frequently created as financing agencies and part of that process is that they provide indemnification. Subsequently, when the project is completed, the JPA may disappear. When this occurs, is the indemnification they provided as part of their financing meaningless and the state then potentially liable? Ms. Cahill responded that what they are trying to do is to have the member agencies agree to indemnify the state in*

*case the JPA disappears; i.e., a local agency will remain that continues to indemnify the state. However, local agencies have limited resources.*

*Ms. Cahill delineated three options for the Board to consider -- to always have the member agencies sign on to continue to indemnify the state; to never have the member agencies sign on; to look at the situation on a case-by-case basis.*

*Mr. Scott Shapiro, speaking on behalf of the California Central Valley Flood Control Association, phrased the issue a little differently: "when granting a permit to a joint powers agency, should the Board make it a condition of the permit that the member agencies of the joint powers agency must indemnify the Board for any liability that may arise from the facilities that constitute the project?"*

*Mr. Shapiro provided a definition of what indemnity is: "it is an agreement whereby one party agrees to secure another against an anticipated loss or damage." He stated that "interestingly, it only shifts the risk. It never lessens or reduces the risk. It doesn't remove liability. It simply says who's stuck with the liability." Further, there are five different types of liability that might arise: design liability; construction liability, operations and maintenance (O&M) liability, development liability, and the "shift the pain" liability.*

*He proposed a compromise position -- that the Board limit indemnity to the JPA members that control O&M and seek obligations to perform O&M by those same JPA members that do the O&M. To go further, he stated, is to place an unfair burden on the JPA members.*

*Mr. Stein Buer, Executive Director, SAFCA, endorsed and agreed with Mr. Shapiro's comments. He further stated that seeking to shift liability to the local entities would have a very chilling effect, as local entities may choose not to participate in flood projects if doing so means that long-term indemnification is a part of their participation.*

*Several other speakers spoke in opposition to the indemnity requirement for various reasons and in support of Mr. Shapiro's analysis of the issue.*

*Mr. Paul Hight, County of Sacramento Risk Management Office, referencing the TRLIA agreement, cautioned that the language written into the indemnity provision may not be enforceable, as it doesn't talk about fault. In addition, it is an issue that is probably not insurable under the Excess Insurance Authority's Memorandum of Coverage.*

*Mr. Tom Eres, Hofman Ranch, suggested that the indemnity requirement is an appropriate, prudent state policy that the Board should adopt and apply equally; i.e. not on a case-by-case basis.*

*After much additional discussion, President Carter noted that the Board is dealing with and issuing permits to many different kinds of JPA's. Does the Board want to have a policy to require an indemnification clause to look through the JPA's or not? Does it want to have the flexibility to do that individually? Given that the Board has a lot of different structures of JPA's*

*and their agreements are all different, it seems that if the Board does require something it needs to be tailored to those individual agreements.*

*After further discussion, Secretary Doherty motioned that the Board require assurances regarding operation and maintenance and indemnity from the members of a joint powers agency as well as from the joint powers agency itself. Vice President Hodgkins seconded the motion.*

*Discussion continued, with other Members commenting that the issues were still not fully clarified. Given the provisions of state law about tort acts, what kind of claims is the state not protected from even if the parent agencies don't sign the agreement? Will the parent agencies be required to provide assurances that they will accept the indemnification in the event of dissolution of the JPA? The Members eventually agreed that more information was needed prior to them making a final decision.*

*Upon motion by Vice President Hodgkins, seconded by Secretary Doherty, the Board unanimously agreed to table the initial motion (see Secretary Doherty, above) and the Item, and continue the discussion at a future meeting.*

**11. COOPERATION AGREEMENT, THREE RIVERS LEVEE IMPROVEMENT AUTHORITY (TRLIA), FEATHER RIVER REPAIR PROJECT, SEGMENT 2, FEATHER RIVER SETBACK LEVEE, YUBA COUNTY**

**Consider approval of a Cooperation Agreement among the Board, TRLIA, Yuba County, and Reclamation District 784 for the Segment 2 Feather River Setback Levee project which provides local assurance for operation and maintenance of the completed project and indemnification for the Board and the State of California.**

*Ms. Cahill and Mr. Shapiro recommended that the Board approve the Agreement as presented today -- that is, the Agreement that includes Yuba County -- with the word "each" changed to "jointly and severally." Mr. Shapiro asked that, as the previous motion (Item 10) was tabled to a future meeting, should the Board decide to adopt a policy with a different consideration, then the parties could return before the Board and speak again on the issue.*

*On that basis, upon motion by Member Brown, seconded by Secretary Doherty, the Board unanimously approved the Agreement.*

**12. SUTTER BYPASS RESOLUTION**

*The Board considered approval of a revised Resolution No. 08-19 which will direct staff to address various issues associated with the Sutter Bypass.*

*Member Suarez suggested that a two-dimensional analysis should be conducted, if funding were available.*

*Mr. Keith Swanson, DWR, expressed concerns about the requirements and expectations associated with a two-dimensional model. Although the model is the "gold standard," it would be very expensive -- perhaps \$500,000 or more -- and thus there arises a question about funding priorities.*

*Following additional discussion, upon motion by Member Suarez, seconded by Vice President Hodgkins, the Board unanimously approved the Resolution, after first appending Section No. 4 to say that "the Board directs staff to work with DWR and the Corps in developing a two-dimensional model, funding permitted."*

*Ms Suarez departed from the meeting.*

### **13. BOARD SPONSORED PROJECTS AND STUDY AGREEMENTS**

#### **WEST SACRAMENTO PROJECT - POSTPONED**

**Consider approval of:**

- 1. A Feasibility Cost Share Agreement (FCSA) among the Department of the Army, the Central Valley Flood Protection Board (Board), and the West Sacramento Area Flood Control Agency (WSAFCA) for a General Reevaluation Report (Study), which includes a Project Management Plan report that outlines and defines major tasks, task management, schedule, and estimated costs for the Study.**
- 2. A Local Feasibility Cost Share Agreement (LFCSA) between the Board and the WSAFCA to carry out the non-Federal sponsors responsibilities under the FCSA for the Study.**

#### **INFORMATIONAL BRIEFINGS**

### **14. FloodSAFE YOLO PILOT PROGRAM**

*Mr. Fran Borcalli, FloodSAFE Yolo Pilot Program Project Manager, presented an informational briefing that focused on Cache Creek and the Cache Creek Settling Basin. He noted that there is an authorized feasibility project with the Corps (although it is not appropriated as yet) and the local community is actively engaged in the overall process.*

### **15. SENATE BILL 5 BUILDING CODE PROJECT UPDATE**

*Mr. Ricardo Pineda, DWR, presented the update and answered Member questions. DWR plans to conduct public workshops starting in January, and they will continue the Technical Advisory Committee (TAC) Meetings. He concluded by emphasizing the importance of engaging the Board, other technical people on the TAC, and the other stakeholders through the workshops and other forms of communication. He stated that the final package will be submitted to the California Building Standards Commission in May or June of '09.*

## **16. ASSEMBLY BILL 156 RISK NOTIFICATION AND LEVEE FLOOD PROTECTION ZONE MAPS**

*Mr. Pineda, DWR, again gave the presentation and then answered Member questions. He provided an update on the overall program, including where DWR now stands with the Levee Flood Protection Zone Maps.*

## **17. SCHEDULE FOR CENTRAL VALLEY FLOODPLAIN EVALUATION AND DELINEATION**

*Mr. Pineda, DWR, also gave this presentation and answered Member questions. The presentation informed the Board of the proposed mapping schedule that needs to be approved by the December '08 Board Meeting.*

## **BOARD REPORTS**

### **18. BOARD COMMENTS AND TASK LEADER REPORTS**

*Member Brown offered to take his fellow Members on a flight over the TRLIA project and the Sutter Bypass. Other Members expressed strong interest.*

*Secretary Doherty went on a water education tour of the empty dams in the Whiskey Town and Iron Mountain clean-up area. She and Vice President Hodgkins met with Don Meisner, recently retired from DWR, and they toured Little Chico Creek and portions of the weir at the head of the Yolo Causeway.*

*Secretary Doherty also attended a session at the museum in Yolo County (at Woodland). She heard a speaker from Downey Brand, a man who spoke on monitoring the wealth in Yolo County, and David Stirling, author of Green Gone Wild, a book about the high cost of "going green," which she highly recommended.*

*Member Rie reported that the Corps approved another clarification memo on 408. Executive Officer Punia noted that he will circulate copies to the Members. Vice President Hodgkins commented that the memo, overall, will not fundamentally change or make the 408 process any easier than it is now.*

*Vice President Hodgkins reported that the Lower Bypass Forum has now had five meetings. The most recent meeting focused mostly on understanding the nature of what it is that people would like to implement in the bypass and whether the bypass is the right place for this particular kind of habitat creation (mostly tidal habitat for fish).*

*He also attended a presentation at Fish and Game's headquarters in the Eagle Basin wetlands. He provided a short summary to the Board.*

*President Carter reported that he, Vice President Hodgkins, Executive Officer Punia and Legal Counsel Cahill continue to work diligently on the DWR-Board MOA.*

*President Carter attended the National Committee on Levee Safety meeting in November. He will also attend a review team meeting in Virginia on December 12<sup>th</sup>. He noted that California seems to be fairly well represented on the Committee.*

*President Carter also reported that the Levee Roundtable is currently trying to finalize their framework, their language; in essence, the parties are trying to agree on what the state can commit to and what the Corps can live with. The next meeting is scheduled for January '09.*

## **19. REPORT OF THE ACTIVITIES OF THE EXECUTIVE OFFICER**

*Executive Officer Punia reported on the following items:*

- *Staff discussed the Sutter Bypass Resolution. In addition, at the Board's direction, they have provided comments on the National Wildlife Refuge Conversation Plan. Copies are included in the Board packet. Also, they have started discussion with DWR to pinpoint the design capacity for the Bypass, although consensus has not been reached as yet.*
- *He commended the leadership and guidance of the Board and the efforts of Vice President Hodgkins and Member Rie regarding the Section 408 Task Force; as a result of their efforts the Board will be able to influence the national policy and make a difference in the policy guidance issued by the Corps. Once the framework document is completed the Corps is going to issue the vegetation policy for the whole country.*
- *The map of the Sacramento/San Joaquin Drainage District is now on the web.*
- *Based upon the Board's request, the Corps has granted an extension on finalizing the PAL agreement authorization on the Bear Creek and Calaveras River through December 15<sup>th</sup>. In the meantime, the county has signed the PAL agreement.*
- *Paperwork is completed to advertise two senior engineer positions, but they have not been advertised as yet.*
- *General McMahan, the Corps South Pacific Division, has coordinated with President Carter for a trip to the JOC in December.*

- *A summary sheet on the status of the permits is included in the Board packet. The bottom line is that staff is not making any headway in clearing the permits. They are still awaiting Corps letters for about 34 permits.*

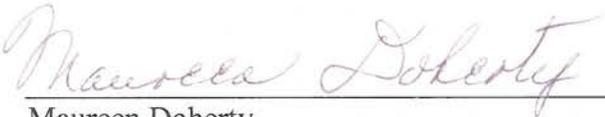
**20. FUTURE AGENDA**

*President Carter referenced the items on the draft future agenda.*

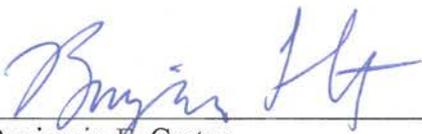
**21. ADJOURN**

*President Carter adjourned the meeting at 5:45 p.m.*

Dated: 16 JANUARY 2009

  
\_\_\_\_\_  
Maureen Doherty  
Secretary

The foregoing minutes were approved:

  
\_\_\_\_\_  
Benjamin F. Carter  
President