

**Meeting of the Central Valley Flood Protection Board  
October 28, 2011**

**Enforcement Staff Reconsideration Petition Rebuttal**

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Board Enforcement Staff has prepared the following statements in response to the reconsideration petition dated September 23, 2011 by Mr. Timothy Kassouni on behalf of Mr. Catabran.

Argument #1:

*"...the Board's August 26 decision is not supported by substantial evidence, contains errors of law, and resulted in an abuse of discretion in light of Mr. Catabran's inability to attend the hearing in light of a medical condition." (Page 1, 2<sup>nd</sup> paragraph)*

Board Enforcement staff Rebuttal:

The Board's August 26, 2011 decision was supported by substantial evidence, including but not limited to a publicly published staff report which included maps, cease and desist letters, violation photos, and witness testimony presented at the August 26, 2011 hearing. Mr. Catabran was granted a 30-day continuance due to his medical condition by the Board at its July 22, 2011 meeting. Mr. Catabran hired a professional representative, Mr. Eric Rasmusson to attend the August 26th, 2011 meeting on his behalf. Mr. Rasmusson gave oral and written testimony from Mr. Catabran that is included in the hearing record and was considered by the Board in its decision.

Argument #2:

*"The Encroachment Notice states that the United States Army Corps of Engineers 'has...determined' that the wall and associated utilities violates this provision of the Code of Federal Regulation. However, there is nothing in the Encroachment Notice or the staff report to substantiate this contention." (Page 1, 4th paragraph)*

Board Enforcement staff Rebuttal:

At the hearing, Ms. Meegan Nagy, Chief of Flood Protection and Navigation of the US Army Corps of Engineers Sacramento District gave oral testimony in support of staff's recommendation during the August 22, 2011 hearing as transcribed below:.

MS. NAGY: Good afternoon, President Carter, members of the Board. Meegan Nagy from the Army Corps of Engineers. I'm here to support staff as well on this decision. This is -- the Corps is clearly concerned about access and visibility. We've seen that a lot on our periodic inspections. As staff noted, this wall was put up after our periodic inspection was conducted. However, had it been there at the time we conducted it, it clearly would have been an unacceptable condition. And we'd be looking at you today to do an Enforcement Action just like we are right now. So we need to make clear to folks that this is an unacceptable action. They cannot go out there, especially after a cease and desist and continue to put up walls. Especially, we're talking about the Natomas Basin. Mr. Bassett talked about the investment that both the State and the locals are putting in to Natomas. And the consequences behind that Natomas levee are one of the most threatening places that your Board has jurisdiction

over in all of the Central Valley. It's a very deep floodplain. And I'm looking at not the one property owner who wants a wall and is concerned about the noise, I'm looking at the 80,000 people that are behind that levee when we look at something. The wall, in the condition as it is, if it came across the Corps' desk would be denied. We are concerned to ensure that accessibility and visibility are maintained and that the structural integrity of the levee at whatever the levee will be after SAFCA construction is intact. So again, I support staff decision. And if there's any questions, I'd be happy to answer them. (CVFPB 8/26/2011 Official Transcript, Page 236-238)

Argument #3:

*"However, the Board ignores 23 CCR 113 (c)(3), which provides: '(3) Where the entire area is at least one (1) foot above the design flood plan, no restrictions apply to fences, walls, and similar structures.'" (Page 2, 1<sup>st</sup> paragraph)*

Board Enforcement staff Rebuttal:

CCR 113 (c) states: *"Within the area located between the waterward levee shoulder and a point sixty-five (65) feet waterward from the centerline of the levee, the following conditions apply:*

*(2) Where the area is less than one (1) foot above the design flood plane, fences parallel to the levee must be an open type and constructed to provide for the unobstructed visual inspection of the levee slope and toe from the levee crown roadway.*

*(3) Where the entire area is at least one (1) foot above the design flood plane, no restrictions apply to fences, walls, and similar structures."*

The Board currently regulates the Natomas area to the 200-yr flood event. Current levee improvements in the Natomas basin are designed to provide 3-feet of freeboard above the 200-yr water surface elevation. Mr. Catabran's residence is located within the 65-ft zone from the Garden Highway centerline and it is below the 200-yr design flood plane which is approximately 40.2-foot elevation (NAVD 88), based on Sacramento Area Flood Control Agency's Levee Improvement Plans for SREL Phase 3 dated 9/22/2010, Page C-202). Therefore, CCR 23 Section 113 (c) (3) does not apply at this floodable location and Section 113 (c) (2) remains appropriate.

Argument #4:

*"Mr. Catabran had also contacted Angeles Caliso via e-mail on September 9, 2011, requesting the name of the court reporter who transcribed the hearing so that a transcript could be obtained in light of his inability to attend the hearing, and to assist in the preparation of this petition. Again, for reasons unknown, this information has not been provided." (Page 3, last paragraph)*

Board Enforcement staff Rebuttal:

Board staff responded to Mr. Catabran's request and provided a copy of the staff report, staff's presentation and information regarding the transcripts. See **Exhibit A**. Board Staff also provided the hearing transcripts to Mr. Catabran's Attorney via the internet and discussed the transcript testimony with him by phone conference.

**ENFORCEMENT STAFF RECOMMENDATION**

After review of the record and the petition Board Enforcement Staff recommends the Board:

- (A) Deny the petition upon finding that the decision and order was proper; and
- (B) Direct the California Attorney General to commence and maintain a suit in the name of the people of the State for the abatement of the wall as a nuisance consistent with the following sections of the California Water Code:

§8719- The doing of any act or construction of any work mentioned in this article, or permitting the work to remain after such construction, without the permission of the board and in violation of any of the provisions of this article, is a public nuisance, and the board may commence and maintain suit in the name of the people of the State for the prevention or abatement of the nuisance.

§8720- Any person who does any act contrary to or in violation of any of the provisions of this article is guilty of a misdemeanor.

§8709.7(c)- Any person or public agency that performs or undertakes an encroachment that is in violation of this part or in a manner that is inconsistent with any permit previously issued by the board, when the person or public agency intentionally and knowingly performs or undertakes the encroachment in violation of this part or in a manner that is inconsistent with any previously issued permit, may, in addition to any other penalties, be civilly liable in accordance with this subdivision. Civil liability may be imposed by the superior court in accordance with this article for a violation described in this subdivision in an amount that shall not be less than one thousand dollars (\$1,000), nor more than fifteen thousand dollars (\$15,000), per day for each day in which the encroachment persists.

# EXHIBIT A

## Caliso, Angeles

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**From:** Caliso, Angeles  
**Sent:** Tuesday, August 30, 2011 4:02 PM  
**To:** 'LINO CATABRAN'  
**Cc:** Taras, Curt; Brewer, Robin; Emami, Mitra M.  
**Subject:** RE: Board Ruling  
**Attachments:** Rasmusson ltr - Catabran Board Order - 08-30-2011.pdf; Enforcement Action 2011-13Catabran Hearing Staff presentation.pdf

Mr. Catabran,

Thank you and I'm sorry to hear about your health and wish you a speedy recovery. Attached is a copy of a letter we placed on the mail today which provides you with guidance on the removal and restoration of the site.

Regarding your questions, attached is a pdf copy of my power point presentation to the Board on Friday. The staff report is available on our website at the following link:

[http://www.cvpfb.ca.gov/meetings/2011/82611Item9C\\_StaffReportw\\_attachments.pdf](http://www.cvpfb.ca.gov/meetings/2011/82611Item9C_StaffReportw_attachments.pdf). I'm not attaching it to this email due to its large size. There is no audio available of our meetings but we do have official transcripts of the meetings. However, the transcript for the August meeting is not currently available. They are typically available 2 months after the meeting and they are posted on our website (<http://www.cvpfb.ca.gov/transcripts/2011/index.cfm>).

Reconsideration is addressed on our regulations (under Article 4.1). Please refer to our regulations which are available on our website ([http://www.cvpfb.ca.gov/regulations/Title23Tierlupdates\\_Register2009.pdf](http://www.cvpfb.ca.gov/regulations/Title23Tierlupdates_Register2009.pdf)).

I would recommend that you contact Ms. Mitra Emami at (916) 574-2363 or via email at [memami@water.ca.gov](mailto:memami@water.ca.gov). She is the Chief for the Permitting Section with the Board. She will be the best person to answer your question regarding what work would require a permit. I have also included her on this email.

Should you have any additional questions, feel free to contact me.

Best Regards,

Angeles Caliso

**Central Valley Flood Protection Board**

(916) 574-2386 Office | (916) 574-0682 Fax

Email: [acaliso@water.ca.gov](mailto:acaliso@water.ca.gov) | [www.cvpfb.ca.gov](http://www.cvpfb.ca.gov)

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**From:** LINO CATABRAN [<mailto:linoc@att.net>]

**Sent:** Tuesday, August 30, 2011 9:54 AM

**To:** Caliso, Angeles

**Subject:** Board Ruling

Ms Calisco, congratulations on a well prepared presentation. Eric told me that you had provided me all materials used for the hearing. I can not remember getting them. Can you resend? Also if you could provide the information on filing a reconsideration and any other options I have to prevent this enforcement it would be appreciated. When can I access the minutes and order? Is there audio available? If I am not entitled to this information please advise.

## **EXHIBIT A**

Future work will be stuccoing the home and replacing the wooden deck and stairs. Do I need any permits from your agency?

Lino Catabran