

## Three Amigos Planning Meeting

Thursday September 18, 10am to 1pm  
Location: 3310 El Camino Ave, room 130, Sacramento  
Contact: Julie Rentner (209) 639-2012

*The purpose of this meeting is to gather common understanding around the next steps in the Three Amigos project, and to develop a timeline for completion.*

### **Attendees:**

USFWS – Kim Forrest, Jim Monroe  
USACE – Brigid Briskin, Paige Caldwell  
CVFPB – Ali Porbaha, Eric Butler, James Herota, Leslie Gallagher  
DWR – David Martasian, Preston Shopbell  
River Partners – Julie Rentner, Jerry Dion  
Congressman Garamendi's office: Brandon Minto

### **Meeting Materials:**

- Preliminary Agreements (1998)
- Memoranda of Agreement – Non-Structural Alternative (2000)
- Hydraulic Analysis – USACE 1997
- Walnut Creek example

### **Notes:**

#### Introductions

Meeting attendees introduced themselves and signed in. Contact information is attached to these notes.

#### Purpose of the meeting, review meeting materials

- Implementation of the Outline of Issues and Preliminary Agreements Nonstructural Alternative to Structural Repairs RD 2099, 2100 and 2102 (February 1998) and;
- Memorandum of Agreement (MOA) Between the Department of the Army and U.S. Fish & Wildlife Service for Implementation of Nonstructural Alternative to the Repair or Restoration of Levees for Reclamation Districts 2099, 2100 and 2102 (June 7, 2000).

Julie Rentner provided a brief background on the project and described the meeting materials and their context. The group spent particular attention reading through the 1998 Preliminary Agreements to better understand each agency's role in the project. Julie described that it is exciting to have all agencies in support of this project, but that the existing conditions are not acceptable from a flood management or wildlife habitat perspective and must be changed. Habitat restoration has been implemented in phases on lands adjacent to the levees, and has been designed with breaching in mind (flow-through wetland configurations, elevated refugia for terrestrial species, etc.). DWR has funded River Partners to complete the final phase of habitat restoration at the SJRNWR and the last component of that project is to breach the levee. This cannot be completed until the NSA (or an alternative approach that modifies the levee maintenance requirement) is completed.

Julie went on to describe that the purpose of the meeting is to review the approach laid out in these documents and discuss the timeline needed to complete the project. The Final meeting document “Walnut Creek Example” provided one piece of a recent deauthorization of a Federal project for the team to consider as another alternative.

#### Project Background, obstacles, and next steps

##### *Real Estate*

All real property of RD 2099, 2100 and 2102 has been purchased by the USF&WS (James Monroe, U.S. Department of Interior). As a result the CVFPB has limited jurisdiction over the project under Title 23, CCR Section 2 (CCR Section 2 (d)). This division does not apply to any activities of the United States or its agencies). The Board does have all the responsibilities and authorities necessary to oversee future modifications of the SPFC as approved by the U.S. Army USACE of Engineers (USACE) pursuant to assurance agreements with the USACE and the USACE Operation and Maintenance Manuals under Code of Federal Regulations, Title 33, Section 208.10 and United States Code, Title 33, Section 408 (Board staff).

Kim Forrest started by providing an overview of the San Joaquin River National Wildlife Refuge, its formation, its management, and the role USFWS played in development of the Three Amigos Non-Structural Alternative (NSA) project. The project has contributed meaningfully to the recovery of several threatened and endangered species and is the largest contiguous block of restored riparian forest in the Central Valley. Over \$50 million in primarily state and federal funds has been spent to create this wildlife refuge, and the final step of this massive effort is to breach the levees. Any levee breaching must be done in a way that is consistent with the purpose of the Refuge.

The group engaged in question and answer about the project, specifically to get better acquainted with the location of the project, the landscape, the history, and the permitting approach. CVFPB staff asked who would be the CEQA lead, and there was some discussion that either DWR as the funder of the final phase of restoration, or the CVFPB as was envisioned in the 1998 agreement could serve as lead agency. CVFPB noted that they do not have funds to prepare CEQA documents. DWR and River Partners described that there are funds in an existing grant agreement to pay for document development and the team resolved to investigate this question further. CVFPB staff asked if the project could be presented to the CVFPB as an informational piece. Julie Rentner indicated that this would be possible.

##### *NEPA – Completed in 1997*

Paige Caldwell continued the discussion by clarifying that the NEPA document prepared by the USACE in 1997 is complete. She continued by reviewing the actionable items listed in the 2000 MOA between the USACE and USFWS. Specifically the group reviewed Article I. A-1 which states that USACE would construct a ring levee around the existing structures to protect them from flooding. A ring levee design was developed by USACE, but the USFWS does not wish for the ring levee to be constructed. Kim Forrest noted that the USFWS would prefer to use the funds to purchase flood fighting equipment for the Refuge.

##### *Flowage easements*

Paige Caldwell then continued to describe the need to purchase flowage easements over lands adjacent to the Three Amigos Reclamation Districts, as required in the 2000 MOA between USACE and USFWS, Article I.A-2. The team reviewed the maps and discussed the location and size of the lands that were

offered flowage easements in 2001, including ~400 acres that accepted the easements and 75 acres that did not. The ownership of those parcels has changed and the team agreed that offering flowage easements to the new owners is an important next step.

The team entered into a discussion regarding the necessity of those easements and the meaning of the term “willing seller basis” in the 2000 MOA. Several questions emerged from this discussion that must be answered by the USACE. Specifically:

1. Is the acquisition of flowage easements a constraint for the modification of the O&M manual?
2. Considering that the existing conditions at the time of the agreement (and persisting today) included a levee breach at the mouth of the West Stanislaus Irrigation District Canal, can the updated H&H study that the USACE is working on consider this as it calculates the land area that would be afforded protection by the levees?

### Discussion

The team discussed the important issue that this effort is the implementation of the Memorandum of Agreement (MOA) Between the Department of the Army and U.S. Fish & Wildlife Service for Implementation of Nonstructural Alternative to the Repair or Restoration of Levees for Reclamation Districts 2099, 2100 and 2102 (June 7, 2000). It is not a “de-authorization” of any federal project or portion thereof.

The team agreed that a maintenance agreement would be developed between the USFWS and the USACE regarding maintenance of the flowage area and formerly maintained levees. Additionally, a revised O&M Manual would be provided to the CVFPB from the USACE regarding maintenance of the flowage area and formerly maintained levees.

Upon completion of the USACE H&H study and receipt of the revised O&M manual, the CVFPB would determine necessary changes to the existing assurance agreements between the USACE and CVFPB with regards to maintenance of the levees within RDs 2099, 2100 and 2102. Because the existing O&M Manual includes RD 2101 which is not part of the Three Amigos project, the existing O&M manual must be modified and not terminated.

USACE staff confirmed that the implementation of this MOA will not trigger the 408 process (see email September 29, 2014).

The team then proceeded to attempt to develop a process for moving forward. The attached flow chart documents the next steps and the timeline discussion from the group. Additionally, the attached includes a recounting of the various questions developed during the discussion. Each agency is asked to please respond to these questions as quickly as possible so that the project can proceed. A follow-up meeting was not scheduled.

### Action Items

River Partners provided draft meeting notes and each agency provided comments. Revised meeting notes are presented here.

The project will be presented to the CVFPB at the October 24 meeting as an informational item.

Three Amigos Meeting  
9/18/2014

| <u>Name</u>      | <u>Agency</u>              | <u>Email / Phone</u>                             |
|------------------|----------------------------|--|
| Eric Butler      | CVFPB                      | eric.butler@water.ca.gov<br>916-574-0707         |
| Julie Rentner    | River Partners             | jrentner@riverpartners.org<br>209-639-2012       |
| ALI PORBANA      | CVFPB                      | mporbana@water.ca.gov<br>916-574-2375            |
| James Herota     | CVFPB                      | james.herota@water.ca.gov<br>916-574-0651        |
| Jerry Pion       | River Partners             | gpion@riverpartners.org<br>530 518 8488          |
| David Mantasian  | DWR                        | David.Mantasia@water.ca.gov<br>916 574-1442      |
| PRESTON SHOPPELL | DWR                        | Preston.shopbell@water.ca.gov<br>(916) 574-1437  |
| Kim Forrest      | USFWS/San Luis NWR Complex | Kim_Forrest@fws.gov<br>209/826-3508              |
| Jim Monroe       | USDOJ Solicitors Office    | james.monroe@sol.doi.gov<br>(916) 978-5674       |
| Leslie Gallagher | CVFPB                      | leslie.gallagher@water.ca.gov<br>916.574-0291    |
| Paige Caldwell   | USACE                      | paige.caldwell@usace.army.mil<br>916.557-6905    |
| Brigid Briskein  | USACE                      | brigid.j.briskein@usace.army.mil<br>916-557-6918 |

| CVFPB  | USACE  | USFWS   |
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| <b>Summary of action items from the 1998 Agreement (abbreviated):</b>  |  |   |
| <p>¶ IIIA. Complete CEQA – Pending DWR funding and supporting project information</p> <p><i>USACE to provide to CVFPB:</i></p> <ul style="list-style-type: none"> <li>• <i>Completed NEPA document</i></li> <li>• <i>Completed H&amp;H study</i></li> <li>• <i>Revised assurance agreement and operation and maintenance Manual</i></li> <li>• <i>CVFPB/USACE decision to revise or terminate existing agreements with RD 2099, 2100 and 2102</i></li> </ul> <p>¶ IIIB. Negotiate an amendment to the O&amp;M manual with the USACE</p> <p>¶ IIIC. CVFPB/USACE decision to revise or terminate existing agreements with RD 2099, 2100 and 2102</p> <p>¶ IIID. CVFPB to consider transferring SSJDD rights of way and easements and or maintaining the levee right-of-way. Any disposition of the SSJDD owned property is at the discretion of the CVFPB.</p> | <p>¶ IIA. Provide recommendations to the USFWS regarding breaching – COMPLETE</p> <p>¶ IIB. Pursue acquisition of flowage easements and other actions</p> <p>¶ IIC. Negotiate an amendment to the O&amp;M manual with the CVFPB</p> <p>¶ IID. Prepare an MOU with USFWS – COMPLETE (see below)</p> | <p>¶ IA. Complete NEPA compliance for expansion of the SJRNWR - COMPLETE</p> <p>¶ IB. Complete appraisals and negotiation acquisition of lands within RD 2099, 2100 and 2102 - COMPLETE</p> <p>¶ IC. Seek funding from NRCS - COMPLETE</p> <p>¶ ID. Do not breach the levee until the USACE H&amp;H study is complete and the CVFPB has agreed in writing (¶ IIIA and ¶ IIIA) are completed</p> |

| CVFPB  | USACE  | USFWS  |
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| <b>Summary of action Items from the 2000 MOA (abbreviated)</b> |  |  |
|  | <p>Article I. A-1. Construct a ring levee to protect El Solyo Dairy</p> <p>Article I. A-2. Acquire flowage easements</p> | <p>Article I. B-1. Accept management responsibilities for flowage easements acquired by the USACE (Article I. A-2)</p> <p>Article I. B-2. Ensure that future uses of lands are compatible with implementation of the NSA</p> <p>Article I. B-3. Operate and maintain a ring levee (Article I. A-1)</p> <p>Article I. B-4. Allow the Army to enter the land</p> |

| CVFPB  | USACE   | USFWS   |
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| <b>Questions:</b>  |   |   |
| <p><i>Q: Can CVFPB be CEQA Lead Agency? How would CEQA document be paid for? Can DWR funding (already awarded to River Partners) be used and is it sufficient to prepare the CEQA document?</i></p> <p>A: Yes. Funding from DWR can be used to prepare the CEQA document. CVFPB staff, DWR and River Partners will work to identify the pathway forward.</p> <p><i>Q: Confirm that the 1998 letter is a sufficient “request” from the CVFPB to the USACE to modify the O&amp;M manual.</i></p> <p>A: Yes, it is.</p> <p><i>Q: How will the CVFPB dispose of the SSJDD easements?</i></p> <p>A: Transfer of the easements is at the discretion of the CVFPB. CVFPB staff will review H&amp;H Study to develop a recommendation to the CVFPB regarding retention or transfer of SSJDD easements.</p> | <p><i>Q: Is acquisition of the remaining flowage easements a constraint to moving forward on revision to the O&amp;M manual (¶ IIC 1998 agreements)?</i></p> <p>A: Paige Caldwell indicated that flowage easements over lands adjacent to the Three Amigos Reclamation Districts are required by the 2000 MOA between USACE and USFWS, Article I.A-2.</p> <p><i>Q: Will the updated H&amp;H currently being prepared by the USACE consider the existing condition of RDs 2100 and 2102 regarding the unrepaired breach at the mouth of the West Stanislaus Irrigation District Intake Canal?</i></p> <p>A: TBD</p> <p><i>Q: Confirm that the 1998 letter is a sufficient “request” from the CVFPB to the USACE to modify the O&amp;M manual.</i></p> <p>A: Yes, it is.</p> <p><i>Q: Confirm that the NEPA process is complete and the document (FONSI) does not require revision.</i></p> <p>A: Confirmed.</p> <p><i>Q: How will Article I. A-1 (the ring levee issue) be resolved?</i></p> <p>A: USFWS and USACE will work on this issue</p> <p><i>Q: Confirm that this action does not require a 408 process.</i></p> <p>A: Confirmed</p> | <p><i>Q: How will Article A-1 (the ring levee issue) be resolved?</i></p> <p>A: USFWS and USACE will work on this issue</p> |

| CVFPB  | USACE  | USFWS  |
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| <b>Action Plan</b>   |  |  |
| <p><u>1. Brief the CVFPB on the project:</u><br/>River Partners will work with USFWS, DWR, and Board staff to prepare an informational presentation for the CVFPB regarding the status of implementing the MOA between USFWS and USACE.<br/><b>November 2014</b></p>   | <p><u>1. Complete H&amp;H study:</u><br/>River Partners/USFWS to provide breach configuration details to USACE<br/><b>TBD</b></p>                            | <p><u>1. Negotiate the ring levee issue with USACE per Article I. A-1</u><br/><b>TBD</b></p> |
| <p><u>2. Review H&amp;H study from USACE:</u><br/>USACE to provide anticipated timeline to CVFPB for updated H&amp;H Study. Once the H&amp;H study is completed, CVFPB staff to review and determine whether to recommend retaining rights of way and easements of levees within RD 2099, 2100 and 2102 – If retained USACE requires rights of way to be maintained by the CVFPB.<br/><b>TBD</b></p> | <p><u>2. Negotiate/Offer Flowage Easements:</u><br/>The landowners have changed since the original offer/decline. New outreach is needed.<br/><b>TBD</b></p> | <p><u>2. Draft maintenance agreement with USACE:</u><br/><b>TBD</b></p>                      |



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| <p><u>3. CVFPB Options as non-federal sponsors :<br/>Develop CEQA documentation:</u></p> <p>DWR has provided funding to River Partners to assist in the development of the CEQA document. CVFPB to act as Lead Agency, DWR and CVFPB staff to provide funding/in-kind and contractor to develop the CEQA document. DWR is a Responsible Agency.</p> <p>Draft Option A)<br/>CVFPB does not transfer rights of way and easements to USFWS. USACE has stated that CVFPB must maintain rights of way and easements (i.e. levees) if not transferred.</p> <p>Draft Option B)<br/>CVFPB transfers rights of way and easements to USFWS. CVFPB would have no responsibility to maintain rights of way and easements. The CEQA document would be needed to disclose and evaluate potential flood impacts. Federal activities are exempt from CVFPB regulations; therefore a CVFPB encroachment permit would not be required for breaching the levees within RD 2099, 2100 and 2102.<br/><b>TBD dependent 1<sup>st</sup> on USACE H&amp;H study and Revised O&amp;M agreement.</b></p> | <p><u>3. Negotiate the ring levee issue with USFWS per Article I. A-1</u><br/><b>TBD</b></p> |  |
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| <p><u>4. Circulate and Finalize CEQA document:</u><br/>CVFPB as CEQA lead will circulate the document (Neg Dec expected) pursuant to CEQA.<br/><b>Timeline is dependent upon completion of: USACE H&amp;H study; CVFPB Draft Resolution; and Modified O&amp;M agreement</b></p>  | <p><u>4. Draft maintenance agreement with USFWS:</u><br/><b>TBD</b></p>  |  |
| <p><u>5. CVFPB actions:</u><br/>CVFPB Resolution Approvals:</p> <ul style="list-style-type: none"> <li>• Accept revised O&amp;M manual from USACE</li> <li>• Select option to retain or dispose of SSJDD easements</li> <li>• Revise or Terminate RD assurance agreements</li> <li>• Authorize proposed levee breaching – dependent on CVFPB transfer of rights of way and easements and or responsibilities as Non-federal sponsor</li> <li>• CVFPB may request DWR to update the SPFC Descriptive Document, contingent to the contents of the revised O&amp;M manual and transfer of Board’s easement and ROW.</li> </ul> <p><b>Target: September 2015</b></p> | <p><u>5. Revise O&amp;M Manual – letter to CVFPB:</u><br/>Expected per ¶ IIIC of 1998 agreement that CVFPB obligations to the USACE would cease for RD 2099, 2100 and 2102. This Maintenance Unit includes RD 2101 which is not part of the Three Amigos project, therefore the O&amp;M Manual will be modified, but maintenance requirements for RD 2101 will not be modified or terminated. USACE has stated that CVFPB must maintain rights of way and easements (i.e. levees) if not transferred.<br/><b>TBD</b></p> |  |

### Three Amigos Next Steps

