

MINUTES
MEETING OF THE CENTRAL VALLEY FLOOD PROTECTION BOARD
June 15, 2012

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 special meeting of the Central Valley Flood Protection Board was held on June 15, 2012, beginning at 9:12 a.m. at the Resources Building, 1416 Ninth Street, Sacramento, California 95814.

The following members of the Board were present:

Mr. Bill Edgar, President
Ms. Emma Suarez, Vice President
Ms. Jane Dolan, Secretary
Mr. Joe Countryman
Mr. Clyde MacDonald
Mr. Tim Ramirez
Mr. Mike Villines

The following members of the Board staff were present:

Mr. Jay Punia, Executive Officer
Mr. Eric Butler, Supervising Engineer
Ms. Nancy Moricz, Staff Engineer
Ms. Lorraine Pendlebury, Staff Analyst
Ms. Deborah Smith, Legal Counsel

Department of Water Resources staff present:

Mr. Jeremy Arrich, Chief, Central Valley Flood Planning Office
Mr. Keith Swanson, Chief, Division of Flood Management
Mr. Ward Tabor, Assistant Chief Counsel

Also present:

Ms. Denise Carter, Colusa County Supervisor
Mr. Tom Ellis
Mr. Ryan Schohr, Schohr Ranch
Mr. Scott Shapiro, California Central Valley Flood Control Association
Mr. Ronald Stork, Friends of the River
Ms. Susan Tatayon, The Nature Conservancy
Mr. Tim Washburn, Sacramento Area Flood Control Agency

1. ROLL CALL

President Edgar welcomed everyone to the special meeting, the purpose of which was to conclude discussion of the adoption resolution and package for the Central Valley Flood Protection Plan (CVFPP), and to publish and post the package for adoption at the special meeting on June 29, 2012.

Executive Officer Punia reported that all Board Members were present except for Mr. Villines, who arrived later.

2. APPROVAL OF AGENDA

Executive Officer Punia stated that staff requested to follow the agenda as posted.

Upon motion by Board Member Countryman, seconded by Board Member MacDonald, the Board unanimously approved the agenda.

3. PUBLIC COMMENTS

There were no public comments for items not on the agenda.

4. CENTRAL VALLEY FLOOD PROTECTION PLAN

A. Proposed Adoption Resolution and Package for the Central Valley Flood Protection Plan.

President Edgar reviewed the previous week's meeting, and asked Board Member MacDonald to report on the comments received last week. Board Member MacDonald presented two documents: the June 15, 2012, version of the proposed resolution in its clean state reflecting all the changes currently proposed, and a section-by-section document comparing the changes from last week, which includes the section, the subject, and what has been changed.

Board Member MacDonald referenced the section-by-section analysis of the amendments and noted that, except for the vegetation management and Cherokee Canal policies, most of this material has only minor changes, such as the addition of an article or the correction of a proper name.

President Edgar asked if the change suggested by Lewis Bair on the Caveats section, clarifying that the Board will consider alternatives to the expansion of the canal on equal footing, was made. President Edgar also mentioned Mr. Sankey's request that the Board consider alternatives for maintenance and operation of the Cherokee Canal before system expansion.

Board Member MacDonald reported there are four changes that have yet to be made:

- Item 1: He suggested changing "consider alternatives to expansion of the canal on an equal footing" to "consider alternatives to expansion of the canal, with alternatives evaluated on an equal footing," to clarify the intent. He recommended further discussion on the Cherokee Canal policy.
- Item 2: Regarding the levee requirements for urban areas, section (b) is not technically correct. It does not properly reflect Senate Bill 5 in that the statute does not require them to meet Federal Emergency Management Agency (FEMA)

requirements by 2025. He recommended changing section (b) to the Department of Water Resources' (DWR) suggested alternative language.

- Item 3: Board Member MacDonald contacted Dr. Jerry Meral, as recommended by Lewis Bair last week, regarding Resolved 11(i). Dr. Meral stated a policy has not been established, but is done on a case-by-case basis, which may not be consistent with the State. One of the attorneys who joined in the conversation with Dr. Meral suggested some caveat language be tacked on to the end of Resolved 11(i) for two reasons: the Board is not committing to more than State policy is; and, the Board is consistent with State policy. However, due to differing opinions on this language, President Edgar recommended leaving this item out of the baseline for further discussion.
- Item 4: There were changes to be made related to the vegetation issue, but Board Member MacDonald suggested first discussing the proposed amendments. Many changes were just technical clarifications and do not change policy, but there were two paragraphs that were inadvertently left out of the document that was posted. Board Member Ramirez noted there are other issues that were left out as well.

President Edgar stated the baseline includes Items 1 and 2; Items 3 and 4 are not included in the baseline, pending further discussion.

Supervising Engineer Butler noted two other minor corrections. He struck the word "occur" after "San Joaquin River at Mendota Pool" in Whereas H, and deleted the reference in Resolved 24 that incorrectly associated the errata that the DWR has produced with the State Plan of Flood Control Descriptive Document and the Flood Control System Status Report.

Supervising Engineer Butler stated the seven components that represent the proposed adoption CVFPP include:

- The draft resolution, which is now called the proposed adoption resolution
- The 2012 public draft that the DWR issued in January
- Volume 1, which includes Attachments 1 through 6
- The errata on the January version of the draft and Volume 1
- The State Plan of Flood Control Descriptive document
- The Flood Control System Status Report, issued in 2010 and 2011
- The public comment record

He stated the documents are available to the public on the website.

Board Member Ramirez asked to change "State supported" to "State led" in Resolved 11(j). DWR Central Valley Flood Planning Office Chief Arrich added changing "evaluate regional plans" to "evaluate appropriate regional plan elements."

President Edgar stated the Board will hear public testimony on the baseline document, addressing minor technical issues as well as the major policy issues the Board will vote on after accepting the baseline document.

Public Comment on the Baseline Document – Tom Ellis

Tom Ellis, landowner and farmer in the Colusa Basin, stated the Cherokee Canal/Feather River Bypass poses a serious threat to the City of Colusa, to the Colusa and Sutter Basins, and to the west side down to Yolo County. He questioned why this issue was not brought to the public's attention before being included in the CVFPP. Since it was not vetted, he requested it be removed from the plan, to prevent the Board from losing public trust, which will carry over into the upcoming regional planning effort. If it is left in the plan, it may be perceived as having been thoroughly discussed and having the public's approval. He implored the Board to listen to the testimony of landowners and farmers along the Cherokee Canal because they understand the flood situation in that area.

Public Comment on the Baseline Document – Ronald Stork

Ronald Stork, of Friends of the River, addressed the vegetation management policy. He gave his proposed amendment to Item 4 to Supervising Engineer Butler, who incorporated it into the documents.

Board Member MacDonald summarized the changes to Item 4 pertaining to Resolved 22.

- “Woody vegetation perennial grasses” was changed to “woody vegetation, the larger roots of woody vegetation, forbs, and non-perennial grasses.”
- “Vegetation management strategy” was changed to “levee vegetation management strategy.”

The last two paragraphs, inadvertently dropped last week, were further modified by Mr. Stork today as follows:

- “On levees” was changed to “on and near levees.”
- “Would not allow vegetation” was changed to “would not allow woody vegetation.”

Public Comment on the Baseline Document – Scott Shapiro

Scott Shapiro, general counsel for the California Central Valley Flood Control Association, suggested:

- Whereas L – changing “primary flood control challenges” to “primary flood management challenges.”
- Whereas DD – changing “many of the Sacramento and San Joaquin River levees were constructed” to “many of the levees along rivers in the Sacramento and San Joaquin Basins were constructed.”
- Whereas LL(a) – putting the last two sentences in a caveat.
- Resolved 15 – adding a comma after the word “guidelines” in the first sentence.
- Resolved 22 – changing “federal State levees” to “SPFC levees.” Mr. Stork stated the policy also applies to levees in the PL 84-99 program; there may be levees in the PL 84-99 program that are not project levees. Supervising Engineer Butler recommended, “That the new USACE levee standards would require removal of all

woody vegetation, the larger roots of woody vegetation, forbs, and other non-perennial grasses.”

- Resolved 11(i) – changing the first two sentences to, “The Board recognizes that mitigation of the impacts of newly established or expanded bypasses and habitat areas on agriculture is a concern to the agricultural community, but also recognizes that the issue of mitigating for effects presents complex questions of both law and policy.”
- Resolved 11(i) – adding a phrase to the end, so the last sentence would read, “The Board intends to follow whatever State policy is established. If the policy of the State is to consider mitigation on a case-by-case basis, the Board encourages DWR to consider mitigation as appropriate.”

Mr. Shapiro stated the Sutter Butte Flood Control Agency is in support of this plan and the resolution as it stands. He stated the resolution is largely consistent with the positions of the California Central Valley Flood Control Association with the exception of the mitigation for agricultural issues.

Board Member MacDonald stated the Bay Delta Conversation Plan (BDCP) is doing habitat mitigation; he contacted Dr. Meral, who reported mitigation policy is not in place yet, occurring instead on a case-by-case basis. Board Member Villines stated current law requires there be mitigation for every impact. Board Member MacDonald added that the Board analyzes impacts through the California Environmental Quality Act (CEQA).

President Edgar stated lawyers consider the impact on adjacent land from habitat nearby as not requiring mitigation. Aside from owner compensation, endangered species habitat may need to be replaced.

Public Comment on the Baseline Document – Tim Washburn

Tim Washburn, of the Sacramento Area Flood Control Agency (SAFCA), stated SAFCA is in support of this resolution. It has experience with this issue through negotiations with Yolo County to acquire certain agricultural conservation easements.

CEQA has no socioeconomic component to it. It is an evaluation of physical impacts and requires identification of, and findings with respect to, potentially feasible mitigation for those impacts. CEQA does not compel the consideration of economic impacts.

This issue will require further discussion. Mr. Washburn agreed with Mr. Shapiro in keeping it on the agenda, evaluating each situation case-by-case, and making a determination consistent with State policy. He also agreed with Mr. Shapiro’s broader language in Resolved 11(i), which, in suggesting more flexibility, brings attention to this important issue. He found Mr. Shapiro’s proposal more affirmative than current CVFPP language, and supported that affirmation.

Public Comment on the Baseline Document – Susan Tatayon

Susan Tatayon, the Associate Director with the Nature Conservancy’s California Water Program, addressed Resolved 11(i). She stated the agricultural community’s concerns can be acknowledged without overshadowing the BDCP or any other state planning process.

She agreed with Mr. Shapiro's proposed language, encouraging the DWR to consider case-by-case.

Public Comment on the Baseline Document – Denise Carter

Denise Carter, the Colusa County Supervisor, agreed with Mr. Shapiro's proposed language and asked the Board to minimize bypass expansion projects in the rural communities, which need to be compensated with taking agricultural land as mitigation.

Colusa County Supervisor Carter proposed the following changes:

- Whereas P – adding a separate Whereas category for “Levee Requirements for Non-Urban or Small Communities.”
- Whereas FF – removing “reconstruction of,” so it will read, “If the levee does not meet the standards, flood damaged levees would not be eligible for federal reconstruction assistance.”
- Whereas GG – changing “the DWR, as outlined in the proposed plan, is proposing a different management” to “the proposed CVFPP outlines a different levee-vegetation management.”

Colusa County Supervisor Carter expressed concern that the language of Resolved 22 goes beyond what was agreed upon in the community in the interim framework, and questioned if this language changes section 4.2 of the plan as well. She recommended that the Board adopt the interim strategy and clearly state the Board will not implement the U.S. Army Corps of Engineers' (Corps) levee vegetation policy. President Edgar stated, due to current litigation, the Board will discuss this issue further in the policy discussion.

Public Comment on the Baseline Document – Ryan Schohr

Ryan Schohr, of Schohr Ranch, urged the Board to add the language “to consider economic impacts to agriculture,” because, while farmers plan years ahead, CEQA takes a one-time-only look at the conditions on the ground. He also asked the Board to remove the Cherokee Canal bypass from the plan as it exists. The language drafted in the Caveat, asking the DWR to consider “improving the canal to its original design capacity,” is a logical place to start.

B. Consider approval to publish and post the proposed adoption package for the CVFPP two weeks in advance of the June 29th meeting to consider final approval, as required by Water Code Section 9612.

President Edgar stated the baseline resolution, updated with technical and clerical corrections, considers four policy issues: the Cherokee Canal, the 100- and 200-year issue, mitigation on agriculture, and vegetation management.

Upon motion by Vice President Suarez, seconded by Secretary Dolan, the Board approved the baseline resolution with one nay.

Board Member Discussion and Amendments to the Baseline Resolution

Item 1 – Resolved 23 – Cherokee Canal

President Edgar stated the Board will accept an amendment regarding the Cherokee Canal. Maintenance and clearance will be the main focus for some time, and, as Tom Ellis pointed out, the issue of widening needs to be vetted more by the public. As the plan moves into implementation, stakeholders must take an active role; therefore, the Board has expanded upon the restrictive existing language.

Secretary Dolan suggested moving Cherokee Canal and the Feather River Bypass from Caveats to Resolved under a new number, Resolved 23, which would necessitate renumbering of the following Resolveds; and adding two sentences: “Therefore the Board removes reference to the new Feather River Bypass from the 2012 plan” and “This may be brought forward in the 2017 update.” The amendment also advises the DWR to continue to study the Cherokee Canal, in order to address the issues of maintenance and capacity.

In response to this amendment, DWR Central Valley Flood Planning Office Chief Arrich stated the DWR has been unable to resolve the issues of sediment removal and vegetation management thus far. The DWR encourages the Board to keep the issues of the Cherokee Canal and Feather River Bypass available, as they play a role in expansion of capacity, diversion of water from urban areas, and improvement of flood protection in the Cherokee Canal area.

DWR Central Valley Flood Planning Office Chief Arrich stated it would be wise to begin evaluation of the bypass expansion now, rather than deferring the issue until 2017. He asked how this would affect the DWR’s study of system-wide elements. Board Member MacDonald answered that the DWR, while planning the Yolo Bypass and other expansions, needs flexibility to account for the entire system.

In response to Secretary Dolan’s comment, DWR Central Valley Flood Planning Office Chief Arrich stated, if the Cherokee Canal or Feather River Bypass is deferred, alternative expansions will need to be considered. He felt that restarting the discussion in five years would counter some of these efforts enacted during that time.

Board Member Countryman stated, although the project has faults from an engineering perspective, the Board should not intervene in the planning process. While the DWR did not have the time or resources available to carry out a complete engineering analysis, this project does not appear to compromise the Yolo Bypass evaluations. Therefore, he supported leaving the Feather River Bypass in the plan.

Vice President Suarez felt it worthwhile to continue discussion of the issue over the next two weeks.

Upon motion by Secretary Dolan, seconded by Board Member Villines, the Board unanimously approved moving the Cherokee Canal and the Feather River Bypass from Caveats to Resolved 23; adding two sentences: “Therefore the Board removes reference to the new Feather River Bypass from the 2012 plan” and “This may be brought forward in the 2017 update:” and advising the DWR to

continue to study the Cherokee Canal, in order to address the issues of maintenance and capacity.

President Edgar stated this amendment is part of the main motion at this point.

Board Member MacDonald asked the Board, over the next two weeks, to consider other options for dispersing flood water and resolving hydraulic impacts. DWR Central Valley Flood Planning Office Chief Arrich expressed concern that two weeks would not be enough time to complete feasibility studies on alternative bypasses. Vice President Suarez stated the Environmental Impact Report, included in the CEQA document, analyzing the scenario without the bypass expansion, can serve as a starting point.

Item 2: Whereas P – 100- and 200-Year Protection

Board Member MacDonald stated the issue with the existing Whereas P is that it is not consistent with the language in Senate Bill 5. The Department suggested some language, but this only addresses the 100- and 200-year protection in urban areas, and does not mention rural areas, so additional language was suggested.

Board Member MacDonald proposed striking the existing Whereas P language, inserting the language that the Department suggested, and adding as a second paragraph the language that Mr. Shapiro proposed. Board Member Countryman suggested changing the title to “Levee Requirements.”

Item 3: Resolved 11(i) – Mitigation on Agriculture

Board Member MacDonald stated his concern over Mr. Shapiro’s language and whether expanded bypasses pertain to this intended mitigation issue. Mr. Shapiro stated there are many things that require mitigation and this language encourages that. Some are required under current law and some may be required as a good gesture. For instance, the DWR may elect to mitigate for habitat creeping due to bypass expansion, which results in a negative impact on the farmer. The language encourages DWR to mitigate as appropriate. The DWR will define what “as appropriate” means.

Board Member Ramirez stated the added language will not provide clarity, as the term “mitigation” is undefined and used in multiple contexts. Since there is no clear way to address this issue, he recommended no changes be made because it makes it open to interpretation.

Board Member Villines stated public testimony changed his opinion on this issue and felt cooperation makes sense if it does not interfere with the DWR. Mr. Shapiro agreed and stated this is one of many concepts included in the resolution to ensure people know they have been heard.

Secretary Dolan stated this long-discussed issue is too project-based to be resolved at the program level; it cannot be defined for every circumstance because of regional variations in agriculture. Too much specificity may inadvertently exclude something, which is why the “case-by-case” language is included to ensure it will be addressed.

Vice President Suarez suggested changing “The Board intends to follow whatever State policy is established” to “if the policy of the State is to consider mitigation on a case-by-

case basis, the Board encourages DWR to consider mitigation as appropriate.” Board Member Ramirez suggested the rest of the paragraph also be changed to keep it in context: “The current policy of the Natural Resources Agency is to examine the issue on a case-by-basis. However, this policy is now evolving as agencies consider the effects of large scale infrastructure projects on habitat and farmland. The Board encourages DWR to consider mitigation as appropriate on a case-by-case basis.”

Item 4: Resolved 22 – Vegetation Management

Board Member MacDonald stated there are three changes to the first paragraph. First, the Board will not adopt the Corps of Engineers’ policy. Second, there will be an exception policy for woody vegetation on new levees near the river. Third, woody vegetation will be allowed on the lower waterside of new levees that are not setback.

Vice President Suarez suggested adding an “in summary” to the second paragraph, to clarify which changes have been made to section 4.2.

Legal Counsel Smith recommended adding a sentence acknowledging the Board’s affirmative support for the position the Department of Fish and Game is taking in litigation and rejecting the Engineering Technical Letter (ETL), while recognizing the practical need for an interim strategy. This will prevent misinterpretation in litigation.

DWR Central Valley Flood Planning Office Chief Arrich recommended changing the word "reconstruction" to "rehabilitation" in Whereas FF to be consistent with the Corps’ language.

Upon motion by Vice President Suarez, seconded by Secretary Dolan, the Board unanimously approved for publication the notice of the adoption package, including the baseline resolution and amendments.

C. Next steps in the adoption process.

Vice President Suarez suggested posting the removed Caveat language along with the latest version of the resolution, for further consideration on 29th. Mr. Shapiro recommended inserting this language as an annotation.


Executive Officer Punia stated there will be two items discussed on the 22nd: the report of the DWR, and Item 8 of the Central Valley Flood Protection Plan.

5. ADJOURN BOARD MEETING

President Edgar adjourned the meeting at 3:10 p.m.

Dated: August 24, 2012

The foregoing Minutes were approved:



Jane Dolan
Secretary

William H. Edgar

William Edgar
President