

MINUTES
MEETING OF THE CENTRAL VALLEY FLOOD PROTECTION BOARD
March 2, 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 regular meeting (Open Session) of the Central Valley Flood Protection Board was held on March 2nd beginning at 8:30 a.m. at the Resources Building Auditorium, 1416 Ninth Street, Sacramento, California.

The following members of the Board were present:

Mr. Benjamin Carter, President
Ms. Teri Rie, Vice-President
Ms. Jane Dolan, Secretary
Mr. Bill Edgar
Mr. Tim Ramirez
Ms. Emma Suarez
Mr. Mike Villines

The following members of the Board staff were present:

Mr. Jay Punia, Executive Officer
Mr. Len Marino, Chief Engineer
Mr. Eric Butler, Supervising Engineer
Ms. Angeles Caliso, Staff Engineer
Ms. Alison Tang, Staff Engineer
Mr. James Herota, Staff Environmental Scientist
Ms. Amber Woertink, Staff Assistant
Mr. Jim Andrews, Legal Counsel

Also present:

Mr. Francis Coats
Mr. Larry Dacus, Three Rivers Levee Improvement Authority
Mr. Monty Hecker
Ms. Debra Hecker
Mr. Kevin Heeney, CTA Engineering & Surveying
Ms. Frances Hofman
Ms. Susan LaGrand
Ms. Carol Miller

Mr. Scott McElhern, Downey Brand, Three Rivers Levee Improvement Authority
Mr. Scott Shapiro, California Central Valley Flood Control Association, Sutter Butte
Flood Control Agency
Ms. Magdalena Vasquez

1. ROLL CALL

President Carter welcomed everyone to the meeting. He thanked the County of Yuba and the locals for hosting the meeting and allowing the use of its Board Chambers, which enabled the CVFPB to be closer to the stakeholders involved in today's action.

Executive Officer Punia reported that all Board Members were present except Board Member Villines, who would arrive shortly.

2. APPROVAL OF AGENDA

Staff reported no proposed changes to the agenda.

Upon motion by Secretary Dolan, seconded by Board Member Edgar, the Board unanimously approved the agenda as published.

3. PUBLIC COMMENT

Mr. Francis Coats of Yuba City addressed the Board on the issue of preserving the public's right to access of the river – to him, the critical piece of today's hearing. There's a lot of concern about the landowners and environmentalists, but not about the real property interests of the public to get to the river and not have access destroyed by physical structures.

4. HEARINGS AND DECISIONS

A. Proposed resolution for 48 notices of violation issued for the removal of unauthorized encroachments and fences on State property adjacent to the Feather River East levee in West Linda, CA (Yuba County) continued from December 2, 2011

Consider approval of Resolution No. 2012-03 to:

1. **Authorize removal of private fences and miscellaneous obstructions on State land.**
2. **Grant revocable licenses to adjacent private parcel owners for the use and maintenance of a portion of State land adjoining the Feather River East levee.**
3. **Rescind the notices of violation subject to voluntary compliance with this resolution.**

President Carter noted that during the hearing of December 2, the action taken by the Board had been subsequently vacated because of some notice defects. This item was therefore being reconsidered.

Angeles Caliso, Staff Engineer, presented evidence on behalf of the Enforcement Action.

Ms. Caliso referred to the Tier 1B regulation changes that took effect February 15. The changes included revisions to the Board's regulations regarding the delegation authority for minor encroachment permits, and also the enforcement proceedings, actions, and timelines.

She presented a timeline demonstrating how events related to both the old and the new regulations. She wished to obtain a consensus of the Board on whether the notice had been sufficient to proceed with the hearing.

Discussion of Proper Noticing

Board Member Edgar requested for the Staff Attorney, Jim Andrews, to provide feedback on the matter. Mr. Andrews pointed out the standard is not a strict compliance standard, but instead a substantial compliance standard.

President Carter recollected that respondents Ms. Miller and Ms. LaGrand had been in attendance at the January meeting, but Mr. King had not. In addition, some others had been present who are involved with Item 4A.

Mr. Punia stated that staff felt that they had complied, and that today's hearing was a continuation of the previous hearing. Their recommendation was to continue.

Mr. Andrews added that the law also applies a prejudice standard, in which a court looks at whether there was substantial compliance. The Board needed to line up the two legal standards of substantial compliance and prejudice in light of the December and January meetings, and all the other noticing that has happened. They could then make a decision.

President Carter remarked that this was a gray area. He asked Ms. Miller if she felt that she had had sufficient notice to respond to the proposed Enforcement Action for her property. She replied that she had not – she hadn't yet gotten through half of the voluminous paperwork. In addition, her packet had been sent to the wrong address.

Mr. Andrews pointed out that the old regulations said to "provide the respondent with a copy of the staff report mailed 10 days prior to the hearing." The new regulations said to "provide a copy of the staff report at least 20 calendar days prior to the hearing."

President Carter asked Ms. Miller if she had understood that her hearing was being continued for 30 or more days; she responded that she had.

Mr. Andrews asked staff how the staff report for January 26 had been given to the respondents. Ms. Caliso replied that Ms. Miller, Ms. LaGrand, Mr. King, and Mr. Hecker had been mailed overnight copies. They were also notified of the availability of staff reports from the Board website. She stated that the other 47 landowners under consideration for Item 4A had received an agenda notification and attached letter indicating that the staff report was available on the website, and to contact the Board's office if they required a hardcopy.

Ms. Caliso stated that the notice for the March 2 meeting had been done in the same way, with the letter mailed on February 14. The exception to that was that Ms. Miller, Ms. LaGrand, and Mr. King (who had separate enforcement hearings) were mailed the agenda, and on February 17, they were overnight mailed a copy of the staff report. Ms.

Caliso had also mailed Mr. Hecker a copy of the staff report, as he was acting as a representative for some of the other 47 landowners.

The Board discussed with Mr. Andrews the issues of compliance under the old and new regulations.

Board Member Suarez noted that substantial compliance didn't make sense: Board regulations made clear that either you comply or you don't. She pointed out that the Board was discussing the portions of its regulations dealing with Enforcement Actions that protect the due process rights of the respondents. The Board needed to ensure that they are as prepared as they can be to present and defend their position.

Mr. Andrews posed the question of whether the regulations actually required materials to be provided to those who had not requested a hearing. President Carter posed the question of whether their silence on the issue constituted waiving their right to receive materials. Mr. Andrews asked whether the Board was comfortable with applying a substantial compliance standard for them.

Homeowner Concerns

Debra Hecker, one of the 48, stated that the encroachment notices had never been explained to them. President Carter informed her that the Board had directed the Three Rivers Levee Improvement Authority (TRLIA) to work with the landowners to move the fences, and enter into agreements where those landowners could occupy the Board's property under an agreement. TRLIA would take care of the expenses of removing the old fences and putting in the new ones. There would be no expense to the landowners with respect to moving the fences and no fine.

Ms. Hecker expressed concern that there may be future fees. President Carter answered that this was not the intent of the Board.

Vice-President Rie noted that the Board had decided that 10 days was not enough time for respondents to digest and understand materials for an enforcement order. She further stated that if Ms. Miller needed more time to read the 200-odd pages of information, she should be given it.

Mr. Punia pointed out that the current staff report was essentially the same as that of January 19. The only added information had been submitted by the respondent. Staff recommendations and conclusions were the same.

Vice-President Rie asked if staff had addressed Ms. Miller's concerns. Ms. Caliso responded that they had in a memo listed as Attachment O.

Ms. Caliso also stated that staff had been working very hard and diligently with TRLIA to explain the process to the community.

Board Member Edgar suggested for the Board to give TRLIA the authorization to start putting up the fences, and in the meantime, fix the notice proceedings. Problems could be addressed as they were encountered.

Scott Shapiro, General Counsel for TRLIA, stated that TRLIA believed that a 20' Operations and Maintenance (O&M) corridor was a reasonable solution in allowing the landowners to continue to use the State land through a license. From the TRLIA

perspective, at the December hearing the Board had made a factual determination that there were encroachments by the landowners. TRLIA was presently prepared to move forward with the fence.

He went on to say that the advantage of issuing a permit on the fence would be to allow TRLIA to know definitively where it would be. This would allow TRLIA to start designing the fence, grading, and drainage. TRLIA had heard extensively from landowners about concern over drainage, and was committed to not making it worse and to doing what it could to make it better.

Mr. Shapiro assured President Carter that TRLIA would be working with Board staff to execute the licenses for the property owners to occupy state lands on the landward side of the new fence.

Mr. Andrews asked if the TRLIA permit authorized them to remove the property owners' fences. Executive Officer Punia replied that removal of the fences is part of the Enforcement Notice.

Mr. Shapiro stated that TRLIA would not be constructing anything in the next month. They would be happy to follow President Carter's suggestion to change the permit to authorize the fence removal; what TRLIA would like to determine was that 20' is where the new fences will be placed, so that they could start the design process and try to deal with drainage issues and any other issues that come up.

The Board asked Ms. LaGrand if she wished to proceed. She came forward and stated that many of the neighbors who are part of the 48 were so elderly that they could not attend the hearing – but they were not pleased with the situation.

Monty Hecker, one of the 48 property owners, came forward and made the following points.

- TRLIA is not coming out and working with the homeowners.
- Some of the homeowners are not fluent in English and don't understand the system.
- At the last meeting with TRLIA, the homeowners had been asked to vote on two options. TRLIA had not worked with them to come up with a good solution as instructed by the Board.
- Mr. Hecker was in a sense offended that a permit was going to be passed to take down the homeowners' fences, because they did not agree with the boundaries.
- The Board Members were doing a wonderful job with the pertinent questions they were asking.
- The homeowners had obtained copies of railroad information that no one was looking at.
- At the previous meeting, a TRLIA staff member had made an inappropriate gesture signifying victory – but this was not a game to the property owners.
- Paul Brunner, TRLIA Executive Director, would not agree to meet at the Hecker property to view discrepancies and drainage issues.

- Mr. Hecker assured Board Member Suarez that he did not want the Board to make a decision on the Enforcement Action that day.

Board Member Suarez recommended to open all the hearings in order to gather more input from the property owners, and to continue all the hearings to a further date to make a determination. This would give more time, as Secretary Dolan had suggested, to cure the defects regarding noticing, and to enable staff to research the property issues that kept surfacing.

(Board Member Villines joined the hearing at this point.)

*Upon **motion** by Board Member Suarez, seconded by Secretary Dolan, the Board unanimously voted to open the hearings for testimony purposes with the understanding that they would all be continued, and to proceed that afternoon with the TRLIA permit discussion.*

Mr. Punia clarified that the employee who made the inappropriate gesture was a CVFPB staff member rather than a TRLIA employee.

President Carter thereby called the hearing to order under agenda Item 4A. He stated that the Board would accept evidence into the record on the hearing from the respondents. The staff report would be presented at a later date.

Language Difficulties Among Some Homeowners

Board Member Suarez noted that she had spoken with Magdalena Vasquez, one of the property owners, and ascertained that many of the property owners speak only Spanish. Some accommodations needed to be made for them in future discussions.

Ms. Vasquez was prepared to present her testimony in Spanish with Ms. Caliso providing translation.

Testimony of Mr. Hecker

- The term “unauthorized” encroachment was inflammatory for the homeowners. They were willing to work together with TRLIA on the encroachment question.
- The letters needed to be provided in Spanish for the Spanish-speaking homeowners.
- Mr. Hecker presented photographs of the levee and the properties. The homeowners were perplexed with the placement of the fence line.
- The Board had asked TRLIA to come out and meet with the homeowners. Larry Dacus had come out, but said that he couldn’t answer their questions.
- Mr. Brunner had said that the homeowners needed to meet at his office, but he would not agree to meet at the homeowner properties.
- John Nicoletti, Yuba County Supervisor, had come out. Mary Jane Griego, Yuba County Supervisor and the new head of the TRLIA Board, had not responded to Mr. Hecker’s phone call.
- Mr. Hecker had found an unexplained metal marker on his property.

- Various markers distributed around the properties were confusing. Other markers were missing.
- Drainage was a worrisome issue.
- Mr. Hecker would like an explanation of a document that says 2.28 acres running across three properties is owned by TRLIA.

Mr. Hecker invited Board Members to come and see his property. President Carter responded favorably, and explained that all of the Board would have to come at the same time so that all would obtain the same information.

Vice-President Rie requested a copy of Mr. Hecker's presentation, which he agreed to supply.

Testimony of Debra Hecker, Property Owner

- The Board's vote on December 2, that the 51 property owners have been encroaching on State property for the past 56 years, was done in haste without proper validation of all the evidence.
- Would the Board have had the authority to issue the encroachments if the properties were found not to be State properties?
- Vice-President Rie had commented on TRLIA's difficulty in finding the monuments and locating the original railroad tracks.
- Had anyone ever taken the time to review the State's maps and not just the deed?
- Board Member Villines had not believed the encroachment was proved based on one survey by a third party.
- Did DWR or the San Joaquin Drainage District have maps or documents that should be examined during this process?
- The 51 private landowners did not feel that the State owned this land. The property was fenced off by the railroad long ago. The results being used in this process were based on one survey that was beneficial to the State and the County, and was in fact paid for by TRLIA.
- The more the homeowners raise questions, the more questions emerge.
- On December 2, Kevin Heeney, CTA Engineering & Surveying licensed surveyor, assured the Board that he had established the State's property line. He said that the Yuba County Surveyor's Office had approved the survey map dated June 2011. However, the map had not been approved until January 9, 2012.

Then, the original map dated June 2011 had been replaced with a new, different map dated January 2012, and titled 2011-11. This survey is currently the only thing on file in Yuba County.

- When the property owners keep questioning why Mr. Heeney didn't survey the railroad property to find the property line, they were told he could not find any

landmarks or monuments behind the private properties. Two had been found but were discounted.

- Mr. Heeney had told the Board that his analysis was based on a 2004 survey. This was not on the survey legend. The homeowners would like to see this map.
- The homeowners had been told that all documents used to identify the property line were listed on the map dated June 2011 that they all were given. Not listed were railroad maps and a 2004 map, and possibly more.
- It would be reasonable for a survey map claiming that 51 property owners are encroaching to have some supporting documentation filed with it.
- Other deed issues have been raised by Ms. Miller with both staffs and ignored.
- In December 2011, after its encroachment vote, the Board had instructed TRLIA to work out a solution or compromise with the property owners. That had not happened.

The homeowners had been given handouts with two options:

Option 1 – have certain property owners sign permits to lease or rent their property.

Option 2 – remove all encroachments including buildings.

Surrounded by lawyers, experts, and staff from the agencies, the homeowners found their questions side-stepped, ignored, and dismissed. No one came out of the meeting understanding what the permit issue meant.

- Ms. Hecker had sent the Board a letter requesting that the permit be suspended until questions and concerns are answered.
- Originally Permit No. 18690 was for road maintenance and a fence. In this agenda, it was formally being called the Encroachment Permit. Just as the survey changed from a generic purpose to identified land issues, and now has been filed with the purpose of delineating encroachment issues – throughout the entire levee project, the January map survey is the only one that has ever been filed with Yuba County.
- The TRLIA and Board staffs' dedication to overcoming the homeowners had been illustrated at the last meeting when one of the attorneys gestured his delight.

Secretary Dolan requested a copy of Ms. Hecker's statement, which she agreed to supply.

President Carter explained that the individual who made the inappropriate gesture at the January meeting was a Board staff employee: the Chief of Encroachments and Enforcements. Disciplinary action has been taken. President Carter apologized for the staff member's behavior.

Testimony of Ms. Vasquez (translated by Ms. Caliso)

- When she purchased the property, she was never notified or told that part of the land belonged to the levee.
- She has attended some of the meetings, but did not understand most of the discussions that took place.

- There are other people in the same situation. They feel that there is no point in attending the Board meetings, because they feel that they are not being listened to – they are not being offered something that is reasonable.
- Ms. Vasquez' property value is going to be affected because additional land is being taken away.
- If the Board wants to do anything on her property where the fence is currently located, they need her authorization. That would include the installation of the K-rails that happened recently.
- If the Board wants that land, she is entitled to compensation for that piece of property.

Vice-President Rie had some questions for Ms. Vasquez:

- Who had verified the property when she purchased it? Ms. Vasquez replied that it had been the real estate broker. No engineer or surveyor had been involved in the preparation of documents.
- Had Board staff had sent the original Notice of an Enforcement Hearing in Spanish? Ms. Caliso replied that they had not.
- If she had known that she had the right to request a hearing, would she have done so? Ms. Vasquez responded that she would have. Ms. Caliso added that she had indicated some of the options available, including requesting a hearing. Ms. Vasquez had not submitted the documents, and neither was there any follow-up on Ms. Caliso's part.
- Did Ms. Vasquez did want an individual hearing in a month? Ms. Vasquez replied that she did.
- Were there additional Spanish-speaking property owners in a similar situation? Ms. Vasquez said that there were at least four or five others.

Response from TRLIA

Mr. Shapiro made the following points.

- The TRLIA staff never wished to create an enforcement morass. The goal had been simply to get access to the property they needed in order to put in the fence and have an adequate O&M corridor.
- Originally there were two issues:
 1. The Board permit, which directed TRLIA to have an O&M corridor.
 2. The urban levee design standards (which DWR is in the process of adopting), which determine that in urban areas there should be access along the toe to do levee fighting and inspection.
- In the last email exchange with Mr. Hecker, Mr. Brunner indicated that he would meet either at his office or at Mr. Hecker's location.
- A meeting had been scheduled that the landowners cancelled.

- TRLIA is just trying to do what is appropriate, which is to compromise between the current position, that landowners are occupying State land with no permission, to the landowners occupying less State land with permission with a toe access corridor.
- Mr. Heeney had done a survey, reviewed all of the normal data, met the best standards required, and submitted his survey to the County which had no comments besides minor cleanup.
- Additional information submitted by Mr. Hecker and the other neighbors has been reviewed by TRLIA. Every item has been addressed, and has only made the survey stronger.
- At the community meeting, TRLIA had indeed presented two options to the landowners. TRLIA had worked with Board staff and DWR on a slough of options. Other options were rejected, and the two offered were the best TRLIA was able to find.
- Before today, TRLIA had not heard the landowners' concern over future financial cost. From TRLIA's perspective, it's supposed to be costless now and costless in the future.
- Other surveys have been filed for the Three Rivers project. A significant survey was filed for the Feather River setback levee lands. It has not yet been recorded by the County as they work through minor issues for that as well.
- There's one property where the fence is actually on the property line.
- TRLIA will commit to send a letter in Spanish next week to all property owners instructing them to request translation services if needed.

Mr. Dacus, Three Rivers Design Manager, addressed the issue Mr. Hecker raised about the fence on one side of the road versus the other.

- Mr. Dacus clarified that he is not a licensed surveyor – this had been a misconception.
- Urban levee design standards talk about providing a 20' clear corridor from the levee toe. First, the levee toe must be defined. This becomes complicated when you have cross-sections that have been altered on the backslope through the years, or served as something else and then had a levee built onto them.
 1. In this particular case, the original embankment was a Sacramento Northern Electric Railroad embankment.
 2. As the years went by, people began to add more levee embankment to the waterside. In some places additional fill has been placed at the bottom of the levee to elevate a road, probably to raise it above the water that ponds after heavy rains.
 3. TRLIA engineers looked at the embankments that exist. They tried to put an average slope through them, that encompassed all of the fill that was on the back of the embankment. They also looked at construction drawings that the Corps had in 1997 when they installed a cutoff wall. On the Corps maps, they had identified a line as the levee toe.

4. Looking at both those things, TRLIA came up with the best engineer's establishment of levee toe.
- Farther to the north, the toe appears to curve because it reaches a point where there's no additional fill on the back of the levee.
 - The round object on the ground that Mr. Hecker had found might be a construction control marker for the Corps, placed when they were doing their work. Mr. Dacus explained the term *control construction*.

Board Member Villines asked about the colored flags on Mr. Hecker's property that go across the road. Mr. Dacus explained that in addition to the old railroad embankment, there was also a ramp coming from Island Avenue that was 4-5' higher than the ground. Where the ramp goes down to natural ground, the toe line changes.

Mr. Dacus discussed with President Carter the definition of levee toe. Mr. Dacus stated that TRLIA's intent was to meet the levee design criteria, which says 20' of the levee toe. This gives the local maintenance agencies adequate room on the toe of the levee to do their job.

Mr. Shapiro added that the standard condition for real estate says not 20' from the levee toe, but 20' from the most landward encroachment – including ramps and seepage berms. President Carter noted that the question arises of whether or not these ramps and seepage berms were permitted encroachments.

Mr. Heeney addressed some issues:

- The two monuments that had been found didn't fit anything of record, didn't show up on any map, and were not stamped or marked as a typical surveyor would do. Mr. Heeney agreed with Mr. Dacus that they were construction control monuments probably set by the Corps.
- There are two maps:
 1. The first was done in June as an exhibit map for TRLIA to use when meeting with DWR cadastral staff and surveyors.
 2. As TRLIA proceeded with filing the Record of Survey, they added the necessary statements and more information. They submitted it to the County, which requested more information. TRLIA responded and produced the final record map in January, which the County Surveyor signed and recorded.

The difference between the two maps do not change where the boundary line is.

Vice-President Rie asked for clarification on who at DWR reviewed the survey maps; Mr. Heeney presumed that it was the cadastral survey group. Mr. Punia clarified that Board staff gave the package to that group, who gave it a cursory review and responded that it followed standard practices. They had recommended that as the property owners were not comfortable with the map, they should hire their own surveyor to verify the survey.

Mr. Heeney added that his measurements substantially match the 1921 and 1939 surveys, and all other prior surveys in that area.

President Carter recessed the hearing, to continue it to a future date after being properly noticed to all.

B. Proposed resolution for Michael King (Enforcement No. 2011-268) continued from December 2, 2011

Enforcement hearing as requested by Board concerning a notice of violation ordering the removal of a private fence and portion of permanent structure located on State land adjacent to the Feather River East levee in West Linda, CA (Yuba County).

Consider approval of Resolution No. 2012-06 to:

- 1. Authorize removal of a private fence on State land.**
- 2. Grant a revocable license to Michael King for the use and maintenance of a portion of State land adjoining the Feather River East levee.**
- 3. Authorize a structure on parcel 020-201-021, owned by Michael King, to remain on State land subject to permitting.**
- 4. Rescind the notice of violation (2011-268) subject to voluntary compliance with this resolution.**

As Michael King was not present, President Carter announced that the Board would continue the item.

C. Enforcement Hearing for Carol Miller (Enforcement No. 2011-272) continued from December 2, 2011

Enforcement hearing as requested by respondent concerning a notice of violation ordering the removal of a private fence located on State land adjacent to the Feather River East levee in West Linda, CA (Yuba County).

Consider approval of Resolution No. 2012-05 to:

- 1. Authorize removal of a private fence on State land.**
- 2. Grant a revocable license to Carol Miller for the use and maintenance of a portion of State land adjoining the Feather River East levee.**
- 3. Rescind the notice of violation (2011-272) subject to voluntary compliance with this resolution.**

President Carter stated that the Board would dispense with the presentation of the staff report, which would be presented at a future meeting. He invited the respondent to present evidence.

Testimony of Ms. Miller

- At the last meeting Ms. Miller had brought up the 1907 indenture to specify that the railroad survey was the survey on the existing fences that the railroad was alongside. There were existing fences there, and they were the dividing lines between the Northern Electric and the property owners at that time.**

- She quoted from a 1908-09 deed of the G. Cohn Estate. No one has told the homeowners how wide the levee is: 150', 160', or another measurement.
- The 1939 Yuba Gardens subdivision survey map refers to an existing fence from the 1908-09 deed, which would make the fence over 103 years old.
- She also had questions about the toe of the levee being in the prism – a question that had been brought up that morning by the Board but not answered.
- The Sacramento-San Joaquin Drainage District did not maintain the fence once they purchased the property; Northern Electric did until they were taken over by Sacramento Northern.

President Carter recessed the hearing, to continue it to a future date. At that time the respondents would have additional opportunities to present evidence and rebut testimony.

**D. Enforcement Hearing for Susan LaGrand (Enforcement No. 2011-287)
continued from December 2, 2011**

Enforcement hearing as requested by respondent concerning a notice of violation ordering the removal of a private fence and portion of permanent structure located on State land adjacent to the Feather River East levee in West Linda, CA (Yuba County).

Consider approval of Resolution No. 2012-04 to:

- 1. Authorize removal of a private fence on State land.**
- 2. Grant a revocable license to Susan LaGrand for the use and maintenance of a portion of State land adjoining the Feather River East levee.**
- 3. Authorize a structure on parcel 020-201-001, owned by Susan LaGrand, to remain on State land subject to permitting.**
- 4. Rescind the notice of violation (2011-287) subject to voluntary compliance with this resolution.**

President Carter stated that the Board would dispense with the presentation of the staff report, which would be presented at a future meeting. He invited the respondent to present evidence.

Testimony of Ms. LaGrand

- Where TRLIA can afford expert engineers, surveyors, lawyers, and so on, the homeowners cannot. Mr. and Mrs. Hecker had looked into the cost of doing a private survey, and it was \$10,000. The cost of hiring a private attorney was also prohibitive.
- The old maps and markers that the homeowners have found have been discounted as insignificant.
- TRLIA should ascertain the origin of the marker that Mr. Hecker found.
- TRLIA should have called the firm that did the original survey and had them do the current one. There should be a second opinion on the survey.

- Regarding the position of the markers on the levee: on Ms. LaGrand's property, the markers move abruptly although the slope of the levee does not.
- There had been a railroad on the site, with the property measured out from the center of the track. If TRLIA does not know where the exact center of the track was, then it does not know the exact property lines.
- On Ms. LaGrand's property is a valuable shop building. If the building is determined to be an encroachment with an uncertain future, her property is going to be almost impossible to sell.

Board Member Villines encouraged Ms. LaGrand that there is a successful win-win-win solution to be found for herself, the Board, and TRLIA. It is in all the parties' interests to reach the solution.

Ms. LaGrand noted that although TRLIA says it has spent \$100,000 of its money, that is basically taxpayer money. Her tax bill clearly shows her yearly payments to TRLIA and RD 784.

Response from TRLIA

Mr. Shapiro made the following points.

- TRLIA does not view the landowner concerns, complaints, and documents they provide as insignificant, but instead takes them very seriously. TRLIA has spent tens of thousands of dollars reviewing, responding, and ensuring that its information is correct.
- Mr. Heeney has done peer reviews of property for other surveyors, spending two or three hours, and billing the client \$300 or \$400.
- While there is an RD 784 and TRLIA assessment on the tax rolls, that is not the money that is paying for this project. The capital budget, which is a combination of State funding and original developer funding, is paying for the project.

E. Permit No. 18690 Three Rivers Levee Improvement Agency

Consider approval of Resolution No. 2011-31 granting authorization of protested Permit No. 18690 to install chain link fencing, K-rails, and a maintenance road on State of California property, adjacent to the Feather River east levee and Yuba River south levee in West Linda, CA. (Yuba County)

Board Member Suarez took a moment to speak directly to the property owners. She thanked them for coming, sharing information, and helping the Board further understand the challenges, dilemmas, and communication problems they are facing. The issue is very complicated.

The deteriorating relationship between the local homeowners and TRLIA is troubling. It was painful to hear very negative expressions against an organization that works with the Board to improve safety in the community.

It is very unfortunate that the Board's work has instigated this acrimonious relationship. Board Member Suarez was hopeful that after everyone has had an opportunity to air their concerns, we can get our working relationships back in order, because TRLIA is the Board's local partner. The Board counts on them to work with the community, and the Board needs to make sure that the community gains a comfort level to work with them.

With that, President Carter invited Alison Tang, CVFPB Staff Engineer, to proceed with the hearing.

Staff Presentation of Evidence

Ms. Tang provided a vicinity map and a location map of the area. She gave some background on the project: TRLIA is completing a \$400 million levee improvement program to increase the level of flood protection for Linda, Arboga, Olivehurst, and Plumas Lake. A 20' maintenance corridor is required in accordance with DWR's urban levee design criteria.

TRLIA hired CTA Engineering & Surveying to prepare the survey map, and discovered that in this area the land for the levee and the required 20' wide access corridor is owned by the State of California. This corridor borders on 58 private properties. The survey shows encroachments on State-owned land for 51 of those properties. The Board may issue revocable licenses to the 51 private owners for use of State property landward of the new fence location.

TRLIA is in negotiations with owners of these lots to acquire that land in fee that they need to complete the 20' wide maintenance corridor.

Ms. Tang showed some property survey maps, including a typical layout plan of the area where the State owns the property, proposed gate locations, and the easement area.

Applicable laws and regulations are the California Water Code Sections 8708 and 8710, and Title 23 regulations Sections 6(a) and 4(a)(4).

Ms. Tang provided timelines on the permit application and the Enforcement Action.

Board staff has received six letters of protest from landowners who have property adjacent to the proposed project. There are some common arguments they expressed, as follows:

1. The methods used for the development of the survey map completed by CTA are inaccurate. However, Board staff feels that CTA has shown that the surveying work was done in accordance with professional codes and using due diligence. Staff is confident that the CTA licensed professional surveyor prepared the map using the best available record documents, monumentation and thorough field verification.
2. The existing location of the fence has remained the same prior to the State purchasing the land from the railway company. Given the length of time that the fence has existed, the landowners hope to claim prescriptive rights. The staff response is that in accordance with Civil Code Section 1007, they cannot.
3. The landowners should be compensated for the loss of use of the land and/or the property taxes paid by the landowners for the portion of the land in question. The

staff response is that the portion of the land where the encroachments exist is owned by the State. Any encroachments within that land are not entitled to compensation.

4. The landowners are concerned that drainage will worsen due to the project. The staff response is that project plans will prevent the project from worsening seasonal ponding issues on adjacent property.

Staff recognized that there is a history of localized flooding problems during the wet season. Once the fence location is authorized, TRLIA can perform topographic studies, and a specific grading plan can be designed. The project plans will ensure adequate storm water management, so that the road is passable in wet weather, and adjacent drainage is maintained or improved.

The project has the following benefits:

- It provides for an accessible 20' wide corridor at the toe of the levee for maintenance and flood fight control as required by State regulations.
- It will prevent unauthorized access to the levee, while also protecting private property from trespassers.
- It will prevent the illegal driving of off-road vehicles on the levee slopes, which has been cited by the Corps and the State as damaging the levee.

RD 784 supports the proposed project. The Corps has issued a comment letter confirming that it has no objection to the project.

The Corps periodic inspection report draft rated the levee as unacceptable, and cited the levee damage from illegal off-road vehicles. The rating will result in ineligibility for PL 84-99 federal levee repair funding.

Board staff has determined that the project is categorically exempt from the California Environmental Quality Act (CEQA).

Staff recommended that the Board approve Permit No. 18690.

Response from TRLIA

Mr. Shapiro made the following points.

- Of the four different concerns raised by adjacent landowners:
 - The survey had been discussed at length in the prior hearings. Mr. Shapiro requested that any relevant testimony be incorporated by reference into this hearing.
 - Mr. McElhern had testified previously regarding prescriptive claims.
 - The compensation request by the landowners had been addressed.
 - Drainage had been discussed at the TRLIA Board meeting. They reiterated their commitment to not making drainage worse, and hoped to improve it. TRLIA also has an interest in improving drainage; having standing water at the toe of a levee is not an ideal situation.

- Construction of the K-rails at the base of the fence will address the problem of off-road vehicles accessing the slope of the levee, rendering it ineligible for PL 84-99 funding.

Board Member Suarez stated that if the Board granted the permit, she would like the assurance of TRLIA that it would open opportunity for further dialogue, and not be used as a hammer upon the landowners and their property.

Mr. Shapiro responded that there is continuing frustration at TRLIA that the landowners have not accepted what TRLIA thinks is fact. The five Board Members, including County Supervisors that represent the people in the area, are very concerned that they actually have a dialogue. Once TRLIA develops a drainage plan, it will meet with the landowners to discuss it.

President Carter asked if the Board could rely on TRLIA to ensure that the drainage gets better. Mr. Shapiro replied that this was not the provision initially proposed in Permit Condition 28. Board staff had determined that stormwater conveyance standard can be achieved through minor grading, surface drainage features within the slopes of less than 10%, and/or pipes and culverts adjacent to or under the existing maintenance road. For any more significant grading, pipes, or culverts, TRLIA would have to come back to the Board to get permission.

Mr. Shapiro assured President Carter qualitatively that TRLIA would do what it could to try to make the drainage better.

President Carter requested Board staff to pay particular attention to how the levee toe is defined. The objective is to not impact the integrity of levee and diminish public safety in any way, but not to move the toe any further than necessary landward of the levee.

Vice-President Rie asked TRLIA to address the removal of some trees that appeared to conflict with the proposed location of the fence. Mr. Dacus stated that there was no specific county ordinance handling oak tree impacts. He knew of an oak tree growing in the levee slope itself that definitely needs to be removed. There are also several smaller oak trees within the fence line itself that will have to be removed.

Vice-President Rie assumed that a CEQA analysis would be necessary to remove an oak tree. Mr. Shapiro stated that it is normal for the local agencies to remove vegetation for O&M. The exception is if it is a protected species under the Federal or State Endangered Species Act or a city or county ordinance. Board staff had found no such ordinance.

Board Member Ramirez stated that he didn't see this decision being something that is proposed to be exempt categorically from CEQA. TRLIA needed to work through that. Mr. Shapiro stated that he would further clarify after getting the facts from Mr. Dacus.

Public Testimony

Mr. Hecker made the following points.

- He showed photographs he had brought of the oak trees in question, and pointed out more oak trees that may need to be removed.

- Mr. Hecker also stated that he wished to talk with TRLIA people about the toe; if they moved the toe line as shown on the map, they would have lots of room: 30-35'.
- He expressed frustration again at his lack of success at setting up a meeting with Mr. Brunner. As a homeowner, he was concerned with the situation. He wanted the maintenance road; he wanted to feel safe. However, he wondered why the Board was asking important questions and showing compassion where TRLIA was not. He felt that the Board was fair, and he needed TRLIA to be fair as well.
- Mr. Hecker had not understood that Mr. Dacus was not a surveyor, and that was why he couldn't answer the homeowners' questions when he came to their property. Mr. Hecker wondered why TRLIA had sent someone who couldn't answer their questions. No one else had come out to his property.
- Mr. Hecker emphasized that the homeowners had not cancelled the scheduled meeting with Mr. Brunner – Mr. Brunner had cancelled it because he wanted to meet at his office.
- Mr. Hecker stressed that the fence needed to be 10' rather than 6' to prevent his property from being used as a thoroughfare for motorcycles and people. Mr. Shapiro stated that TRLIA had decided among staff upon 10' for the fence. Board Member Villines suggested that if the two sides could talk more, they could resolve each issue.
- Mr. Hecker expressed concern that he would not be able to utilize his property from the manner in which TRLIA had drawn the fence lines; he pointed out abrupt jumps in the lines.

Ms. Miller made the following point.

- The 1958 deed described the 150' parcel of land, and there was supposed to be an additional 20' with it, but the deed did not specify parcel 5 which is in back of her house.

Ms. Hecker made the following points.

- The homeowners should be able to see the documents from the San Joaquin Water District and the DWR real estate group. They had been told in the beginning that all the documents used in the survey were available to them.
- The center of the levee has never been identified. The homeowners had consulted with a surveyor who told them they might have an issue with a no-man's land.
- Ms. LaGrand had tried to reach out to the other agencies to obtain the other documents. Her emails had been forwarded and she received a response from Mr. Punia to go through the Freedom of Information Act.
- Ms. Hecker requested the Board not to vote on the permit today.

Ms. LaGrand made the following points.

- She confirmed that she had received email instructing her to go through the Freedom of Information Act to obtain copies of the documents. She had thought that anyone was allowed access to the information, that it was public knowledge.

- Voting on the permit today would be a huge injustice to the homeowners. Ms. LaGrand wanted to work with TRLIA, although she didn't like the half-truths they told.
- She maintained that all State grants, funds, and DWR money is taxpayer money.
- Until the center of the railroad is found, no one knows where the property truly ends.

Board Questions and Discussion

Vice-President Rie inquired about the unauthorized removal of the trees in the line of the fence. James Herota, Staff Environmental Scientist, stated that under Title 23, maintenance does include removing vegetation, but if it's substantial (i.e., cutting into the levee), TRLIA would have to come back for a permit.

Vice-President Rie asked counsel how the Board can authorize installation of a fence that requires removal of oak trees, if the Board hasn't made a decision on the enforcement. Mr. Andrews responded that a better sequence would be to conclude the enforcement actions before any construction is begun. His recommendation was to add a condition to the permit that no construction will begin until the Enforcement Actions of the adjacent properties are concluded.

Board Member Edgar asked Mr. Andrews' opinion on whether TRLIA can proceed with construction on the uncontested properties, assuming the Board approves the permit allowing TRLIA to proceed with design plans and specs for the entire project. Mr. Andrews felt that they could not proceed on any of the properties until the Enforcement Actions are resolved. Whether contested or not, the Board hasn't closed the loop on any of the 51.

President Carter suggested following Board Member Ramirez' recommendation to add a condition in the permit that resolves the issue of the location of the levee toe, such that it is defined essentially to protect the existing levee prism shape and not diminish public safety in any way.

At that point Mr. Andrews read a proposed condition he had drawn up that deals with the sequencing issue.

The Board discussed the levee toe issue with Mr. Andrews. He drew up verbiage for the Board which was suitable.

Board Member Suarez requested deletions of two phrases in the Resolution.

Upon motion by Board Member Edgar, seconded by Board Member Suarez, the Board voted to adopt Resolution No. 2011-31 as amended, which includes the deletion of the second and third "whereas" on Page 2, and the specification of "approximately 10 feet" for the chain link fence on Page 3; and make the changes to Condition No. 25 on the permit, and the addition of Condition No. 37 on the permit, as presented by Staff Counsel Andrews. The vote was six ayes and one abstention.

Board Member Suarez requested for the Board to consider appointing a member liaison to work with TRLIA and the community to help resolve outstanding issues. This might help facilitate the dialogue and discussions.

5. INFORMATIONAL BRIEFINGS

A. Introduction of the maintenance and use agreements for the RD 784 levee access corridor and an easement policy to avoid landlocked properties.

Mr. McElhern stated that he represented TRLIA as Special Counsel for right of way acquisitions and eminent domain. He stated that the purpose of the Informational Briefing was to discuss:

- Two instruments that TRLIA intended to utilize with respect to property owners as ways to work with them when their property is landlocked.
- License agreements that would allow for use of the toe access corridor area for continuing farming operations.

Mr. McElhern gave a brief background of the project. He explained that severing farms by cutting off access may result in adverse economic impacts, which in turn would substantially increase TRLIA's real estate acquisition costs, which in turn would result in increased acquisition costs for the State under the Environmental Impact Report program.

Mr. McElhern gave the solution: where TRLIA acquires fee title to an existing levee crossing a large farm under unified ownership, or where an owner of a waterside parcel would lose access by the fee acquisition, TRLIA will grant a permanent access easement across the levee to the owner.

The benefits of the policy are as follows:

- It preserves economies of scale and existing agricultural operations.
- It minimizes the potential adverse impact of TRLIA's levee improvement program on individual farming operations.
- It decreases TRLIA's and ultimately the State's real estate acquisition costs and therefore lowers overall cost to the public of the levee improvements.

Protections for the State are as follows:

- The properties would be farming operations only with no other uses allowed.
- The property owners would be restricted from interfering with the O&M of the levee.
- The property owners would be responsible for the cost of repairing any damages associated with the use of the easement area across the levee. They would be required to indemnify TRLIA, RD 784, and the State and federal government for any liability arising out of their use of these easements. The State and RD 784 would be third-party beneficiaries of the easements and able to enforce its terms.

Another instrument that TRLIA intends to use is the license agreement, different from the cross-levee access agreement. The license agreement would just be for the use of the toe

access corridor. As part of the project, TRLIA is acquiring fee title, and the property owners with large agricultural operations have requested the ability to access the toe access corridor area. In certain instances, TRLIA has determined that by granting this license to use the toe access area, it would not impact the O&R of the levee.

Mr. McElhern listed the significant limitations on the non-exclusive license agreements for the protection of TRLIA and the State.

Advantages of the non-exclusive license agreements to TRLIA and the State are as follows:

- They minimize the adverse impacts of TRLIA's levee improvement program on individual farming operations.
- They maximize the amount of usable farmland.
- They preserve the State's and RD's ability to revoke licenses.

Mr. McElhern stated that DWR staff supports the licenses in general.

Board Questions and Discussion

Board Member Villines asked if TRLIA had spoken with the farmers. Mr. McElhern replied that they had. There are some currently pending eminent domain actions where this is an issue, and this could be a way to resolve the litigation.

Board Member Villines asked about mitigation for the farmers. Mr. McElhern said that the farmers had argued that if they cannot access their land, the State would have to buy the entire piece of property.

In answer to a question from Board Member Suarez, Mr. McElhern stated that there were four different property owners involved.

He further informed her that TRLIA was providing this informational hearing in order to gauge if this were an issue with the Board.

In answer to a question from Board Member Edgar, Mr. McElhern said that the property owners would have keys to the gates on the access roads. Mr. Dacus explained that at the upper end of the river there will be fences between the O&M corridor and the agricultural operations, but at regular intervals there will be pipe gates at the ramps that will allow the farmers access.

Vice-President Rie asked how a revocable license agreement compensates property owners whose access to their property is being cut off. Mr. McElhern replied that the license agreement would be used only in the toe access corridor. TRLIA is working with the property owners to determine the terms of levee access.

Vice-President Rie asked if the access easements are part of the litigation. Mr. McElhern said they would be used as part of the settlement to resolve the litigation.

6. BOARD COMMENTS AND TASK LEADER REPORTS

President Carter stated that staff had asked the Board to clarify for them the new regulation language with respect to the Hearing Notice.

The Board discussed the phrase “shall provide” under Section 25, Cease and Desist Order, Board Hearing Procedures, Item (b)(4). Secretary Dolan felt that this means providing a hardcopy via U.S. mail. Board Member Suarez agreed; not all members of the public have access to computers and printers that can download documents.

Vice-President Rie noted that there are large delays in U.S. mail delivery at present. Board Member Villines remarked that people who don’t want to receive a packet of mail can find ways to accomplish that. Ms. Caliso agreed: she had found that many of the residents that staff tried to contact were reluctant to receive certified mail. In the past, staff reports have been sent via overnight mail to one or two respondents – but with 51 people to contact it becomes problematic.

Mr. Butler proposed sending the hardcopies by U.S. mail or whatever alternative mail means is necessary to ensure delivery. Vice-President Rie spoke against certified mail: the resident must be home to sign or go to the Post Office for pickup later, which can be difficult and inconvenient.

President Carter clarified that the clock starts when the agent – U.S. mail or another delivery service – takes possession of the document for delivery.

Mr. Andrews felt that “provide” means the document is in the party’s hands.

President Carter stated that this question is something the Board needs to pass on to the Regulations staff to try to fix. In the meantime, the Board needs to be generous and lenient in terms of its application of the return responses from the respondents.

Mr. Andrews made a suggestion for the pending TRLIA Enforcement Actions. Staff could ensure that the respondents receive the staff report at least 20 days prior. President Carter felt that the timeframe should be a month or more in advance of a hearing to prevent further notice issues – to err on the very conservative side.

Board Member Suarez commented that the Board can always waive its regulations regarding when a respondent needs to submit evidence.

Frances Hofman came forward to comment on Agenda Item 5.

- The term Western Interceptor Canal is incorrect; it is Reeds and Hutchison Creek Lateral.
- Instead of taking everything in fee, TRLIA should take an easement. When they take it in fee, it comes off the Yuba County tax role. When they take an easement, the agreements are not needed.
- The documents should be in the name of the agency that actually handles most of the State’s agreements: the Sacramento-San Joaquin Drainage District.
- RD 784 should have the right to control the levee for O&M.
- In looking at the thousands of acres that TRLIA has taken off of the Yuba County tax role in the form of fee, easement would simplify it.
- TRLIA is talking about turn rows for row crops, which doesn’t apply to wheat fields, pasture ground, or hay ground.

President Carter addressed CVFPB committees and subcommittees. Board Member Ramirez had expressed an interest in participating in the San Joaquin River Restoration Committee, which is actually two committees: a Technical Committee and an Executive Committee. He agreed to take former Board Secretary Hodgkins' role and participate in both committees, as well as the Yolo Bypass Fishery Enhancement Conservation Measure and the FloodSAFE Conservation Strategy's Interagency Steering Committee.

Board Member Edgar volunteered to participate in the Interagency Flood Management Collaborative and the Tier 2 Update Regulations group.

Vice-President Rie volunteered to participate in the Urban Level of Flood Protection work group.

Regarding the Section 25(b)(4) regulations, Board Member Suarez stated that the first step is to get a legal opinion from Mr. Andrews on what they mean; this is a legal document. There is background information on why the regulations were developed the way they were. After obtaining a legal opinion, if the Board feels that it needs to revise the regulations, it can embark on that with Tier 2.

7. FUTURE AGENDA

Executive Officer Punia gave the schedule for the April hearings:

Thursday, April 5, 9:00 a.m. – 5:00 p.m., Resources Building Auditorium,
Sacramento

Friday, April 6, 9:00 a.m. – 5:00 p.m., Yuba County Government Center,
Marysville

Monday, April 9, 1:00 p.m. – 9:00 p.m., Stockton Agriculture Center

Wednesday, April 11, 1:00 p.m. – 9:00 p.m., Yolo County Board of Supervisors
Chambers, Woodland

Board Member Suarez noted that for the April 6 and April 9 hearings, DWR will hold open houses on CEQA and the technical documents from 1:00 – 3:00. For the April 5 and April 6 meetings, the CEQA hearing begins at 2:00, with DWR providing an open house from noon – 1:00.

Mr. Butler distributed two draft documents. One was in the form of a typical agenda for notifying the public via the website, etc. For the other, Mr. Butler had condensed an overview of the State Systemwide Investment Approach supplied by Jeremy Arrich, Chief of the Central Valley Flood Planning Office at DWR.

Mr. Butler stated that what DWR wanted to do is to show the Board how the material in the technical documents supports the initial analysis that went into developing the three preliminary approaches, and the ultimate selection of the State Systemwide Investment Approach.

He added that the hydraulic analysis had been one of the keystones to all the technical analyses, but there were many other technical considerations: wet hydrology, economics, and environmental conservation.

Mr. Arrich had wanted the Board to know that to do a half-day workshop, DWR could not go through each of the technical documents in detail. But by providing the Board with an overview of the methodology they used and showing how the technical documents supported that methodology, the Board could gain a better understanding of the key technical issues.

Board Member Suarez said that the comments that the Board receives between now and the public hearings that deal with the technical documents, will be addressed at the technical discussions.

Secretary Dolan asked what had happened to Phases 3 and 4. Mr. Butler explained that Phase 3 was to be the detailed regional analysis. Phase 4 was to describe the actual on-the-ground projects. However, it had taken a great amount of time for DWR to put the project together so far; to do Phases 3 and 4 would take probably another 18 months.

Mr. Butler felt that the current challenge is that the public is not well-briefed as to the specificity and level of detail of the proposals. They may think that these are prescriptive recommendations when they actually are not; they are proposals for what has been identified so far as having merit for further review. DWR is already starting the regional outreach process and moving on with Phases 3 and 4.

Board Member Ramirez expressed the hope that it will be clear to people at the hearings, when they provide comments, what the difference is between providing them to the Board in its role, and what it is for DWR and CEQA.

He commented that it was important for the Board to think about how it lays out the process for the public particularly in April, so that they understand the plan as well as possible.

Board Member Edgar expressed concern that some members of the public are already opting out of the plan. The Board needs to emphasize that the regional approaches are starting; stakeholders will be involved. No one has made a final decision that the Sutter Bypass will be widened. Everyone needs to stay at the table.

Mr. Butler agreed – many people are drawing the wrong conclusions from possibly an insufficient amount of information. They are thinking that there are specific projects of a prescriptive nature proposed by DWR.

Vice-President Rie asked whether the DWR technical discussions would be interactive. Mr. Butler replied that at the end of each of the four sections, there will be a Board Q&A session.

Board Member Suarez requested that Mr. Arrich be aware that the Board might desire additional technical briefings on particular segments, depending on the level of interest.


President Carter requested that the Notice for Public Meeting be finalized and posted by Wednesday, March 7.

8. ADJOURN

President Carter adjourned the meeting at 4:52 p.m.

Dated: _____

The foregoing Minutes were approved:



Jane Dolan
Secretary



William Edgar
President