

MINUTES
MEETING OF THE CENTRAL VALLEY FLOOD PROTECTION BOARD
October 29, 2010

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 reconvened on October 29, 2010 at 8:35 a.m. at The Resources Building, 1416 Ninth Street, Auditorium, Sacramento, California.

The following Members of the Board were present:

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

The following members of the Board staff were present:

Mr. Jay Punia, Executive Officer
Mr. Len Marino, Chief Engineer
Mr. Ali Porbaha, Supervising Engineer
Mr. Curt Taras, Supervising Engineer
Mr. Gary Lemon, Staff Engineer
Ms. Angeles Caliso, Staff Engineer
Ms. Deborah Smith, Legal Counsel
Ms. Amber Woertink, Office Technician

Department of Water Resources (DWR) staff present:

Mr. Ward Tabor, Assistant Chief Counsel
Ms. Robin Brewer, Staff Counsel

Also Present:

Mr. Thomas S. Knox, Knox, Lemmon, Anapolsky & Schrimp
Ms. Meegan Nagy, United States Army Corps of Engineers
Mr. Robert Sieglitz
Mr. Paul Devereux, Reclamation District 1000

15. HEARINGS AND DECISIONS

A. Encroachment Removal Enforcement Hearing for Mr. Robert and Mrs. Carrie Sieglitz, 2817 Garden Highway, Sacramento, California

President Carter welcomed everyone to the hearing. He noted for the record that the Board did meet as agendized on October 28 in the Bonderson Building, and was continuing with the published agenda for Item 15.

The hearing was for Encroachment Removal Enforcement Notice No. 2010-49, dated April 12, 2010, that was sent to Mr. Robert and Ms. Carrie Sieglitz to consider ordering removal of encroachments and restore levee slope damage by toe excavation of the east bank levee of the Sacramento River Flood Control Project in Sacramento.

Executive Officer Punia stated that all the Board members were present.

Staff Presentation

Mr. Ali Porbaha, Staff Supervising Engineer, presented the facts and the Enforcement Action. He discussed the following subjects regarding the proposed Board action:

- Applicable laws and regulations.
- Comments related to the easement.
- Chronology of the communications and other events related to this case.
- Basis for a staff recommendation related to three items:
 1. Waterside levee toe cut
 2. Uncontrolled fill for secondary driveway
 3. Conex containers, metal roof, and boat carrier

Comments from the agencies would come first; second, the analysis of the California Environmental Quality Act (CEQA); third, a conclusion and staff recommendations. At the end of the presentation would be comments by federal and local agencies through representatives from the U.S. Army Corps of Engineers (Corps) and Reclamation District (RD) 1000.

Mr. Porbaha began with a geographical description of the area.

He continued with a statement of applicable laws and regulations: California Water Code Sections 8534, 8708, and 8709; and the California Code of Regulations Title 23, Sections 6, 112, and 20.

Mr. Porbaha listed the easement documents as a deed granted by the initial owner in 1913, and a joint use agreement executed in 2009 by RD 1000 and the Central Valley Flood Protection Board (CVFPB).

He gave a chronological record of letters, site visits, and inspections related to the project.

Mr. Porbaha gave physical details, including photographs, of the three encroachments and cited the codes violated.

He addressed the issue of public safety and flood risk associated with the encroachments, stating that the encroachments undermine the current improvements on the Natomas Basin Early Implementation Program project, and that the 100,000 residents living in the Natomas Basin would be affected. He noted that failure to address this structural deficiency would remove the Natomas system from PL 84-99 rehabilitation assistance.

He stated that the CEQA analysis determined that the project was categorically exempt in accordance with CEQA guidelines, sections 15321 and 15301.

Mr. Porbaha gave the staff recommendation as follows:

“These determinations constitute as significant evidence that said encroachments will interfere with maintenance and performance of the Sacramento River Flood Control Project pursuant to Water Code Section 8708 and Section 8709.

The State is obliged to enforce removal of encroachments that impact the integrity of the levee pursuant to Water Code Section 8708. The Board determined that the encroachment removal is exempt from CEQA to adopt the Enforcement Action number 2010-49, and to order removal of unauthorized encroachments and restoration of slope in accordance with Enforcement Action No. 2010-49.”

Ms. Meegan Nagy, Chief of the Flood Protection and Navigation Section for the Sacramento District Army Corps of Engineers, stated that the Sacramento District strongly supports the staff recommendation. The Corps had conducted a periodic inspection on this levee system last winter. They determined that the encroachments were likely to prevent the system from performing as intended during the next flood event.

Mr. Paul Devereux, General Manager for RD 1000, urged the Board’s support in getting the levee slope repaired, especially since the levee is made of sand. The district has an unacceptable rating – but the bottom line is the public safety issue.

Respondent

Mr. Tom Knox, Counsel for Mr. and Mrs. Sieglitz, summarized his presentation: he had prepared questions and answers for Mr. Sieglitz followed by remarks of his own. They had submitted a letter to the Board together with exhibits. The purpose of Mr. Sieglitz’s testimony was simply to make clear the facts asserted in the Brief. Mr. Knox would then follow up with discussion of the legal issues.

Mr. Knox questioned Mr. Sieglitz about the timeline and the actions he took in creating and situating the supposed encroachments.

Mr. Sieglitz disputed the levee fill content; the 3 to 1 levee grade; the angle of the Exhibit E photograph; and the supposed cut he made into the levee to situate the Conex boxes.

Mr. Knox and Mr. Sieglitz also pointed out that the 10-year Statute of Limitations on the claims had run out; and that boat trailers parked against the levee slope are mobile and can be moved at any time.

Mr. Sieglitz acknowledged that he built the driveway without a permit; but he built it over the levee not through it. He was willing to apply for a permit.

Rebuttals

The two sides made their rebuttals.

Ms. Robin Brewer, Staff Counsel, made points regarding the Civil Code. Mr. Porbaha, Supervising Engineer Taras, and Staff Engineer Angeles Caliso also spoke.

Mr. Knox and Mr. Sieglitz rebutted the staff's testimony.

Questions from the Board

With the evidence presented, the Board commenced to ask questions.

Questions arose as to why the staff had included a cease and desist in the Enforcement Order, and whether the Board had given authority to staff to enter into a joint use agreement with RD 1000 for the easement.

It was established that the respondent did not bring a protest to the Board about the execution of the joint use agreement, because he had not received notice of the hearing.

Mr. Knox asserted that Mr. Sieglitz had not cut into the levee slope but into the fill; the staff asserted otherwise.

The group discussed whether the Conex containers obstructed visual inspection, and anchorage of the containers. They also discussed general levee erosion and the 3 to 1 slope up and down the river.

Conclusion

The Board agreed to order removal of the Conex boxes, the roof, and materials associated with that; and removal of the secondary driveway, including the fill placement supporting the driveway.

They agreed to have staff draft an Enforcement Order that excludes the portion regarding restoration of the slope at the burden to the respondent. Ms. Deborah Smith, Staff Legal Counsel, and Mr. Gary Lemon, Staff Engineer, will draft the proposed findings and proposed decision, to distribute to the respondent, the Board, and the staff at least ten days before the next meeting. The Board will vote on a final decision then.

16. ADJOURNMENT

President Carter adjourned the meeting at 12:22 p.m.

Dated: 1-28-11

The foregoing Minutes were approved:



Francis Hodgkins
Secretary



Benjamin F. Carter
President