

MINUTES

MEETING OF THE CENTRAL VALLEY FLOOD PROTECTION BOARD January 16, 2009

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 January 16, 2009, beginning at 8:42 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
Mr. Eric Butler, Senior Engineer
Ms. Virginia Cahill, Legal Counsel
Mr. Dan Fua, Supervising Engineer
Mr. Gary Hester, Chief Engineer
Ms. Jill Phinney, Support Staff

Department of Water Resources (DWR) staff present:

Mr. Paul Farris, Branch Chief, Real Estate
Ms. Nancy Finch, Legal Counsel
Mr. Mike Inamine, Chief, Levee Repairs and Floodplain Management Office
Mr. Eric Koch, Chief, Division of Flood Management
Mr. George Qualley, Chief, Division of Flood Management
Mr. Pal Sandhu, Branch Chief, Levee Repairs Branch
Mr. Chris Scobba
Mr. Ward Tabor, Assistant Chief Counsel
Mr. Dave Wheeldon, Levee Repairs Branch, Sacto. River Protection Project Mgr.
Mr. Jon Yego, Chief, Floodway Protection Section
Mr. Kip Young, Environmental Scientist, Levee Repairs Branch

Also Present:

Mr. Paul Brunner, Three Rivers Levee Improvement Authority
Mr. Mike Dietl, U.S. Army Corps of Engineers
Mr. Daniel Ruiz, Meridian Farms Water Company
Mr. Jim Sander, U.S. Army Corps of Engineers
Mr. Scott Shapiro
Mr. Coren Wong, on behalf of John and Cathy Klein

1. ROLL CALL

Executive Officer Punia called the roll.

2. APPROVAL OF MINUTES - SEPTEMBER 18, 2008 TOUR AND NOVEMBER 21, 2008 BOARD MEETING

President Carter stated that his name was omitted from the list of attendees for the September 18 Tour. He asked that his name be added. Member Brown noted that he was absent from the Tour.

Upon motion by Secretary Doherty, seconded by Member Suarez, the Board approved the September 18, 2008 Tour and November 21, 2008 Meeting Minutes, with the changes referenced in the previous paragraph. The vote was 4-0, with Member Brown abstaining.

3. APPROVAL OF AGENDA

After some discussion, it was decided to continue with the Agenda as published.

Upon motion by Member Brown, seconded by Secretary Doherty, the Board unanimously approved the Agenda as presented.

4. PUBLIC COMMENT

Mr. Daniel Ruiz, Meridian Farms Water Company, commented on a permit that was put before the Board for approval a year ago. He stated that, because of the delay, his company's costs have been increased by \$400,000 and they will not be able to complete the project if they can't get the permit issued by February '09.

Chief Engineer Hester, Board staff, verified that the permit was approved by the Board at its June 20, 2008 meeting. The additional review by the U.S. Army Corps of Engineers (the Corps) to ensure there are no hydraulic impacts associated with the permit has been the cause of delay since then. President Carter encouraged Mr. Ruiz to touch base with Mr. Sander of the Corps today to get his perspective on the current status of the permit.

5. REPORT OF ACTIVITIES OF THE DEPARTMENT OF WATER RESOURCES

Mr. George Qualley, DWR, reported the following:

- *Water conditions: precipitation is about 90 percent of average to date at the end of the year; runoff, 40 percent of average; reservoir storage, 70 percent of average. Also, the snow pack is at about $\frac{3}{4}$ of its average value.*
- *The 2008 Local Agency Annual Report is in reproduction and hard copies will be available to Board Members and the public on the website by the end of the month.*
- *Floodplain Management Branch: the Flood Risk Notification Program staff conducted two workshops, one for the upper and lower Sacramento basins and another for the lower San Joaquin basin, to discuss the levee flood protection zone maps with the local experts. Many useful comments were received and the Branch will address the comments and revise the maps as necessary by the end of February, then have a series of public workshops to further refine the maps, followed by presentation of the updated maps to the Board and the public in March 2009.*
- *Senate Bill 5, the Building Code Project, has two public meetings scheduled for later this month (January '09). The project team is revising the project's context within the FloodSAFE initiative. Three technical advisory committee meetings have been held so far and a fourth is scheduled for January 29th.*
- *Flood Operations Branch: the Eureka flood center had a little activity but did not actually get to flood stage. Also, the Upper Jones Tract has experienced seepage ever since the repair was put in. The needed mitigation is now being defined.*
- *Yorba Linda: DWR provided technical assistance on repositioning k-rails to mitigate some mud flows that started there.*
- *The Delta Emergency Operations Plan Tabletop Exercise was held on December 12th and by all accounts was very successful and helpful to all the participants.*
- *The FOC training sessions are completed.*
- *The Local Emergency Preparedness and Response Section promoted a trip to Folsom Dam for new staff so they could become acquainted with the facilities there.*
- *Numerous agencies are in the process of preparing the Delta Multiagency Integrated Flood Emergency Operations Plan, which is designed to get local*

agencies, the Corps, OES, DWR and others sponsored into a working group so that everyone understands each agency's specific role.

- *Modernization of the Flood Center IT Assets: DWR now has the capability to do webcasts of their weather briefings.*
- *Now that the EIP guidelines have been finalized, DWR is working with SAFCA to get all the necessary information together for the funding agreement.*
- *All funding on public safety projects is on hold until the budget situation is resolved.*
- *The Wheatland/Bear River Project, in RD 2103, is working on the funding agreement to provide added funding for some additional eligible costs that have come up.*
- *The Star Bend Setback Levee, LD1 in Sutter County, has been finalizing their environmental compliance and working on real estate acquisitions.*
- *Statewide Grants Branch: the Local Levee Urgent Repair Program staff is working with Orange County staff on a \$5 million cap grant that the county qualified for.*
- *The Floodway Corridor Program is working to finalize the restoration arrangements on the land purchased in Elkhorn Basin.*
- *The National Committee on Levee Safety has completed their draft report, which will be finalized after it is reviewed and cleared by the Office of Management and Budget. No specific time frame has been set for that. The report represents the best thinking of a diverse group of levee safety experts from around the country. Included in this group were Rod Mayer, Les Harder, Steve Verigin and President Carter. There were seven separate, intense, three-to-four-day meetings in five cities across the country.*

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

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

- *TRLIA has funding to carry them through until March of '09. At that time they will begin ramping up for April 15, when major construction projects are under contract again.*
- *They continue to monitor the crack on the Feather at Segment 1.*

- *They will attend the February 5 State Mining Board meeting. At that time either an exemption will be given for the project or they will receive the go-ahead for two borrow sites not immediately adjacent to their site. Member Suarez asked that a Board staff member attend that meeting. Executive Officer Punia responded that a staff member will attend and report back to the Board.*
- *Now that the 404 and 408 permits have been received they can start working those areas, once the contracts are awarded. They are looking forward to doing that very quickly.*
- *Signed copies of the cooperation agreement for the indemnification are available for stapling together with the previously signed Board copies.*
- *They are in discussion regarding a burial ground just north of Star Bend. A specific solution is not yet available. They need to know the boundaries and the size of the burial ground before they can start to modify things. He will update the Board later as more information becomes available.*
- *Ms. Rie arrived at this time.*

7. **CONSENT CALENDAR**

A. **Permit No. 18266, Vicki Pfingst**

Consider approval to authorize existing boat dock supported by two steel pilings, attached to a steel gangway, attached to a concrete pier on the left (east) bank levee of the Sacramento River.

B. **Permit No. 18270, Timothy Gergen**

Consider approval to replace existing wooden stairs with concrete stairs on the landside slope of the left (east) bank levee of the Sacramento River.

C. **Permit No. 18294, Sean Hutton**

Consider approval to construct a boat dock, supported by steel piles, attached to gangway, supported by concrete piers, attached to existing concrete deadman on left (east) bank levee of the Sacramento River.

D. **Permit No. 18306, Gilbert Gonzales**

Consider approval to authorize existing boat dock, supported by steel piles, attached to gangway, on left (east) bank levee of the Sacramento River.

E. Permit No. 18357, William Koenig

Consider approval of to authorize existing boat dock, supported by steel pilings, attached to a debris diverter and a gangway on the left (east) bank levee of the Sacramento River.

F. Permit No. 18378, Reclamation District 341

Consider approval to clear and grub approximately 5,500-linear-feet of vegetation on the landside slope of the left (east) bank levee of the Sacramento River.

Upon motion by Member Brown, seconded by Vice President Hodgkins, the Board unanimously authorized Executive Officer Punia to sign the approval for the Permits listed in Items 7A through 7F, with the approval of the Corps of Engineers forthcoming.

8. HEARING AND DECISIONS - NONE

REQUESTED ACTIONS

9. CACHE CREEK CRITICAL EROSION SITE (LM 3.9L AND LM 4.2L) NORTH LEVEE SETBACK PROJECT EMINENT DOMAIN FOR EASEMENTS

1. Consider approval of Resolution 09-01 to adopt findings, mitigation measures, and mitigated negative declaration for the project.
2. Consider approval of Resolution 08-23 to authorize the Resolution of Necessity to commence the eminent domain proceeding to acquire a levee and flood control easement over APN 027-170-39-1, Board Parcel No. 13668, owned by Margrit Boyd, Trustee of the Survivor's Trust under the Steven and Margrit Boyd Family Revocable Trust.
3. Consider approval of Resolution 08-24 to authorize the Resolution of Necessity to commence the eminent domain proceeding to acquire a levee and flood control easement over APN 027-170-02-1, Board Parcel No. 13669, owned by Margrit Boyd.
4. Consider approval of Resolution 08-25 to authorize the Resolution of Necessity to commence the eminent domain proceeding to acquire a levee and flood control easement and a utility easement over APN 027-160-05-1, Board Parcel No. 13672, owned by Klein Farms, Incorporated, A California Corporation.

- 5. Consider approval of Resolution 08-26 to authorize the Resolution of Necessity to commence the eminent domain proceeding to acquire a levee and flood control easement and a utility easement over APN 027-160-06-1, Board Parcel No. 13673, owned by John C. Klein and Catherine L. Klein, husband and wife, as tenants in common.**

(Item 4 was settled previously and will not be considered by the Board.)

Project Manager Dave Wheeldon, DWR, began the presentation by providing some background on the flooding history and related issues for the Cache Creek system. Environmental Scientist Kip Young, DWR, presented the CEQA compliance for the site.

Levee Repairs and Floodplain Management Office Chief Mike Inamine, DWR, Mr. Wheeldon and Mr. Young then answered Member questions.

Legal Counsel Nancy Finch, DWR, provided some general background on the Resolutions of Necessity (Items 2, 3 and 5 above). She stated that the process will be to approve the mitigated negative declaration and approve the project (number 1 above) and then move on to the Resolutions of Necessity. If the project is not approved by the Board, it will not make it to the eminent domain proceeding.

She stated that four findings are required before an agency can exercise its power of eminent domain:

- 1. The public interest and necessity require the property of the project;*
- 2. The proposed project is planned or located in a manner most compatible with both the greatest public good and the least private injury;*
- 3. There is a determination that the property sought is necessary for the proposed project; and*
- 4. The offer required by the Government Code has been made to the owner.*

Ms. Finch then supported each of the four findings in turn for the specific Resolutions and Members asked clarifying questions on each.

Mr. Paul Farris, Chief of Real Estate, DWR, discussed the background and supporting information for required finding number four.

President Carter then entertained a motion to adopt Resolution 09-01.

Upon motion by Member Suarez, seconded by Secretary Doherty, the Board unanimously adopted the findings, mitigation measures, and mitigated negative declaration for Resolution 09-01 of the project.

The Board then decided to consider Items 2 and 3 together. Item 2, Resolution 08-23, has a duplicate resolution number of 09-03; Resolution Number 08-24 has a duplicate resolution number of 09-04.

During consideration, Board Members asked various questions, some regarding the fairness of the ongoing compensation negotiations between DWR and the property owner, Margrit Boyd.

The Board modified the motion to require DWR to come back and advise the Board on the status of negotiations and to get Board approval and concurrence on the direction DWR is heading prior to any court filings on the matter.

Upon motion by Member Suarez, seconded by Vice President Hodgkins, the Board unanimously approved Resolutions 08-23 (09-03) and 08-24 (09-04) with the modification noted in the preceding paragraph.

The Board then considered Item 5 -- Resolution 08-26 (duplicate number 09-05).

Mr. Coren Wong, representing the landowners, John and Catherine Klein, declared that the fourth finding had not been met; i.e., an offer required by Government Code 7267.2 had not been made to the owners. The dispute revolves around whether the walnut trees on the property are being properly compensated for. Mr. Farris responded that the highest and best use of the property was based on a rural residential appraisal and trees are not factored in with that type of highest-and-best-use analysis.

Ms. Nancy Finch, DWR legal counsel, recommended that the Board decision on the Resolution of Necessity be put off a month and allow these issues to be resolved, as the project does allow for that.

Member Suarez motioned that the Board treat this Resolution in the same way as the previous two; Member Brown seconded the motion.

Member Rie stated that she preferred that DWR go back and take a look at their appraisal and have a discussion with the property owner on the value of the walnuts and then come back and brief the Board next month (February).

President Carter reiterated that treating the Resolution the same as the previous two meant that DWR would come back to the Board and advise them of the status of negotiation, seek concurrence on the negotiations and direction from the Board prior to filing any court actions and any papers with the courts.

After further discussion, upon motion by Member Suarez, seconded by Member Brown, the Board approved the motion with five "yes" votes, with the modification noted in the preceding paragraph. Member Rie abstained.

10. ESTABLISHMENT OF TWO CENTRAL VALLEY FLOOD PROTECTION BOARD SUB-COMMITTEES

- 1. Consider establishing a sub-committee to develop policy regarding indemnification requirements for joint power authorities.**

Legal Counsel Virginia Cahill framed the question before the Board: do you want to form either a working group of just two people to work with the affected community, or do you want to have a formal subcommittee of three people that would be fully subject to all the Bagley-Keene requirements? The Board discussed the advantages and disadvantages of each.

Upon motion by Vice President Hodgkins, seconded by Member Brown, the Board unanimously approved the establishment of a formal subcommittee to develop policy regarding indemnification requirements for joint powers authorities to include Members Suarez, Hodgkins, Rie and Doherty.

- 2. Consider establishing a sub-committee to review proposed "Tier 2" amendments to Title 23 of the California Code of Regulations.**

Executive Officer Punia stated the staff recommendation, which is to form a task group consisting of Board Members Suarez and Hodgkins, Staff Engineer Dan Fua and Board Counsel Debra Smith.

After discussion, and seeing no objections, President Carter directed staff to implement the formation of the task group.

11. BOARD SPONSORED PROJECTS AND STUDY AGREEMENTS

WEST SACRAMENTO PROJECT

Consider Resolution 08-21 to approve:

- 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.**

Because of the existing state budget situation, Legal Counsel Cahill recommended that the Resolution be put over for a month.

Ward Tabor, DWR Assistant Chief Counsel, remarked that he is virtually certain that this is one of the projects that DWR has requested an exemption for through the Department of Finance; at this time none of the exemption requests has been approved.

President Carter stated that the Board and Board staff are willing to help out in any way. If DWR requests their help, they will help.

Eric Koch, DWR Division of Flood Management Chief, stated that DWR is requesting funding for this and a number of other projects and are subject to receiving approval from Department of General Services. They continue to pursue various avenues through DGS and are committed to coming back to the Board in February with a solid answer (whether yes or no) to the request for funding approval.

The Board decided to postpone the Resolution and place it on the February Meeting Agenda.

INFORMATIONAL BRIEFINGS

12. BRIEFING BY THE U.S. ARMY CORPS OF ENGINEERS

A briefing to the Board regarding the Sacramento River Bank Protection Project Phase II Supplemental Authorization of Additional 80,000 Linear Feet (WRDA 2007)

Mr. Mike Dietl, the Corps, gave the briefing, which included the project overview, purpose, background, status, authority, plan of study, policy compliance issues and other issues that relate to the project and its long history.

BOARD REPORTS

13. BOARD COMMENTS AND TASK LEADER REPORTS

Secretary Doherty attended a hearing where she learned that some three-dimensional modeling was done just below the Fremont Weir. She noted that the cost of the modeling was \$150,000.

Member Rie mentioned that Executive Officer Punia forwarded a copy of the letter of violation for Three Rivers sent to Mr. Brunner for a mining violation associated with the Feather River setback levee.

Vice President Hodgkins attended the Department of Conservation seminar on the Williamson Act. He is also continuing his work with the Lower Yolo Bypass Planning Forum.

President Carter and Executive Director Punia had dinner with General Temple, who replaces General Riley as the new Director of Civil Works for the Corps, at Corps Headquarters.

President Carter, Vice President Hodgkins, Executive Officer Punia and Chief Engineer Hester met with the Corps to discuss the permit backlog. President Carter stated that the Corps had made some fairly significant commitments to devote some resources to clearing the current backlog and then to implement steps to be sure that the backlog doesn't build anymore.

President Carter, Vice President Hodgkins, Executive Officer Punia and Legal Counsel Cahill met with new Assemblymember Jared Huffman. At the meeting they introduced themselves to him, oriented him in terms of their perspective on the Board's role, and found out if he had any specific uses or items that he wanted to bring before the Board.

President Carter, Vice President Hodgkins, Executive Officer Punia and Legal Counsel Cahill met with DWR executives to discuss the staffing issue with regard to the Tier 2 regulations and their intent to source some technical expertise from DWR.

Prior to that meeting the group attended the Levee Roundtable meeting. There was a very frank and highly productive discussion among the parties and they hope to have an agreement in place on what the language in the framework will say by their next meeting on February 27th. The final document will outline a plan for levee maintenance, including a high level schedule and level of commitments in terms of doing the maintenance.

14. REPORT OF THE ACTIVITIES OF THE EXECUTIVE OFFICER

Executive Officer Punia reported on the following items:

- Based on the Governor's Executive Order S-16-S-08, the Board received a memorandum from DPA that will result in a furlough plan that will begin in February and continue through June 2010. The furlough plan closes general state government operations on the first and third Fridays of each month.*
- As this affects the Board's normal third Friday meeting time, the current proposal is to move Board meetings to the fourth Friday each month starting in March 2009. The next meeting is tentatively scheduled for February 26th.*
- There is also a request from the Governor's office to reduce the Board's budget by 10 percent, so they are adjusting the budget to show the ten percent reduction.*
- Legal Counsel Cahill has chosen to retire, effective sometime in April '09. Board staff has begun the search for her replacement.*

- *The Memorandum of Understanding between the Board and DWR has been officially signed.*
- *There continues to be a problem in the calculation of Board Member salaries and staff continues to work with the State Controller's Office to resolve the issue.*
- *An article in the next quarterly DWR magazine will detail the Board's new MOU and new relationship with DWR.*

15. FUTURE AGENDA

President Carter read the proposed agenda.

Secretary Doherty asked that an update on the Sutter Bypass be added.

Member Rie asked if someone is looking into the legal issues of requiring Fish and Wildlife to get a permit from the Board. This is a possible February agenda item.

Member Rie also mentioned that Jim Sander is retiring from the Corps, effective February 27th. She will put a resolution of appreciation on the February agenda.

A closed session with regard to the Cache Creek setback levee will be added to the February agenda.

Member Suarez requested an update from Kasey Schimke on legislation in the Capitol Building. This is also a possible February agenda item.

16. CLOSED SESSION

Discuss litigation (Valley View Packing Company, et al. v. Sacramento and San Joaquin Drainage Dist., et al.; Yuba County Superior Court No. YCSCCVCV 0700001013) pursuant to Government Code section 11126 (e)(1)

Discuss litigation pursuant to Government Code section 11126 (e)(1) in the following cases:

Sacramento Area Flood Control Agency v. Christine Binford DeYoung, Central Valley Flood Protection Board, et al. (Sacramento Superior Court No. 34-2008-0000-7953)

Sacramento Area Flood Control Agency v. Horganic Family LLC, Central Valley Flood Protection Board, et al. (Sacramento Superior Court No. 34-2008-0000-2961)

**Sacramento Area Flood Control Agency v. Burton H. Lauppe,
Central Valley Flood Protection Board, et al. (Sutter Superior Court
No. CVCS 08-0879)**

**Sacramento Area Flood Control Agency v. Odysseus Farms, Central
Valley Flood Protection Board, et al. (Sutter Superior Court No.
CVCS 08-0878)**

**Sacramento Area Flood Control Agency v. William Cummings,
Central Valley Flood Protection Board, et al. (Sutter Superior Court
No. CVCS 08-0877)**

**Sacramento Area Flood Control Agency v. Paul Lausevic, Central
Valley Flood Protection Board, et al. (Sutter Superior Court No.
CVCS 08-0876)**

17. ADJOURN

President Carter adjourned the meeting at 4:30 p.m. to go into Closed Session (see above).

Dated: 3-27-09

The foregoing Minutes were approved:


Maureen Doherty
Secretary


Benjamin F. Carter
President