

**MINUTES**  
**MEETING OF THE CENTRAL VALLEY FLOOD PROTECTION BOARD**  
**August 26, 2011**

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 August 26, 2011 at 8:30 a.m. in the Auditorium of the Resources Building, 1416 Ninth Street, 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  
Mr. John Moffatt  
Ms. Emma Suarez  
Mr. Mike Villines  
Mr. Jared Huffman, Ex Officio, represented by Ms. Tina Cannon-Leahy

**The following members of the Board staff were present:**

Mr. Jay Punia, Executive Officer  
Mr. Len Marino, Chief Engineer  
Mr. Dan Fua, Supervising Engineer  
Mr. Curt Taras, Supervising Engineer  
Mr. Eric Butler, Senior Engineer  
Mr. Dave Williams, Senior Engineer  
Ms. Angeles Caliso, Staff Engineer  
Mr. Martin Janolo, Staff Engineer  
Mr. Gary Lemon, Staff Engineer  
Ms. Amber Woertink, Staff Assistant  
Ms. Deborah Smith, Legal Counsel

**Department of Water Resources (DWR) staff present:**

Mr. Gary Bardini, Chief, Division of Flood Management  
Ms. Lani Arena, Federal Liaison  
Ms. Nancy Finch, Senior Staff Counsel  
Mr. Rod Mayer, Assistant Deputy Director  
Mr. Mike Mierzwa, Supervising Engineer

Mr. Mike Mirmazaheri, Chief, Bay-Delta Levees Branch  
Mr. Jeff Schuette, Senior Environmental Scientist  
Mr. Keith Swanson, Chief, Maintenance Office  
Mr. John Wilusz, Senior Engineer

**Also present:**

Mr. John Bassett, Sacramento Area Flood Control Agency  
Mr. Martin Burnham  
Mr. Gilbert Cosio, MBK Engineers  
Mr. Paul Devereux, Reclamation District 1000  
Mr. Dante Nomellini, Reclamation District 5  
Ms. Meegan Nagy, United States Army Corps of Engineers  
Mr. Chris Neudeck, Kjeldsen, Sinnock & Neudeck, Inc.  
Mr. Eric Rasmusson, Rasmusson Public Affairs  
Mr. Scott Shapiro, Downey Brand  
Dr. Marty Spongberg  
Mr. Branden Strahm, Olsson Associates

**1. ROLL CALL**

President Carter welcomed everyone to the meeting. He requested Executive Officer Punia to call the roll. All Board members were present except Vice President Rie and Acting Ex-Oficio Member Cannon-Leahy, who arrived shortly.

**2. APPROVAL OF MINUTES**

Board Member Brown noted a correction: on page 6, Item F should read "Board Member Moffatt" rather than "Board Member Brown."

*Upon motion by Board Member Brown, seconded by Secretary Hodgkins, the Board unanimously approved the Minutes for June 24, 2011 as amended above.*

**3. APPROVAL OF AGENDA**

There were no suggested changes to the agenda.

*Upon motion by Board Member Brown, seconded by Secretary Hodgkins, the Board unanimously approved the agenda.*

**4. PUBLIC COMMENT**

There was no public comment.

**5. RECOGNITION OF SERVICE – DAN FUA**

President Carter announced that Mr. Dan Fua, Staff Supervising Engineer, was retiring. The Board had prepared a resolution recognizing Mr. Fua's service to the Board and to the State and citizens of California: he had served for 31 years with honor and distinction. President Carter read the resolution. Mr. Fua accepted the resolution and expressed his sincere thanks.

## 6. REPORT OF THE ACTIVITIES OF THE DEPARTMENT OF WATER RESOURCES (DWR)

Mr. Gary Bardini, Chief of the DWR Division of Flood Management, reported on the following.

- He expressed appreciation for the many contributions in many areas that Mr. Fua had made over the years.
- Recent changes in the DWR included Mr. Bardini accepting the position of Deputy Director.
- Speaking in that capacity, he pointed out that financing is a pivotal issue for public safety programs, water management, and water reliability. Next year will bring the opportunity to provide a finance plan. The plan will have five main elements to discuss with the Legislature:
  - A history of funding that will describe its cyclical nature.
  - A description of where capital investments are necessary for the Central Valley. It will show where the largest deficiencies are occurring.
  - The broad needs of flood management and risk reduction programs across the entire state.
  - The programs that handle Delta risk management itself, which go beyond just that of the federal State flood control system.
  - An explanation of where federal interest lies in helping finance these programs, describing how the State and local governments proceed in progressing the implementation of these programs.

With the concurrence of the Legislature, we can embark on a number of new programs in a post-plan Central Valley Flood Protection Plan and a post-plan phase of the FloodSAFE implementation.

Mr. Eric Koch is now the Acting Division Chief. Mr. Keith Swanson, Chief of the Flood Maintenance Office, took over the report on behalf of Mr. Koch.

- Mr. Dan Whisman, a principal engineer for Flood Management, recently retired. Mr. Paul Marshall will fill that role.
- Mr. Mike Inamine took a position with the Sutter Buttes Improvement Association. His duties are being spread across all of DWR's offices in flood management.
- On August 19 a Roundtable meeting was held, with the Board represented by President Carter and Executive Director Punia. Positions on how to move forward are becoming defined.

However, there is major disagreement involving the Corps' position that many of the legacy issues existing in the system are local maintainers' obligation to resolve. There is also an impasse on commitment to future vegetation removal.



A Roundtable technical work group is looking at how the Corps vegetation policy, including their system improvement framework, manifests itself with the West Sacramento Improvement Project and parallels some of the Sacramento Regional Flood Control Agency's (SAFCA's) improvements.

- RD 2064, located at the confluence of the Stanislaus and San Joaquin Rivers, is having monetary problems. Their staff is working without any funding.
- RD 1001 has a levee slump on the cross canal levee that they maintain. They looked to get funding assistance at the State and federal levels, which finally worked out to be 75% State, 25% local.

Staff has been working very well with the RD and their consultant. Mr. Swanson thanked President Carter for his effective work behind the scenes with the locals.

Vice President Rie asked about securing funding for both emergency work and non-emergency work – major repairs that need to be done to the levees that are above and beyond regular maintenance work.

Mr. Swanson replied that the bond allows this kind of expenditure; what they are involved with right now is developing a cost-sharing program for the Central Valley Flood Protection Plan. Discussion is beginning regarding the types of problems to be considered critical: erosion, seepage with boils, levees not at design height, all-weather access roads, etc.

#### **Central Valley Flood Protection Plan (CVFPP) Status Update – Limited Release of an Administrative Working Draft 2012 CVFPP.**

- Mr. Swanson continued with a status update on the administrative working draft of the Central Valley Flood Protection Plan. The update included the briefing schedule and chapter topics.
- Mr. Mike Mierzwa, DWR Supervising Engineer, gave a summary of the attachments to the technical summary report and the supporting documentation for the conservation framework.
- Mr. Swanson noted that as they continue writing and modifying the report, the environmental document must be modified at the same time.
- The State Plan of Flood Control is complete, and the Flood Control System Status Report (the inventory of the flood control system's current conditions) is more or less complete.
- The document entitled Living With Risk is a history document that is in progress.

Board Member Suarez made the comment that during the Senate Rules Committee review of Mr. Villines' confirmation, Senator Steinberg wanted to ensure that the Board was comfortable that this planning process was proceeding on schedule, and that all necessary documents would be delivered on time for the Board to deliberate.

Mr. Swanson responded that staff was confident in delivering a quality report on time.

**Quick overview of the recent trip to Washington DC to discuss implications of the decisions by the U.S. Army Corps of Engineers regarding Section 408 and Section 104 crediting requests.**

Ms. Lani Arena, FloodSAFE federal liaison for the DWR, reported on activities of the FloodSAFE federal advocacy program, specifically with respect to developments with the Assistant Secretary of the Army's (ASA's) decision to discontinue 104 crediting. Below is a summary.

Section 104 has been a valuable tool for non-federal stakeholders to be eligible for credit, for construction commencing after initiation of a feasibility study but prior to federal authorization of a project. The ASA's decision is effectively stranding hundreds of millions of dollars of investment made by State and local flood control agencies. It is a fundamental element of the State's Early Implementation Program – its FloodSAFE strategy.

Section 221, on the other hand, while it is broader in project purpose, because it permits credit to be applied to ecosystem restoration, is much more limited in its application as set up by the Corps because work eligible for credit must be initiated after completion of the feasibility study.

A coalition of non-federal stakeholders who are concerned about policy changes with respect to levee vegetation has evolved. Stakeholders from various states are participating.

The group made a trip to Washington D.C. at the end of July. They had three types of meetings:

- With staff from the committees of jurisdiction, both majority and minority House and Senate, Authorizations and Appropriations.
- With select House members to solicit their support.
- With the Assistant Secretary of the Army and with Steve Stockton.

The coalition now hopes to work with the Corps on the Section 221 guidance, scheduled to be issued October 1.

The non-federal coalition drafted a House letter and provided it to the offices of Representatives Thompson and Matsui. Its purpose is to express concern about the decision, and to urge the ASA to continue to work with the non-federal stakeholders.

The third effort that the coalition is embarking upon is a letter containing specific recommendations: points that clarify the existing law, and points that change the law and would require legislation.

In response to a question from Vice President Rie, Ms. Arena said that the ASA had listened to the group's concerns and acknowledged that her decision was having unintended consequences. She would like to see some of these addressed, and seemed willing to work with the group on at least some of their concerns.

Mr. Rod Mayer, DWR Assistant Deputy Director, gave comments on the Section 408 policy changes. He started by stating that one of ASA Darcy's concerns was that giving credit to projects while the projects are being formulated may unduly influence the Corps



in terms of what the federal project will ultimately be. She felt it appropriate that non-federal partners not proceed until such time as there's a Chief's Report.

Section 408 is the authority the Corps now uses to approve modifications to federal projects, including all encroachments and major modifications. The Corps is developing new Section 408 guidance, and Mr. Mayer and many others are thinking that a dialogue needs to occur.

The thinking is that there are major 408s and minor 408s. The minor 408s are very much the modifications – minor encroachments that normally would be approved under 208.10, until recent policy said that everything is a 408.

Mr. Mayer would like to see a lot more clarity between major and minor 408s. That clarity can help non-federal partners to form their projects such that they can avoid the 12- to 18-month review. Major 408s should be projects that have major policy considerations where Headquarters review is appropriate.

The Corps is considering whether an approved 408 would mean that the non-federal partner would have to bring the levee up to Corps standards, versus just doing the work that the non-federal partner proposes.

Hydraulic impact policy needs some work: there is not clarity in terms of how the Corps would require the projects to address significant hydraulic impacts.

The Corps has recently indicated in an approval letter on 408, that it would be hesitant to approve any more 408s in the Central Valley until we have done a programmatic National Environmental Policy Act (NEPA) document. This is a huge concern and it goes beyond any requirement of law.

Corps Headquarters has also expressed concern that any project that exceeds a federally authorized scope, may not be approvable under 408 (such as a levee raise or levee extension). The practice in the past has been that such projects are approvable and have been supported under 408.

Mr. Mayer stated that the intention is to work together with the Corps on this, and engage in a workgroup effort similar to the Section 104 issue.

Mr. Scott Shapiro, Downey Brand, came forward. He stated that he had gone to D.C. on behalf of Sutter Butte Flood Control Agency, West Sacramento Area Flood Control Agency, and San Joaquin Area Flood Control Agency, but obviously has been representing the interests of local agencies.

He noted that the locals take this issue as seriously as the Board and DWR do; and the local agencies are even more limited in budget.

Ms. Susan Gilson, Executive Director of the National Association of Flood & Stormwater Management Agencies (NAFSMA), was on the trip. She was so impressed with the severity of the issue and the effort that we undertook, that she's actually adding a plenary panel on this topic to the NAFSMA conference in November.

Mr. Shapiro acknowledged that we've had tremendous cooperation from the Corps District and Division levels. They have been equally concerned and equally confused about some of the requirements.

In response to a question from Secretary Hodgkins, Mr. Shapiro stated that the 221 guidance says that you can't mix credit: while we may be able to seek 221 credit after the Chief's Report, if we've already gotten 104 credit before the Chief's Report (even if they have stopped 104s in the future – there are many 104s sitting out there) arguably under the existing guidance we can't get 221, because we've already gotten some 104. This is a fundamental problem that needs changing.

There are two actual legislative efforts going on. One is the possibility of something in the Senate Appropriations bill that would provide a small push on the 104 credit. The other comes from Congressman Costello from Illinois, who is very interested in these issues. He is interested in introducing a standalone piece of legislation this year that would streamline some of the processes for 104, 408, and others. We've been asked to take the first cut at the legislation and provide it to him for possible introduction.

**7. REPORT OF ACTIVITIES OF THE EXECUTIVE OFFICER – *Postponed***

**8. CONSENT CALENDAR**

**A. Permit No. 18552, Stockton East Water District**

**Consider approval of Permit No. 18552 to authorize seven rock weirs 33 feet apart downstream of the Budiselich Flashboard Dam in the Stockton Diverting Canal. (San Joaquin County)**

**B. Permit No. 18676, Coleman Reedy**

**Consider approval of Permit No. 18676 to install a pre-manufactured modular home to replace the previous home that was damaged by fire in Area C of the Yuba River Designated Floodway. (Yuba County)**

**C. Permit No. 18678, Windswept Land & Livestock**

**Consider approval of Permit No. 18678 to authorize installation of a self-cleaning, retractable fish screen system on existing agricultural water diversion. (Sutter County)**

**D. South Sacramento Streams Project**

**Consider approval of Resolution No. 11-23 to:**

- 1. Adopt the Mitigated Negative Declaration, Findings and Mitigation Monitoring Plan for the South Sacramento County Streams Morrison Creek – Union Pacific Railroad Flood Damage Reduction Project.**
- 2. Approve the Sacramento County Streams Morrison Creek – Union Pacific Railroad Flood Damage Reduction Project.**

**E. American Rivers Common Features Project**

**Consider approval of Resolution No. 11-22 (Attachment A) to:**

- 1. Adopt the Mitigated Negative Declaration (Attachment B), Findings (Attachment B) and Mitigation Monitoring Plan (Attachment C) for the Howe Ave Levee Improvement Project and delegate authority to the Executive Officer to execute the Notice of Determination;**



**2. Approve the Howe Avenue Levee Improvement Project**

**F. Property Management – EIP West Sacramento Area Flood Control Agency, CHP Site, Pacific Gas & Electric Grant of Easement**

**Consider approval of Resolution No. 11-21 to approve the conveyance of a nonexclusive easement for ingress and egress purposes from Sacramento and San Joaquin Drainage District to Pacific Gas & Electric and delegate to the Executive Officer the authority to execute the Easement Deed and any associated documents needed for this real estate transaction. (Yolo County)**

*Upon motion by Board Member Brown, seconded by Board Member Suarez, the Board voted unanimously to approve the Consent Items, with Board Member John Moffatt recusing himself from Item 8F.*

**9. HEARINGS AND DECISIONS**

**A. Permit No. 18670, Martin & Ellen Burnham**

**Consider Application No. 18670 to construct a single family residence within the Kaweah River designated floodway. (Tulare County)**

Mr. Taras began the variance hearing, which is necessary when Board staff receives an application for an encroachment that is non-conforming with the California Code of Regulations. Mr. Janolo, Staff Engineer, explained the details of the presentation.

Mr. Janolo gave the staff recommendation as follows.

- After review of the application, staff found no evidence supporting California Code of Regulations Section 107 requirements. The location of the proposed dwelling within the floodway will obstruct and collect downstream debris, thereby impeding the free flow of water.
- The foundation of the proposed dwelling will be exposed to highly erosive flood flows and downstream debris, thereby damaging and risking flotation of the dwelling.
- Staff concluded that Board standards remain appropriate for the application. Furthermore, the adopted Designated Floodway is an official standard of management to minimize flood risk to human lives, properties, and existing works, and to preserve the flood-carrying capacity of the floodway.
- It is a non-structural approach designed to minimize encroachments, and to limit human dwellings within an area required for the safe passage of the designed flood. Staff therefore recommended the Board to deny Application No. 18670 and to adopt Resolution No. 11-25 based on the following:

That unauthorized work had been completed by the applicants prior to Board approval, that the proposed dwelling within the floodway will endanger life and restrict the flood-carrying capacity, indirectly jeopardize the physical integrity of existing works, such as bridges and utilities, impede the free flow of water, and become a floating debris hazard should the foundation be damaged due to erosive flood flows and downstream floating debris.



Vice President Rie noted that the proposed dwelling was outside FEMA's (Federal Emergency Management Agency's) 100-year floodplain, so FEMA would allow and insure the structure. Mr. Janolo stated that the Board used the Kaweah River Designated Floodway map, adopted in 1974. The FEMA map had been approved in 2009.

President Carter explained that it's not uncommon for the FEMA line to be different from a Designated Floodway line, or even different from the State Plan of Flood Control lines. Historically, the State federal project considers flood flow capacities, and FEMA looks at annual incidence levels. Their standard is 100-year level of protection. In contrast, the State federal project is designed around carrying a certain amount of cfs; so often the two don't align.

Mr. Martin Burnham, the homeowner, explained why it would be both safe and smart to build his house. He then explained how, in order to ensure that construction was legal, he had done his best to navigate the CVFPB process. At this point he was feeling frustrated and confused.

Dr. Marty Spongberg, Professional Engineer and Professional Geologist, gave a presentation. He showed that the Designated Floodway map did not accurately depict the location of the floodplain. While the State map is based on the flood of 1966, the FEMA map, updated in 2009, is based on the USGS flood gauging stations. Dr. Spongberg described the FEMA map as state of the art and the best available science. The entire project would be located above the floodplain as mapped by FEMA.

Dr. Spongberg went through the chronology of communication with the Board staff. He outlined the case of the Hubl encroachment permit, which was approved four months ago. He noted that Tulare County had endorsed the Burnham project. He enumerated the built-in safety factors of the project.

President Carter clarified that the Board had not denied the Designated Floodway modification request based on science; the denial was based on lack of sufficient process on the part of the applicant. This was the reason that the Board and staff suggested going to an encroachment permit or a variance request.

The Board discussed the project.

Board Member Suarez noted that for the Board to approve any type of encroachment, it would have to find an exception under Section 107 in order to accommodate this particular request.

Ms. Deborah Smith, Staff Counsel stated that under Section 107, if the Board were to approve this application, it would have to find that "...The application would not unduly impede the free flow of water in the floodway or jeopardize public safety." Further, Section 107(g) states, "Structures that are designed to have a minimum effect upon the flow of water and are firmly anchored to prevent the structure from flotation are allowed provided that normally no structures for human habitation will be permitted."

*Board Member Brown motioned to grant the variance to Section 113 on the basis that there are no adverse impacts to public safety or to the State Plan of Flood Control. The motion was seconded by Vice President Rie with CEQA findings that the project is exempt under the portion of CEQA for minor alterations of land, and that the project is outside the 100-year FEMA floodplain; normally, the*

*Designated Floodway would represent the actual floodway and coincide with actual flood flows, but in this case there had been an error. The motion included direction to staff to return next month with CEQA findings and a resolution to be approved on Consent. The motion passed by a vote of five ayes and two nays.*

**B. Permit No. 18672, Burlington Northern Santa Fe (BNSF) Railroad Co.**

**Consider approval of a variance to allow removal of an existing trestle railroad bridge and construction of a new railroad bridge over East Branch of Cross Creek. (Kings County)**

Mr. Dave Williams, Staff Senior Engineer, explained the variance. He first noted that three people from Burlington Santa Fe Railroad Company had flown out for the hearing. They were in support of the staff recommendations and the variance.

The existing bridge is a very old wood trestle-type bridge that inhibits a flow on a regulated stream on Cross Creek near Bakersfield. Water sheet flows alongside the regulated stream.

The variance is for the water that is going from bank to bank in this stream. The actual variance is that the soffit of the bridge is five inches lower than the existing bridge. Title 23 says that the new bridge cannot be any lower in soffit elevation than the existing bridge.

The Burlington Northern Santa Fe Railroad Company requests the Board to grant a variance, because the proposed bridge would decrease the design water surface compared to the existing condition. It would raise the soffit to match the existing bridge, which would cause several miles of infrastructure raise. That is track raise, which is not feasible and very costly.

Staff recommends that the Board determine the project to be exempt from CEQA, approve Title 23, Section 128 construction variance, and approve Permit No. 18672 based on the Corps 208.10 comment letter of no opposition to the project.

*Upon motion by Board Member Brown, seconded by Vice President Rie, the Board voted unanimously to approve the application as recommended by staff.*

**C. Encroachment Removal Enforcement Hearing for Mr. Lino Catabran, 5291 Garden Highway, Sacramento, California**

**Conduct a hearing regarding the Enforcement Removal Notice No. 2011-138, dated May 20, 2011 that was sent to Mr. Lino Catabran ordering removal of a newly constructed parallel solid masonry wall along the East levee of the Sacramento River Flood Control Project. (Sacramento County)**

Ms. Angeles Caliso, Staff Engineer, gave the presentation for the Board to consider ordering compliance of the Enforcement Action to remove the following encroachments:

1. Excavation on the waterside hinge point of the levee for the installation of the masonry block wall.
2. Placement of a parallel solid masonry block wall in varying height from 6 to 8', which includes two gates on the levee within 10' from the waterside hinge point.



3. Placement of utility lines associated with the masonry block wall and the landscaping on the levee.

Ms. Caliso showed photos of the property and encroachments. She then listed applicable laws and regulations from the California Water Code, the California Code of Regulations, and the CalTrans Highway Design Manual that apply.

She highlighted that the constructed wall is actually within a county right of way that was obtained for public access.

Ms. Caliso listed the communications that had taken place beginning in September 2010 between Board staff, Reclamation District 1000, and the respondent. These included a Notice of Violation and a Cease and Desist order, and in May 2011, an Enforcement Order.

Ms. Caliso gave a detailed explanation of the three encroachments. She followed with some Board permit history related to this particular property. She gave agency comments from the Reclamation District and the Corps supporting the Enforcement Action.

The staff recommendation was that the information presented constitutes significant evidence that the encroachments will interfere with the performance of the flood control facility pursuant to Water Code Section 8708 and 8709; the State is obligated to enforce the removal of encroachments that impact the integrity of the levee pursuant to Water Code Section 8708.

Staff also recommended for the Board to adopt the Enforcement Action 2011-138 as issued, with a removal of the encroachments being exempt from CEQA, and ordering the removal of the unauthorized encroachments and restoration of the levee as stated in the Enforcement Order No. 2011-138.

Ms. Caliso answered Board questions. Board Member Suarez noted that in the past, especially on Enforcement Actions, the Board has hoped that staff would, to the last minute, try to work with the affected party to resolve matters before having to come before the Board. Mr. Curt Taras, Supervising Engineer, responded that staff had met with the respondent on site and at their office on multiple occasions.

Board members asked about changes that could be made to the newly constructed wall and driveway (with permits obtained) aside from complete removal.

Mr. Eric Rasmusson of Rasmusson Public Affairs gave a presentation on behalf of his client, Mr. Catabran. He described communications and attempts at communication between his client and Board staff, the county, and RD 1000.

Mr. Rasmusson stated that Mr. Catabran had been unfamiliar with the process of filing permit applications but thought he was complying. After receiving the Cease and Desist Order, he continued only with work that was necessary to stabilize the site for erosion and public safety: finishing the driveway, landscaping the yard, and putting the facing on the block wall. He stopped the structural work.

In response to a question from Board Member Villines, Mr. Rasmusson said that his client would be willing to consider removing part of the wall to install see-through panels or wrought iron in order to restore visibility to the levee.

Vice President Rie mentioned the regulations in Section 133 stating that if a wall is within a foot of the design flood elevation, it needs to be open.

Mr. John Bassett, Director of Engineering for the Sacramento Area Flood Control Agency, recommended that the Board enforce their standards. The wall has two issues of visibility: the flood control aspect looking through the wall to observe the integrity of the flood control feature; and the limited visibility for a driver pulling out of the driveway onto the Garden Highway.

Mr. Paul Devereux, manager for Reclamation District 1000, supported the Board staff recommendation. The issues are visibility and access. He noted that he had endorsed a permit application from Mr. Catabran, but it was for a wrought iron fence. The agency had seen the solid connection going in between the pillars and issued a Cease and Desist order on October 18, 2010. However, the work continued through the winter on the solid panels.

Ms. Meegan Nagy, United States Army Corps of Engineers, also voiced support for staff on the recommendation. The Corps is clearly concerned about access and visibility. It needs to make clear to the public that this is an unacceptable action. Mr. Bassett had talked about the investment that both the State and the locals are making to Natomas. It is a very deep floodplain and one of the most threatening places over which the Board has jurisdiction.

Mr. Rasmusson pointed out that if the wall were to be removed, visibility to the levee is blocked by the house anyway. He added that Mr. Catabran was adamant that when he received the Cease and Desist order, no further structural work happened.

Mr. Rasmusson requested to begin the discussion with staff again to try to reach a reasonable compromise, rather than complete enforcement.

*Upon motion by Board Member Suarez, seconded by Secretary Hodgkins, the Board voted unanimously to approve the staff recommendation with a timeline of 60 days or no later than November 1 for the removal to take place.*

## **10. INFORMATIONAL BRIEFINGS**

### **B. Briefing on the Delta Levees Subventions Criteria and Procedures**

Mr. Mike Mirmazaheri, DWR Bay-Delta Levees Branch Chief, thanked the Board for their support for the Subventions Program, in particular Vice President Rie.

Mr. Mirmazaheri stated that the Subventions Program is one of the most successful programs in the Delta. Since the inception of FloodSAFE in FY 2007-08, about \$50 million has been invested in the levees. Next month they will come before the Board to present a plan for FY 2011-12 for about \$12 million.

Mr. John Wilusz, DWR Senior Engineer, briefed the Board on proposed revisions to the guidelines for procedures and criteria, which is the document that guides the administration of the Subventions Program. Below is a summary.

- **Overview.** The Subventions Program provides State funds for levee maintenance and rehabilitation in the Delta. It is a State cost-share program authorized by Water Code Sections 12980-12995.



The goal is to preserve the physical characteristics of the Delta essentially in their present form, while at the same time ensuring no net loss of habitat.

Subventions is a reimbursement program in which local agencies are responsible for the work. The program reimburses participating agencies for up to 75% of eligible expenses.

- **Overview of guidelines.** The guidelines are authorized by Water Code Section 12984. They set forth the requirements to receive State funding, and guide the administration of the program.

The primary objectives for the update have to do with improving financial accountability. The update also improves the organization of the document.

- **Overview of updates.** Additions and clarifications were made to Article 3, which pertains to program administration; Article 4, which pertains to reimbursements and eligible expenses; and Article 5, which pertains to levee maintenance.

An index and appendices were added.

- **Schedule for implementation.** Implementation of the guidelines is intended to begin in FY 2011-12.

Mr. Wilusz noted that they had received input from stakeholders; some suggestions were accepted while others were not. In response to a request from Vice President Rie, Mr. Mirmazaheri addressed some of the more controversial issues, in which there still isn't agreement between some of the reclamation districts and DWR staff.

Mr. Chris Neudeck, a civil engineer with Kjeldsen, Sinnock & Neudeck, gave his endorsement of the process of review and input given to the DWR staff. They also endorsed the new rules and procedures.

Mr. Dante Nomellini, Reclamation District 5, had submitted a set of comments. Among them were suggestions to consider using GPS locations instead of paddles on the levees, and to work toward a partnership effort between the locals, the State and the Corps in dealing with levees and inspections. He noted that at the local level, FEMA's Hazard Mitigation Plan (HMP) is not a levee standard.

Mr. Gilbert Cosio, MBK Engineers, spoke on behalf of 27 reclamation districts. He supported the Subventions Program, noting that much of the Delta would have been underwater following the '97, '98, and '06 high tides without the program. He endorsed the changes presented and will continue to work with DWR staff to keep the levees maintained.

#### **A. Presentation and Discussion: Small Erosion Repair Program (SERP)**

Mr. Keith Swanson, DWR Maintenance Office Chief, gave an informal briefing on SERP. He stated that DWR was very interested in the Board's thoughts and would appreciate some policy guidance. DWR is caught between the Corps' Engineer Technical Letter (ETL) on one side and the Resource Agencies insisting that there is vegetation on levees on another side.

Mr. Swanson explained that SERP is a five-year pilot program for dealing with up to 15 small erosion sites per year. It came out of an interagency flood management

collaborative, where DWR worked with the Resource Agencies, the Corps, and Board staff. It's a proactive attempt to address erosion sites when they're small, rather than waiting for the huge Sac Bank sites that cost \$6,000 a lineal foot to repair.

Mr. Jeff Schuette, Senior Environmental Scientist with the DWR Flood Maintenance Office, elaborated on the program as summarized below.

- The Flood Maintenance Office's responsibility is levee repairs, including the channels and structures, all with limited funding. Combining the limited funding with the need to coordinate with multiple agencies for every levee repair has been a recipe for delay.
- Programs like SERP have a real potential to save time and money for maintenance activities and have a real environmental benefit.
- SERP is unique in that it is a program that looks at a type of repair.
- The Flood Maintenance Office is moving toward a programmatic CEQA document to cover the program.
- The SERP manual has pre-defined small erosion sites.
  - Tier 1 sites are 264 linear feet along the bank, about 1/10 of an acre.
  - Tier 2 sites are 1,000 linear feet along the bank, about 1/2 of an acre.
- The SERP manual contains standardized assessments and notification, where agencies have weighed in on their needs.
- There are seven design templates. There is a rock-only design for some cases, but the emphasis is on vegetation at the toe.
- SERP is a five-year pilot program in which participants can opt out at any point.
- The main premise of the program is to get to the repairs to prevent small sites from becoming larger scale, extremely costly sites.

Mr. Eric Butler, Staff Senior Engineer, had worked with Mr. Swanson's group to review the program and possibly move it forward. He noted that with multiple agencies involved, many with overlapping and sometimes conflicting missions, there would need to be some give and take.

Mr. Butler showed slides to give a sense of the staff's initial concerns, including:

- The need for Encroachment Permits for some SERP sites.
- The problem of using willow cuttings for vegetation because in time they would grow large enough to hinder inspections.
- The question of scope of maintenance.
- Proper evaluation of hydraulic impacts.
- The need for a public review period.
- The need to operate and maintain the project per Board assurances with the Corps.



- The need to develop and maintain habitat for endangered species.
- The need to maintain PL 84-99 rehabilitation eligibility.

Mr. Butler stated that the program long-term has a lot of merit, but some issues need to be addressed first.

Ms. Nagy stated that the Corps stance is that the State has to be comfortable that they are working within their maintenance obligations as written in the O&M manual issued by the Corps, and that they feel that they are working in conformance with the framework that has been signed. The obligation to make sure there are no hydraulic impacts is inherent in the State responsibility to maintain the project.

Ms. Nagy went on to state that the amount of collaboration between the Resource Agencies and the State was very impressive. The program has great potential and she hoped there was a way to make it work.

The Board began discussion with input from DWR Senior Staff Counsel, Ms. Nancy Finch. President Carter noted that the Board needed to find out if there is a way to move the program forward legally within Board regulations, and also to address the technical and mechanical issues. He mentioned that his big concern was basically the vegetation standard.

As a way to move forward, President Carter proposed for Ms. Smith to work with DWR legal staff, and for Secretary Hodgkins and any other interested Board members to work with Mr. Swanson and staff to develop the process for the Board, assuming it can be done as maintenance.

#### **11. BOARD COMMENTS AND TASK LEADER REPORTS – *Postponed***

#### **13. CLOSED SESSION**

The Board went into closed session to discuss litigation. They reconvened into open session at 6:35 p.m.

#### **12. FUTURE AGENDA**

Regarding the Road 9 project, Board Member Moffatt requested that the proposal coming before the Board should include detailed budgets and outlines of an agreement on cost share for either the improvement of O&R or ongoing O&R.

President Carter noted that Ms. Nagy had asked that Items 18663 and 664, which are California Department of Transportation bridge items, be postponed because the Corps has not received those applications yet. Staff is going to continue to try to expedite those items with the Corps.

Executive Officer Punia stated that staff would try to resolve the Burnham permit matter.

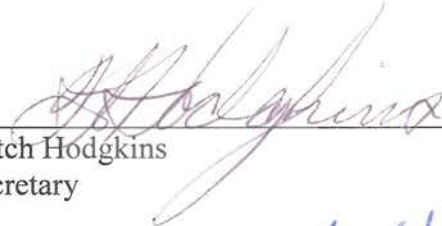
President Carter mentioned that at the suggestion of Board Member Suarez, the Board would initiate efforts to design a program of outreach for the Central Valley Flood Protection Plan. She and Board Member Villines will be working with staff to facilitate public input.

#### **13. ADJOURN**

President Carter adjourned the meeting at 6:41 p.m.

Dated: October 28, 2011

The foregoing Minutes were approved:

  
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Butch Hodgkins  
Secretary

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