

**MINUTES**  
**MEETING OF THE CENTRAL VALLEY FLOOD PROTECTION BOARD**  
**May 25, 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 of the Central Valley Flood Protection Board was held on May 25 beginning at 9:00 a.m. in the Auditorium of the Resources Building, 1416 Ninth Street, Sacramento, California.

**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. Len Marino, Chief Engineer  
Mr. Eric Butler, Supervising Engineer  
Ms. Mitra Emami, Senior Engineer  
Mr. Michael Wright, Senior Engineer  
Mr. Gary Lemon, Staff Engineer  
Ms. Nancy Moricz, Staff Engineer  
Ms. Amber Woertink, Staff Assistant  
Ms. Deborah Smith, Legal Counsel

**Department of Water Resources staff present:**

Mr. Jeremy Arrich, Chief, Central Valley Flood Planning Office  
Mr. Kevin Faulkenberry, Senior Engineer  
Mr. Noel Lerner, Chief, Flood Maintenance Office  
Mr. Keith Swanson, Chief, Division of Flood Management  
Mr. Ward Tabor, Assistant Chief Counsel  
Mr. Kent Zenobia, Chief, Project Delivery Branch

**Also present:**

Mr. John Cain, American Rivers  
Ms. Denise Carter, Colusa County Supervisor  
Mr. Paul Devereux, Reclamation District 1000  
Ms. Alicia Forsythe, United States Bureau of Reclamation  
Mr. Justin Fredrickson, California Farm Bureau Federation  
Mr. Josh Harmatz  
Mr. Steve Jaques, California Department of Transportation  
Mr. Ryan Larson, United States Army Corps of Engineers  
Mr. Scott Shapiro, Downey Brand  
Mr. Tim Washburn, Sacramento Area Flood Control Agency

### **1. ROLL CALL**

President Edgar welcomed everyone. Executive Officer Punia reported that all Board Members were present except for Mr. MacDonald, who arrived shortly.

### **2. APPROVAL OF MINUTES – March 2, 2012 and March 22-23, 2012**

Secretary Dolan reported that a date needed to be changed on the March 2 Minutes.

*Upon motion by Secretary Dolan, seconded by Board Member Villines, the Board voted unanimously to approve the amended Minutes for March 2, 2012 and March 22-23, 2012.*

### **3. APPROVAL OF AGENDA**

Executive Officer Punia stated that staff was requesting to move the Closed Session to the lunch break, as the day's agenda was very full.

Executive Officer Punia also clarified that Item 8A was actually an attachment to Consent Item 7A.

*Upon motion by Board Member Countryman, seconded by Board Member Ramirez, the Board unanimously approved the agenda as modified above.*

### **4. PUBLIC COMMENTS**

Steve Jaques, Caltrans Liaison to the CVFPB, stated that Caltrans had a project coming up: The widening of the Highway 99 Butte Creek Bridge in Butte County. During the past week Caltrans had resubmitted the project.

Mr. Jaques requested an expedited review, not only by the Board, but also by the Army Corps of Engineers, so that Caltrans could obtain the permit by July 27. The project will then need to go to the State Transportation Commission. The project was on the contract for delivery and was one of very few that is currently not succeeding.

President Edgar responded that the Board was in the middle of a laborious process in trying to get the Central Valley Flood Protecting Plan (CVFPP) approved, and was handling a number of other issues. He stated that the staff would try to accommodate Mr. Jaques' request in every way they could.

## 5. REPORT OF ACTIVITIES OF THE DEPARTMENT OF WATER RESOURCES

Keith Swanson, DWR Chief of the Division of Flood Management, reported on the following items.

- He had attended two public ceremonies denoting success.
  - The River Partners and Tuolumne River Trust celebrated the restoration of 1,600 acres at the confluence of the Tuolumne and San Joaquin Rivers. The effort had been funded through ten different agencies.
  - Mr. Swanson had also attended a ceremony of the Joint Federal Project at Folsom, an \$800 million project. Flood Board members were also present.
- DWR had met with the Corps and MBK Consulting regarding the 2006 PL 84-99 mitigation planting. MBK was representing the three reclamation districts associated with this effort; they were looking for new planting sites away from levee toes due to concerns of ongoing maintenance. The Corps was expecting a revised biological opinion that would allow future management of the vegetation.

The Corps also pledged to work with DWR to coordinate with the Department of Fish and Game on future management of the sites.

- The Department of Fish and Game has filed suit against the Corps regarding their vegetation policy. The grounds are alleged Endangered Species Act (ESA) and National Environmental Policy Act (NEPA) violations.
- Thirty members of the U.S. House of Representatives' California delegation have introduced a bipartisan bill suggesting that the Corps develop a process for regional vegetation variances.
- In August 2010, the Corps distributed an engineering circular saying that any existing certifications over 10 years old are no longer valid. This is a particular issue in the Sacramento area. If any levee certification is over 10 years old, the Corps will withdraw the certification in August 2013.

SAFCA has begun to put together a team to address this. Noel Lerner and Rod Mayer of DWR met with SAFCA and MBK staff to discuss how to move forward in Maintenance Area 9 in the Pocket Area.

The issue is going to be contentious, with the encroachment management issue at front and center. Necessary easements are not all in place. President Edgar and Board Member Countryman commented on how difficult it is going to be to get A99 approval in Natomas and the Pocket.

Mr. Swanson noted that the issue is systemwide, and the effort will need to be systematic, with clear roles and responsibilities at the local level and assigned support at the state level between DWR and the Board.

President Edgar remarked that a project management plan will be key. He offered Board support in the effort moving forward.

DWR was pressing forward with responses to the Program Environmental Impact Report (PEIR). DWR had completed master responses for 23 topic areas. Twenty writers were working through 4,000 comments. For the Plan, the last month had been filled with good discussion, resulting in an improved plan and a better post-adoption process for implementing projects.

DWR had begun initial discussions with some of the implementing and maintaining agencies.

DWR would be meeting with the Central Valley Flood Control Association regarding a complaint that they were hearing slightly different things from one DWR staff member to the next.

After adoption, DWR's goal is to implement projects. This will require a funding plan at the local and state levels.

- Mr. Swanson thanked the Board for their support on DWR's Small Erosion Repair Program (SERP).
  - Board Member Countryman had discussed the new hydrology with DWR staff.
  - Mr. Swanson reported on some personnel moves.
    - Jon Ericson is moving to a three-month assignment leading the transition of the CVFED program. He will supervise the completion of the models and floodplain maps, and migration of the models into the DWR library models.
- Mr. Countryman commented that DWR had contracted with the Corps to do the hydrology. He recommended that in the future, DWR should contract directly for it and keep control of the schedule and the product.
- Dave Wheeldon of the CVFED program is moving to the Flood System Sustainability Branch in the maintenance area.
  - Hamid Bonakdar of the Flood Maintenance Office is moving to the Flood Projects Office in new program development.
- The DWR/DFM/Department of Fish and Game routine MOU for the maintenance program allows for expedited permits for routine maintenance, and has proved very successful. During the past year, 63 projects were approved in 1-7 days to allow the work to comply with the 1600 obligations.
- We need to come up with something similar on the federal side. Federal DSA compliance has been difficult for flood control maintainers.

Board Member Countryman inquired about the Lake Kaweah enlargement project. Was there any money available from the federal government for credit for the local costs of acquiring lands, easements, rights of way, etc.? Kent Zenobia, DWR Project Delivery Branch Chief, replied that about \$3.7 million is available from the state General Fund for reimbursement.

## **6. REPORT OF ACTIVITIES OF THE EXECUTIVE OFFICER**

Executive Officer Punia reported on staff activities.

- He brought to the Board's attention the Federal Emergency Management Agency (FEMA) letter regarding the certification expiration of the majority of levees in the City and County of Sacramento. For the local communities to have to certify the levees with the Corps will be a major undertaking.

Everyone involved must work together: Board staff, the Sacramento Area Flood Control Agency (SAFCA), DWR, and local maintaining agencies such as RD 1000 and the American River Flood Control District. Board staff members Len Marino and Michael Wright will be participating on the team to address the encroachments.

- Staff had received a letter from the Corps, putting them on notice that the Corps was strongly encouraging them to work with DWR to align DWR's inspection program with the criteria and rating program of the Corps'.
- Board staff has issued a Notice of Violation to SAFCA for the construction of the project on the east levee of the Sacramento River. Staff is working with SAFCA and their consultant to reach a point where the Notice of Violation can be withdrawn.
- Staff met with the Three Rivers Levee Improvement Authority (TRLIA) to resolve the levee compaction issue. Executive Officer Punia was confident that the two groups would reach agreement with TRLIA on the compaction requirements outlined in the Board permit.
- Staff is continuing to meet with the West Sacramento Area Flood Control Agency regarding the Southport Levee. Eventually the project will be brought to the Board and the Corps for 408 approval.
- Staff is working with the Sutter Butte Flood Control Agency to arrange an informational briefing and field visit for the Board, probably in July. This major project will be coming to the Board for 408 approval.
- The Singh Unit Conservation Project, being proposed by the Department of Parks and Recreation, had been brought to the Board for approval amidst opposition from adjoining property owners. The Department of Parks and Recreation has hired a facilitator to meet with the landowners on May 29. Board staff will attend the meeting.
- Staff met with the Bay Delta Conservation Plan team and Corps staff to begin the permitting process for the planned facilities under 408.
- In the Governor's May Revise Budget, the CVFPB's General Fund budget is intact.
- Staff is continuing to work with California High-Speed Rail. They are expecting close to 90 permit applications from them shortly.
- The Sutter Bypass two-dimensional model is almost complete.
- Staff is continuing to work with DWR and the other agencies on the mercury issue in the Cache Creek area.

- Board President Bill Edgar, Secretary Dolan, Board Member MacDonald, and Executive Officer Punia attended the Folsom Dam auxiliary spillway construction ceremony.

Michael Wright, Senior Engineer, gave a synopsis of the Board's enforcement activities.

- Board staff and TRLIA continue to collaborate on public outreach and acceptance of the site plan for the Feather River East Levee in West Linda. TRLIA presented grading and drainage plans that were acceptable to Board staff. Board staff also supported TRLIA's revised plans for the access corridor and fence alignment in West Linda.
- Board staff meets monthly with DWR and the Corps to discuss the state and federal inspection programs.
- Board staff and the DWR Flood Project Inspection section have been coordinating efforts to identify and resolve serious encroachments that threaten the integrity of the flood protection system.
- Board staff has started to coordinate with DWR's Flood Project Integrity Section, which is in the process of documenting pipes throughout the levee systems.
- Board staff is coordinating with DWR's Maintenance Support Branch to resolve the levee deficiencies in maintenance areas described in the Corps' periodic inspections.
- Board staff continues to work with the Corps on the Periodic Inspection Program. For Bear Creek, out of nine systems, one is inactive for PL 84-99 assistance due to unwanted vegetation growth and encroachments. For Mormon Slough, out of five systems, one is inactive for PL 84-99 assistance for the same reasons.
- The Putah Creek and Knights Landing Levee System outbrief was held May 18. The maintaining agencies are the Knights Landing Ridge District, Yolo County, and DWR. The two systems rated unacceptable and inactive will have an inactive status for the Corps PL 84-99 Rehabilitation Program, if the items found that likely prevent performance in the next flood event are not addressed prior to the Corps final report.
- The next PI outbrief is scheduled for July 13. It will include Hastings Tract Levee System (maintained by Reclamation District 2060) and Cache Slough Levee System (maintained by Reclamation Districts 2068 and 2098).

Secretary Dolan clarified with Mr. Wright that when a levee system is deemed *inactive*, it actually means *ineligible for PL 84-99 assistance*. The levee system is still functional and operating.

Board Member Countryman asked if staff has GPS coordinates for all of the encroachments in the Pocket Area. Mitra Emami, Staff Senior Engineer, replied that for the permitted encroachments they have a database. Staff has contracted with Atkins to obtain GPS coordinates for unpermitted encroachments to put into the database.

Board Member Countryman asked if the Board has permitted encroachments in the right of way. Mr. Lerner answered that there's a whole range of encroachments: those that

predated the project, those that were permitted with the Corps, and those that were built unpermitted. The issue has been thorny because of enforcement.

Mr. Lerner continued that because the certification of the levees is going to be required for FEMA, the Board and DWR are going to have to address the issue; whoever wants to certify may not because of encroachments. Pipelines are another category, and DWR has a program for inspecting and addressing deficiencies.

### **Discussion about the Bagley-Keene Open Meeting Act**

Deborah Smith, Staff Legal Counsel, clarified two issues that had been causing confusion regarding Bagley-Keene.

Generally the Bagley-Keene Open Meeting Act requires open noticed meetings when there's a quorum of the Board convening or addressing issues that are within the Board's jurisdiction, unless there's an exception to the Open Meeting requirement, such as closed session. For the CVFPB, a quorum would be four.

Another section in the act addresses advisory committees. For the Board, an advisory committee of three must comply with open, noticed meetings.

A meeting includes not only face-to-face meetings, but also serial meetings, which are a series of emails, phone calls, etc. It also applies to receiving information as well as exchanging information among Board members.

There is an exception that is a relatively recent development in Bagley-Keene: a staff member or the Executive Officer can have separate conversations or communications, or relay information to individual Board members, so long as that staff member does not share the comments or positions of the other Board members. Thus Board members are free to contact Executive Officer Punia to ask him questions.

This exception wouldn't apply to, for example, a situation in which a draft letter is going out from the Board – staff would not be able to send the draft to the entire Board requesting comments; that would be a serial meeting.

To have a draft reviewed and comments provided outside of a public Board meeting, the person can solicit comments via email to incorporate into a memo that will be presented at the next open Board meeting.

Four or more Board members can attend a ceremonial proceeding, for example, but they cannot discuss matters under the jurisdiction of the Board.

## **7. CONSENT CALENDAR**

### **A. Permit No. 18166-2, Sacramento Regional Transit District**

**Consider approval of Permit No. 18166-2 to construct light rail improvements as part of the South Sacramento Corridor Phase 2 adjacent to, and over Union House Creek; and relocate existing levee access road adjacent to Morrison Creek. (Sacramento County)**

### **B. Permit No. 18697, Grimmius Cattle Company**

Consider approval of Permit No. 18697 to construct a 2-acre gravel parking lot, a storm water catch basin, a soccer field, two volleyball courts, a picnic area, a perimeter fence, a pole hay barn, a flood protection berm, and an employee entrance building on the east side of the Cross Creek Designated Floodway. (Kings County)

**C. Permit No. 18720, California Department of Transportation (Caltrans)**

Consider approval of Permit No. 18720 to widen an existing cast-in-place reinforced concrete slab bridge (Br. No. 29c-0377) crossing Duck Creek South Branch at Munford Avenue. (San Joaquin County)

**D. Permit No. 18723, Reclamation District 2093/Trust for Public Land**

Consider approval of Permit No. 18723 to degrade approximately 4,200 linear feet of the east-west private levee along Shag Slough within the Yolo Bypass; excavate minor breaches and small channels; widen and deepen the existing breach on the east-west levee; excavate a bench and plant tule plugs along a portion of the northern project boundary; and seed existing levee upland areas with native and naturalized species. (Yolo County)

**E. Permit No. 18726, County of Fresno, Department of Public Works**

Consider approval of Permit No. 18726 to construct an approximately one mile long foot trail; one-half mile long ADA compliant trail; one-half acre parking lot; ADA compliant concrete picnic tables; informational kiosks; aluminum trash receptacles and a double-vault waterless/solar lit restroom. (Fresno County)

**F. Permit No. 18727, Pacific Gas & Electric Co. (PG&E)**

Consider approval of Permit No. 18727 to abandon the existing 2-inch diameter steel main gas pipeline and install a 6-inch diameter high pressure plastic gas line along the McAllen Road alignment between Holman Road and Wilson Way; the new pipeline will be installed using directional drilling methods beneath the Calaveras River. (San Joaquin County)

**G. Permit No. 18728, EA&B Ranch, Inc.**

Consider approval of Permit No. 18728 authorizing removal of an 8-inch discharge pipe and replacement with a 12-inch discharge pipe along Sutter Slough. (Yolo County)

**H. Permit No. 18729, Pacific Gas & Electric Co. (PG&E)**

Consider approval of Permit No. 18729 to install two wood power poles and to secure a 12kV wire crossing county road to serve well #8W-N2. (Yolo County)

**I. Permit No. 18730, Conaway Preservation Group, LLC**



Consider approval of Permit No. 18730 to install a groundwater well (32NW2), well platform, controller and service pole and ancillary flatwork within the Yolo Bypass. (Yolo County)

**J. Permit No. 18732, Conaway Preservation Group, LLC**

Consider approval of Permit No. 18732 to install a well (5W2), well platform, controller service pole and ancillary flatwork within the Yolo Bypass (generally) east of the Center Line of West Levee bank 200 feet and north of county road 25. (Yolo County)

**K. Permit No. 18733, Conaway Preservation Group, LLC**

Consider approval of Permit No. 18733 to install a well (8W-2N), well platform, controller, service pole and ancillary flatwork within the Yolo Bypass. (Yolo County)

**L. Permit No. 18734, Conaway Preservation Group, LLC**

Consider approval of Permit No. 18734 to authorize an existing well (5W3), well platform service pole/controller and ancillary flatwork within the Yolo Bypass. (Yolo County)

**M. Continuation of Lease No. PRC 6873.9 with the State Lands Commission for the Palisades Demonstration Bank Protection Project on the Sacramento River (Tehama County)**

Consider approval of Resolution No. 11-26 to:

1. Continue the Central Valley Flood Protection Board Lease with the State Lands Commission for the Palisades Demonstration Bank Protection Project with a new lease extending the lease term to 10 years; and
2. Delegate to the Board's Executive Officer the authority to sign and execute the lease.

Board Member Countryman recused himself from Items D and G.

*Upon motion by Vice-President Suarez, seconded by Secretary Dolan, the Board voted unanimously to approve the items on the Consent Calendar.*

**8. CENTRAL VALLEY FLOOD PROTECTION PLAN**

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

President Edgar commented that at this point, the Board was quite familiar with the plan itself. They were very pleased with the public participation during the adoption process; stakeholders have provided valuable local perspectives on various aspects of the plan. Board staff has compiled the comments and briefed the Board on them.

Many comments had now been received on the first revision to the resolution.

**B. Board discussion of Draft Adoption Resolution and Package.**

President Edgar proposed to convene a Board drafting committee comprised of Vice-President Suarez and Board Member MacDonald. They would edit the existing draft with input from DWR staff and volunteer stakeholders. This committee would produce a redraft of the proposal.

The Board members agreed with President Edgar's suggestion.

**C. Next steps in the adoption process and discussion of media outreach plan.**

Eric Butler, Staff Supervising Engineer, briefed the Board on the current schedule. He showed the calendar for May and June with key milestones indicated.

The key point was that the Water Code requires the Board to post changes to the plan for a minimum of two weeks prior to adoption. This meant that for the scheduled adoption date of June 29, the proposed package has to be posted on June 15.

Mr. Swanson had mentioned that DWR was in the midst of a huge effort to respond to the 4,000 or so public comments they had received on the PEIR. They intended to have their responses, especially the responses to the commenting agencies, completed by June 18 – they needed to complete this a minimum of 10 days prior to certifying the PEIR.

DWR would like to have the certification occur on June 28, one day prior to the June 29 meeting for final adoption. This all meant a very compressed time schedule.

The Board discussed the schedule.

Mr. Butler displayed a conceptual diagram of the components of the draft adopted plan: the resolution, draft errata, regional planning documents, and public comment record. (The regional planning document consisted of a four-page publication DWR had presented at the April Board meeting, and the two DWR PowerPoint presentations.)

Nancy Moricz, Staff Engineer, spoke about public outreach. She stated that the Board had conducted four public outreach hearings and a special Board meeting to discuss the plan, and staff provides regular updates to the Board website.

Additional public outreach is currently being proposed:

- **Newsletter and website updates.** Board staff electronically distributes brief articles to relevant newsletter editors and webmasters for redistribution to their readers.
- **Briefings.** Board members and staff provide briefings to elected officials, flood management agencies, and stakeholder organizations as requested.
- **Media relations.** Board staff issue news releases at key steps in the process.
- **Electronic updates.** Board staff issue email updates to interested parties using both the FloodSAFE and the Board contact databases.
- **Public meetings.** The Board hosts additional public meetings after adoption of the plan for distributing information to stakeholders, or whatever may be needed at that time in the process.

In addition, Board members may elect to submit letters or guest opinion pieces to regional newspapers, with the optional help of Board staff.

Secretary Dolan expressed concern about the briefings, which might be very challenging. Ms. Moricz recognized the timing constraints, and stated that the briefings were to be meant for organizations whose members haven't been able to attend meetings.

President Edgar stated that the drafting committee was going to convene next week. He requested for any interested stakeholders to submit their names.

Jeremy Arrich, Chief, DWR Central Valley Flood Planning Office, provided DWR's feedback on the current draft resolution.

- The proposed State Systemwide Investment Approach achieves the state's vision for flood management, consistent with the legislative requirement for a systemwide approach.
- In considering the interests of all Californians, the Board and DWR have a responsibility to balance investments, to achieve sustainable, long-term, systemwide benefits while meeting local and regional needs.
- The Board and DWR must be diligent in approving and implementing local and regional projects while ensuring that they do not impede systemwide benefits.
- At the same time, the Board and DWR need to allow continued improvement through Early Implementation Program-type projects, critical repairs, and other urgent actions.
- DWR shares the Board's intent to apply limited funding effectively, agreeing that accountability and responsibility are critical.
- Considering future funding uncertainties, DWR strongly suggests maintaining flexibility in implementation processes, using the five-year CVFPP updates to make adjustments as needed.
- DWR will engage local and regional partners in upcoming regional planning efforts to identify projects consistent with both the CVFPP's systemwide approach and regional priorities, and funding capacities.
- DWR reemphasizes its commitment to rural agricultural flood management.
- DWR will continue to work with rural agencies to develop appropriate rural levee repair criteria.
- DWR will also work with local agencies to identify feasible, multi-benefit flood management improvement projects and residual risk management actions to support sustainable, rural agricultural economies.

### **Public Comment**

- John Cain of American Rivers expressed interest in serving on the drafting committee. He proceeded to read a prepared statement, summarized below.

We are here after a lot of work to solve a problem that was identified in 2005 with the levee failures in California and New Orleans. Governor Schwarzenegger stepped up with a call to do something about the problem. The voters responded

by approving Prop 1E. The Legislature responded by passing the Flood Control Act of 2008.

DWR acted responsibly by producing a draft plan on time. Although American Rivers has pointed out some important deficiencies with the plan, they think DWR leadership and staff deserve praise for getting it done on time; the plan is a good step forward as a framework for additional planning.

Governor Brown appointed the new CVFPB members; American Rivers is very pleased with the caliber and experience they bring. The public has in turn done a great job responding to the draft plan and letting their feelings be heard regarding the plan.

Mr. Cain presented a six-point program for a successful Central Valley Flood Plan. The six points are as follows.

1. Streamline the regulatory process associated with landside repairs of rural levees, particularly by reducing the amount of bureaucracy associated with complying with the 408 permitting program.
2. Focus on corridor management strategies to facilitate permitting of waterside repairs, as well as improvements and restoration of habitat.
3. Establish a program containing financial commitments to fund near- and long-term repairs to rural levees and to increase protection for rural communities.
4. Prioritize modification of the flood bypass system, so that the system functions better to convey flood flows.
5. Advance policies to maintain a healthy agricultural economy on newly designated federal floodplains, recognizing that the changes in the National Flood Insurance Program (NFIP) could be a hardship for agriculture.
6. Develop a new, more effective and efficient model for planning and implementing flood system improvements, particularly in rural areas.

Mr. Cain expressed the hope that the Board could incorporate the six-point program into the resolution.

He commented that the drafting committee is just the first step in trying to find ways to get the public to take more ownership.

- Justin Fredrickson, Environmental Policy Analyst with the California Farm Bureau Federation, stated that the Board had improved the plan process in the last six months, making it more transparent. The Board has also gone above and beyond in reaching out to stakeholders.

Many people had the impression that the plan itself would be revised and modified in substantive ways. However, the resolution and other documents indicate that there will be no substantive revisions.

The resolution shows that the Board has independent authority and thoughts on the plan, and that a number of details remain to be worked out in regional planning and so forth.

Regional planning is a concern at this point because it is somewhat amorphous.

The plan is being adopted as is – described as a framework for the next five years and beyond. Yet Phases 3 and 4 will now happen in regional planning with stakeholder participation. How much can really change when the concrete is setting on the plan?

The plan's timeline is 18 months. What is being proposed to be done in those 18 months? The DWR briefing spoke of prioritization, but some details need to be discussed sooner rather than later. Regional planning needs to look at synergies, reducing impacts and conflicts, and finding something that's workable and acceptable to the locals.

Mr. Fredrickson volunteered the California Farm Bureau Federation for the drafting committee.

Regarding the conversation between the Flood Association and the conservation community: Mr. Fredrickson would have been interested in engaging in that. (Secretary Dolan pointed out that that conversation did not originate from the CVFPB.)

- Tim Washburn, Director of Planning of SAFCA, stated that he had submitted a letter with SAFCA's comments on the draft resolution.

He also stated that SAFCA's jurisdiction contains the most urbanized flood basins in the State Plan of Flood Control, and 60-70% of the flood damage reduction benefits are in its jurisdiction. It is obviously a major part of the plan.

SAFCA is very supportive of the framework laid out in the draft resolution. The document is quite lengthy; its historic nature can perhaps be made simpler and clearer. There is much room for reorganization without abandoning its substance.

Mr. Washburn provided three comments on details in the resolution.

1. Section 10 anticipates that regional planning will need to be complete before new site-specific improvements come to the Board for review and approval. However, SAFCA has a site-specific improvement likely to come before the Board in 2013 before regional planning is complete.
2. Section 30J, regarding the absence of current projects that increase reservoir storage for flood space, is not correct. A major set of projects going on at Folsom Dam – the Folsom Dam Joint Federal Project, the Folsom Dam Water Control Manual Update, and the Folsom Dam Raise Project – will significantly increase the space available in that reservoir for flood management.
3. Through the Central Valley Flood Control Association, SAFCA has been involved in the crafting of the six-point program. It is important to call out specifically the importance of river corridor management in the process of

incorporating stakeholders, and flood management, environmental, recreational, and agricultural interests in the plan implementation process.

- Scott Shapiro, General Counsel for the California Central Valley Flood Control Association, stated that his comments were strongly influenced by his communication with members of the Board of the Association.

The current draft of the resolution shows a positive trend toward addressing stakeholder concerns, while still being respectful to DWR's product. Much of the language was responsive to the Association's comments, which was appreciated.

Mr. Shapiro volunteered himself and Ric Reinhardt for the drafting committee.

He suggested some reorganization of the document; headers would be helpful. Also, the role of the Board in partnering with DWR to get the plan out could be made clearer. The commitment of the Board and DWR to the rural communities could be stressed more as well.

Mr. Shapiro had been on the committee that worked to develop the six points that Mr. Cain presented; it is fundamental for the stakeholders to come together in ensuring that the plan works. He felt that there is room to reflect all six points in the resolution.

- Denise Carter, Colusa County Supervisor, suggested some names for the drafting committee. She stated that the Board had done an incredible job in making the plan accessible to the public. It was heartening to see stakeholder comments permanently placed in the resolution.

The CVFPB had also taken stakeholder concerns into account as they drafted the actions moving forward. Stakeholders were pleased in particular with the recognition on page 10 that systemwide improvements be funded by the beneficiaries, and that the priority direction of the bypass expansions is to go further downstream first.

They also appreciated the verbiage on page 13, "...to not delay local repairs and improvements because of the intent to later consider systemwide improvement." This speaks to being able to get the small tasks done when needed.

A group in the north state had met the previous day and come up with a few remaining concerns:

- Reference to the Cherokee Canal. The plan is in the conceptual phase. Specifying an unpopular project such as the Cherokee Canal without having all of the research and analysis perhaps should be rethought.
- The need for firmer language regarding a locally-driven partnership with the state.
- Alternatives for funding of the local cost share. Ms. Carter's group felt that lack of the water storage component was significant; it would be a multi-purpose and multi-benefit component to the entire state.

President Edgar asked Mr. Arrich if the conclusions in the plan were prepared assuming that the Cherokee Canal was completed. Mr. Arrich replied that everything in the State Systemwide Investment Approach was part of the proposed plan moving forward to be

studied further. All elements and components have been evaluated in the CEQA document.

President Edgar asked whether the deletion of the Cherokee Canal from the plan would require a recirculation of the environmental document under CEQA. Ward Tabor, DWR Assistant Chief Counsel, responded that it would not.

### **Board Discussion**

Board Member MacDonald agreed that the document is quite long and could probably be shortened. He also agreed that it needs to tell the story of why it's being done; the clear issue is that we need to improve levees and system capacity. The flood control system was really pushed in 1986 and 1997.

Board Member Ramirez expressed concern about the drafting committee being formed so quickly; the Board is made vulnerable to people saying that they were not notified to have a chance to participate.

He also commented that the meetings in June should not be about making everyone else comfortable. If people feel an element of uncertainty about the plan, it could encourage them to continue engaging in July after the plan's adoption.

Board Member Ramirez also stated that he did not want to begin a process of stating what the Board will not do in the resolution. If anything, the plan is a laundry list and a menu. Nothing needs to be taken off the table.

Regarding regional planning, he wanted to see detail fleshed out in the "framework for implementation" (29-43). The Board can make sure that the regional planning can happen that way, and the public can understand it that way.

Board Member Villines was encouraged and pleased with the amount of interaction with the stakeholders that had been taking place. The Board had developed a process through which the public could be as engaged as they wished. From the time he had sat in the Legislature in 2008 and voted on this plan to be created, he felt that the Board was on the path to finish the task on deadline.

He noted that the Board could extend the process another two years and it still wouldn't be enough – people would always appear in the final stretch asking to have their say. But Board Member Villines gave credit to the public for coming and participating. In addition, the establishment of priorities, responsibilities, and partnership with DWR was in place.

Board Member Countryman felt that the document was 90% there. He didn't perceive a need for much modification, only some tweaking perhaps.

Secretary Dolan felt that staff had done an excellent job of taking a large compendium of information from the public and processing the themes. She recalled Vice-President Suarez's key instruction for the public to present suggestions and ideas rather than only criticisms.

She added that the document does need some headings, reorganization, and wordsmithing, and the drafting committee could take care of it adeptly.

Board Member Villines agreed with Board Member MacDonald that adding some historical context would be a good idea. People pay attention to a story, and it gives them a clear perception of the situation.

Vice-President Suarez commented that there are essentially two parts to the resolution:

1. The “whereas” section, which provides the background. Board Members were agreeing that it could use some cleanup and tightening.
2. The “resolved” section, which was really the important part because it outlines how the Board wishes the plan to be interpreted and implemented once it gets adopted.

Those making public comment today seemed to be giving general support to the Board for getting the plan right. Vice-President Suarez felt that altering the “resolved” section may result in a loss of support.

President Edgar remarked that the plan could use some reorganization, and the story could be told better. Some of the “whereases” could be consolidated. He agreed that a major rewrite could leave people behind and garner opposition – exactly what the Board does not want to do.

Some concepts that the public had raised during the meeting should be acknowledged and included. President Edgar had been concerned about agriculture, and the rural and small communities; they were engaged now and wanting to participate.

Board Member Ramirez suggested, for transparency’s sake, posting the drafting committee meeting on the website that afternoon. The other members agreed.

Mr. Butler stressed that six to eight people on the drafting committee would be optimal for getting tangible work done.

## **9. INFORMATIONAL BRIEFINGS**

### **A. Update on the San Joaquin River Restoration Program**

Alicia Forsythe of the United States Bureau of Reclamation and Program Manager for the San Joaquin River Restoration Program, and Kevin Faulkenberry, DWR Senior Engineer, gave an overview of the components of the San Joaquin River Restoration Program that the Board might have an interest in.

Ms. Forsythe began the presentation.

- The restoration program is a comprehensive long-term effort to restore a self-sustaining Chinook salmon fishery on the San Joaquin River from Friant to the Merced River confluence.
- The origins of the program actually started with a court settlement and federal legislation.
  1. In 1942 the Bureau of Reclamation completed construction of Friant Dam.
  2. In 1988 a lawsuit was filed against the Bureau for their renewal of long-term contracts with the Friant Division of the Central Valley Project.



3. In 2004 a federal judge ruled that the Bureau of Reclamation had violated Section 5937 of the California Fish and Game Code, which requires maintaining fish in good condition below a dam.
  4. In 2006 a settlement was reached and the Bureau of Reclamation began implementing it.
  5. In 2009 the San Joaquin River Restoration Settlement Act was enacted, authorizing and directing the Secretary of the Interior to implement the settlement from the 1988 lawsuit.
- The settlement has two main goals:
    1. To restore and maintain fish populations in good condition in the San Joaquin River from Friant to the Merced River confluence – about 153 miles of river.
    2. To reduce or avoid adverse water supply impacts to the Friant Division of the Central Valley Project.
  - The Bureau of Reclamation works with a series of parties:
    - The Natural Resources Defense Council (the plaintiffs in the case), representing about 14 environmental organizations.
    - The Friant Water Authority, which represents 22 water users, water districts, and agencies.
    - The federal government: the Department of the Interior through the Bureau of Reclamation, and the Fish and Wildlife Service and the Department of Commerce through the National Marine Fisheries Service.
  - The implementing agencies are those same three federal agencies, as well as the state through DWR and the Department of Fish and Game.
  - The project has broken the river into five separate reaches to better manage activities.
  - There is also a flood control project in the same area.
  - Ms. Forsythe explained the release flow areas created when the Bureau of Reclamation built Friant Dam.
  - The three main activities for restoring self-sustaining, naturally-reproducing fish to the river are:
    1. To increase flows.
    2. To make channel and structural improvements to convey flows.
    3. To reintroduce spring- and fall-run Chinook.
  - The restoration flows schedule for releases from Friant Dam, involves having the river wetted year-round with a spring pulse and a fall pulse geared towards the needs of the fall-run and spring-run Chinook salmon.

- The settlement calls for releasing flows under existing channel capacity in all cases.
- Ms. Forsythe described the two channel modification projects of greatest interest to the Board.
- The project is looking at collecting donor salmon stock from Northern California, building a conservation hatchery near Friant Dam.

Mr. Faulkenberry spoke about how the restoration program may affect the flood control system.

- The program could have two main effects:
  - Redirected impacts from construction projects, both inside and outside the study area.
  - Impacts of the restoration flow and interim flow releases on the flood system and its operation and maintenance.
- The existing system is in very poor physical condition. Much of it was designed based on hydraulic considerations. Very little geotechnical exploration or consideration was given to the design.
- A channel capacity advisory group will be formed – basically a peer review that provides input to the Bureau of Reclamation on its yearly determination of existing channel capacity. Five agencies will be involved: CVFPB, the Bureau of Reclamation, DWR, the Corps, and the Lower San Joaquin Levee District.
- The program will be monitoring erosion and performing maintenance, and also reducing or redirecting flows should any problems arise.
- DWR is going to do a systematic analysis of the existing system by drilling on the levees. DWR will use that geotech data to identify flow limitations or bottlenecks within the system that might impact the program. DWR will then prioritize those limitations and design remediation actions to allow for the safe conveyance of restoration flows through the system.
- DWR has recommended not putting water on the levees because of the lack of geotech information to evaluate the impact of interim and restoration flows.

Board Member Countryman commented that this was extremely conservative; President Edgar commented that this could drive up the project cost. Mr. Faulkenberry responded that once they can identify how much water can be on the levees and then identify the sections of levees to be impacted by the restoration flows, the cost will be far less: they won't need to rebuild the whole system, but just parts of it.

Board Member Countryman expressed concern over the requirement that Kings River water, after it reaches 2,500 cfs, be sent north and below Mendota Dam. Having no water on the levee might only be 400 cfs; however that is not going to change the fact that the Corps is going to send 2,500 cfs down.

Vice-President Suarez noted that the relationship between the Board and this project hadn't always been smooth; now the project was recognizing the Board's role in ensuring

that the flood system was maintained and protected during the fish restoration. She gave credit to Ms. Forsythe for her effective leadership.

Vice-President Suarez continued that there are still many issues. Some local landowners are very concerned about what the flows are going to mean. There are engineering concerns about whether the system can really carry water full-time.

Ms. Forsythe expressed optimism about working with the Board to make improvements to the flood system, while accomplishing environmental restoration at the same time.

Board Member Ramirez noted that in the CVFPP, there is not always a lot happening on the San Joaquin side. From his standpoint, one of the problems has been that most of the regions of the San Joaquin Valley don't connect in the plan itself.

## 10. HEARINGS AND DECISIONS

### A. Variance Hearing for Permit No. 10566-B, Josh Harmatz

**Consider approval of Resolution No. 2012-18 to approve a variance to board standards for Permit No. 10566-B which includes existing and proposed residential appurtenances and a pool located on the waterside of the Sacramento River Levee at 4171 Garden Highway. (Sacramento County)**

Gary Lemon, Staff Engineer, provided a staff report for the Board.

- In the project description, Mr. Lemon stated that existing encroachments needed authorization: a retaining wall, wrought iron fence, two driveway gates, water tank shed, playset structure, basketball court, and elevated concrete patio. The homeowner also had plans to add 2,500 square feet to the home, a concrete driveway, garage, covered patio, rock retaining wall, and swimming pool.
- Mr. Lemon provided aerial photos of the property, as well as a map showing the components to be constructed.
- He listed the applicable sections from the California Code of Regulations that showed the need for variances.
- MBK Engineers had done a hydraulic analysis for pre- and post-project conditions. The results showed that the proposed project would have no measurable impact on water surface elevations for the project design flow (107,000 cfs from 1957) or the 200-year flow (119,000 cfs).
- Mr. Lemon listed the five existing encroachments that did not meet Title 23 standards. They had existed when Mr. Harmatz purchased the property in 2008.
- The encroachments were all securely anchored and would not significantly impede flows as per the hydraulic analysis.
- There was no evidence suggesting that the encroachments would interfere with the Sacramento River Flood Control Project. Also, the encroachments did not interfere with the maintenance responsibilities of Reclamation District 1000, as signified by their endorsement of the project.

- The Corps had no issues with the project, including the items that require a variance. (The Corps said that they assumed that the project complied with Board regulations; this was an oversight that they would amend.)

Ryan Larson of the Corps affirmed that they had reviewed the plans and specs, including the items subject to the variance, and had sent a statement of no objection to the approval of this application subject to conditions.

- Mr. Lemon gave the California Environmental Quality Act (CEQA) determinations.
- There would be no measurable impacts to the State Plan of Flood Control or the Sacramento River Floodway.
- Mr. Lemon presented a timeline of events beginning with the initial application on May 12, 2011 to receipt of the Corps letter on May 22, 2012. He also listed all the encroachment permits issued for the property beginning in 1975.
- The staff recommended for the Board to adopt Resolution 2012-18 and to approve Permit # 10566-B.

The Board and Mr. Lemon proceeded to discuss the Resolution.

In response to a question from Board Member MacDonald, Mr. Lemon explained that the retaining wall, wrought iron fence, and other property improvements could all be removed in order to do any necessary flood fighting in the future. Deborah Smith, Staff Legal Counsel, added that Section 22 of the Board Regulations specifies that the Executive Officer has the authority to direct removal of items in an emergency.

Mr. Lemon noted that Item 14 of the permit stated that the permittee acknowledged that the proposed improvements are located within the Sacramento River Floodway, and may be subject to periodic flooding.

Board Member Suarez added that there was always a general clause in the permits that the Board holds the right to rescind the permit, and that the homeowner must restore the site to its original condition.

Board Member MacDonald asked about the Board's policy on approving permits for projects that are already developed. Board Member Villines answered that the Board does not have a policy. He expressed concern that the Board has not been consistent in approving variances.

He continued that in this situation, the existing encroachments for which the property owner was requesting permits happened to be within proper guidelines. The new projects were another issue.

Vice-President Suarez added that in the past, the Board has looked at the permanent nature of the structures in question and made its determinations according to the likelihood of someone being hurt in a flood. The Board has also considered residences versus commercial structures, farmland, and so on. The problem along the Garden Highway is the expensive homes and the investments that have been made.

Mr. Lemon stated that staff is using Condition 13 for situations where someone is buying a home and needs to know what is authorized. Condition 13 says that a covenant will be recorded with the county that must be disclosed to new homeowners, so they can see the permitting that has been done.

Paul Devereux, General Manager of Reclamation District 1000, stated no objection to what Mr. Harmatz was proposing along the levee area. The variances were all beyond 150' and did not affect levee operations and maintenance.

President Edgar gave his view on variances, having dealt with them at the local government level: each variance has different facts, circumstances, and issues. The Board cannot say that Title 23 applies to certain people and not others. Title 23 applies to everyone, but there are certain unusual circumstances for which the Board can issue a variance.

Board Member Ramirez noted the need for variance criteria or guidance. The Board could go down the list and assess each of the applications for variances against the items. Vice-President Suarez stated that for the next revision of Title 23, which deals with the standards section of Board regulations, one of the big issues is variance. The term has been used to allow permits on the floodway, and in floodplains, and for permanent structure and houses which have really vacated the Board regulations.

Mr. Harmatz stated that he was trying to be open and transparent as he attempted to obtain permits for this property after the fact. He also pointed out that the new levee has been completed across from his property, which in a way negates many of the Title 23 components such as the setbacks.

Mr. Harmatz noted that during last year's flood, there was no damage to any of the structures.

Mr. Butler clarified the Board regulations. Staff has done some preliminary drafting on Tier 2, but has not addressed Section 133. Staff has not considered extending the 150' line to the adjacent setback levee. SAFCA has indeed built a new levee in the area in question, and staff will deal with it in the future.

Vice-President Suarez noted that if the Board did update that section of the regulations which deal with RD 1000, the scheme might be stricter rather than more lenient – precisely because many of the issues have to do with properties on the waterside of the levee.

Board Member Villines asked about the difference between an above-ground pool versus an in-the-ground pool, when both are past the 150' mark. Mr. Lemon answered that fill was being brought in and basically, retaining walls were being built around the pool. It would be an above-ground structure. If the pool was in the ground, it would probably be permissible under current regulations.

*Upon motion by Vice-President Suarez, seconded by Board Member Villines, the Board unanimously voted to issue permits to the encroachments that do not require a variance: the existing retaining wall, existing wrought iron fence,*

*driveway gates, water tank shed, basketball court, and 2,500 square foot home addition excluding the breakfast nook.*

Vice-President Suarez said that of the items that did require a variance, the play structure and the new fence, were small scale and would not present a significant hardship if they had to be removed later on. She suggested that for the other items – the swimming pool and the breakfast nook – perhaps additional discussion could be held to come up with an alternative plan that would not require variances.

*Upon motion by Vice-President Suarez, seconded by Board Member MacDonald, the Board unanimously voted to grant the variance for the play structure and the fence.*

Board Member Countryman stated that from a flood control perspective, he could see no reason not to approve the breakfast nook as it was elevated 15' above the water.

Board Member Ramirez commented that the issues were the individual precedent and the permanency of the breakfast nook. Also, it did not impede RD 1000 from O&M.

President Edgar suggested having staff work with the applicant to look for any alternatives for the design of the breakfast nook, the concrete patio, and the swimming pool in a way that would not require variances. Mr. Lemon stated that the options for the existing patio would be to leave or to remove.

Mr. Harmatz noted that his neighbors on both sides had swimming pools; and further, the hydraulic analysis proved that there would be no impact to any flood events. He added that Title 23 contained variances for situations such as his that were not black and white.

Board Member Villines cautioned against voting yes to today's variances, when in a few years, the Board might possibly have to require changes or removal by order of the federal government, for example.

Board Member MacDonald commented regarding the concrete patio, which served as the anchor point for the gangway leading to the permitted boat dock. If necessary, the applicant had agreed to place additional rock riprap to protect the patio and dock. If this were a new proposal, Board Member MacDonald would vote against it – it would go against restoration of habitat on the river.

Vice-President Suarez recognized that the applicant who inherited the problem was coming to the Board; the concrete patio was recorded in the permit. The Board now had some enforcement and oversight. If the patio were something new Vice-President Suarez would vote against it.

*Upon motion by Board Member Countryman, seconded by Vice-President Suarez, the Board voted to approve the concrete patio by a vote of five ayes and two noes.*

President Edgar stated that the Board was taking no action regarding the swimming pool and the breakfast nook, and was instructing staff to work with the applicant. He emphasized to Executive Director Punia that the Board needed the Title 23 Tier 2 update, in order to set forth the criteria for the variance procedure in more detail for the public.

Vice-President Suarez thanked Mr. Lemon for his consistently clear presentations. Board Member Villines agreed, and thanked the applicant as well for going through the process with the staff and Board.

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

President Edgar reminded the Board that at the previous meeting, he had presented a report on committee structure. He had received feedback that the Board members would rather not be pigeonholed into the committee categories, preferring to be involved in multiple Board meetings.

President Edgar proposed to establish a schedule in which the Board meets twice a month on the second Friday in addition to the fourth Friday. The first meeting will be for conducting business items: enforcement hearings, permits, and so on. The second meeting will be for information hearings, policy items, and DWR monthly updates.

Every Board member is not expected to be present at every meeting. But meeting twice a month on these separate items will allow the Board to hold the kinds of policy discussions they have had today in more detail.

An agenda item for both meetings will be for the Executive Committee to meet. The officers of the Board – President Edgar, Vice-President Suarez, and Secretary Dolan – will follow up on Board items where the staff needs clarification or help. The Executive Committee will also make individual ad hoc assignments to Board members, for example, to be representatives at certain meetings. As these will be public meetings, other Board members can sit in or participate.

Regarding the ad hoc assignments, the Executive Committee will appoint the Board members based upon their interests and skills.

*Upon **motion** by Secretary Dolan, seconded by Board Member MacDonald, the Board voted unanimously to approve President Edgar's organizational suggestions as outlined above.*

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

The Board briefly discussed the upcoming meetings in June.


#### **13. ADJOURN – REGULAR BOARD MEETING**

*Upon **motion** by Secretary Dolan, seconded by Board Member Countryman, the Board voted unanimously to adjourn.*

President Edgar adjourned the meeting at 3:12 p.m.

Dated: July 27, 2012

The foregoing Minutes were approved:

  
\_\_\_\_\_  
Jane Dolan  
Secretary

William H. Edgar  
\_\_\_\_\_  
William H. Edgar  
President