

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

NOTE: THE BOARD WILL CONSIDER TIMED ITEMS AS CLOSE AS POSSIBLE TO THE LISTED TIME, BUT NOT BEFORE THE TIME SPECIFIED. UNTIMED ITEMS MAY BE HEARD IN ANY ORDER. MINUTES ARE PRESENTED IN AGENDA ORDER, THOUGH ITEMS WERE NOT NECESSARILY HEARD IN THAT ORDER.

A special meeting of the Central Valley Flood Protection Board was held on November 15, 2012, beginning at 8:36 a.m. in the Auditorium at The Yuba County Government Center Board Chambers, 915 Eighth Street, Marysville, California.

The following Members of the Board were present:

Mr. William H. (Bill) Edgar, President
Ms. Emma Suarez, Vice President
Ms. Jane Dolan, Secretary
Mr. Joe Countryman
Mr. Clyde Macdonald
Mr. Tim Ramirez

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, Senior Engineer
Ms. Nicole Rinke, Legal Counsel
Ms. Deborah M. Smith, Legal Counsel
Ms. Amber Woertink, Staff Assistant

Also Present:

Mr. Mike Bailey, Atkins
Mr. Paul Brunner, Three Rivers Levee Improvement Authority (TRLIA)
Mr. Kevin Heeney, CTA
Ms. Laura Hollender, Department of Water Resources (DWR) Legal Counsel
Ms. Susan Lagrand
Ms. Betsy Lombard, Spanish Interpreter
Ms. Carol Miller

Also Present (continued):

Mr. Philip Miller
Ms. Ana Quintero

1. ROLL CALL

Executive Officer Punia called the roll and a quorum was achieved.

2. APPROVAL OF AGENDA

Executive Officer Punia recommended that, in the interest of time, Agenda Items 5 (Board Comments and Task Leader Reports) and 6 (Future Agenda) be postponed to the regular Board meeting scheduled for November 16.

*Upon **motion** by Board Member Countryman, seconded by Board Member Macdonald, the Board unanimously approved the staff recommendation (see sentence above).*

3. PUBLIC COMMENT

Ms. Ana Quintero, a property and homeowner in the area, stated (through an interpreter) that her family had been flood victims and they would like to know more about the fence project. President Edgar provided an introductory explanation. Vice President Suarez encouraged Ms. Quintero to discuss the situation further with Senior Engineer Caliso.

4. HEARINGS AND DECISIONS

President Edgar remarked that Spanish language translation services were available upon request, and would be available throughout the meeting.

He stated that the Board will consider five enforcement actions for fences, structures and other miscellaneous items located in what the Board staff and legal counsel determined to be state-owned property.

It is believed that these encroachments obstruct the area in which the Three Rivers Levee Improvement Authority (TRLIA) plans to construct a 20-foot maintenance road as part of a larger flood control project previously approved by the Board.

The Board is considering authorization of staff recommendations to remove the private fences, structures, and miscellaneous obstructions; or grant *conditional easements* (previously termed "licenses") to the landowners for use and maintenance of the portions of state land outside the landward side of the 20-foot maintenance corridor; and rescind the Notices of Violations, subject to voluntary compliance.

In addition, the proposed resolutions state that, if the landowners don't want to accept these proposed conditional easements, TRLIA's new fence will be placed at the Sacramento-San Joaquin drainage district right-of-way line, which would then preclude private use of state land within the landward side of the 20-foot maintenance corridor.

President Edgar further noted that, at a public hearing held on December 2, 2011, the Board determined that the private encroachments did exist on the state-owned property. However, enforcement hearings were continued until two things had happened:

1. Staff would return with a proposal to provide a 20-foot levee toe maintenance corridor while minimizing the impact on adjoining property owners.
2. Staff would provide a real estate solution that would allow adjoining property owners continued use of the state-owned property outside the landward side of the 20-foot maintenance corridor.

Subsequently, hearings were held on January 26, 2012 and the Board adopted the staff recommendation authorizing the removal of the existing fences; and authorizing the Executive Officer to enter into conditional easements for the use of state property and rescinding Notices of Violations subject to voluntary compliance.

The matter was reviewed on March 12, 2012, in front of the new Board, which voted to continue those hearings because of possible noticing problems.

Staff Engineer Caliso and Legal Counsel Smith verified that all proper noticing requirements had been met prior to today's meeting.

4A. Proposed resolution for 46 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, California (Yuba County) (Continued from March 2, 2012)

Executive Officer Punia read the proposed resolution into the record.

Staff Engineer Caliso gave the project description and history related to the enforcement actions and answered Board Member questions. She also reiterated that what were previously referred to as "licenses" will now be referred to as "conditional easements."

She concluded with the staff recommendation that the Board adopt Resolution 2012-13 and authorize the removal of the private fences and miscellaneous obstructions that are on state land, and that this occur in accordance with Permit 18690, which would include reasonable access to the state to allow for the relocation of the property of the elderberry shrubs; that the Board grant conditional easements, or the execution of conditional easements, to the 46 property owners identified in the staff report that would allow the

owners the use and maintenance of the portion of the state land that is adjacent to the Feather River East Levee; to rescind the Notices of Violation listed in the staff report that correspond to the 46 property owners, subject to compliance with the resolution; that in the event the landowners are unwilling to agree to the terms of the conditional license then the proposal is that the fence be constructed at the state right-of-way; to direct staff to file a Notice of Exemption with the State Clearinghouse; and finally to direct the Executive Officer to execute the conditional easements, subject to review and concurrence from the Board.

Board Members, working with Legal Counsel Smith and DWR Legal Counsel Hollender, reviewed and further clarified the language of the proposed resolution.

Upon motion by Vice President Suarez, seconded by Secretary Dolan, the Board unanimously adopted Resolution 4A as amended above.

**4B. Proposed resolution for Michael King (Enforcement No. 2011-268)
(Continued from March 2, 2012)**

Executive Officer Punia relayed a quote from Board Analyst Lorraine Pendlebury, who spoke with Mr. King earlier in the day: *“Mr. King stated that he was in agreement with the staff’s finding to move his property line. Further, he was pleased that none of his buildings needed to be destroyed and he applauded the Board for being proactive in preventing people and property from flooding. He was also very pleased with how Angeles Caliso handled things.”*

Staff Engineer Caliso then gave the project description and history related to the enforcement actions and answered Board Member questions.

She concluded with the staff recommendation to authorize the removal of the fence that is within state land in accordance with Permit 18690; to provide adequate access to TRILIA and their consultants for the removal of elderberry shrubs; to grant the conditional easement to Mr. King for the use and maintenance of the state land; to authorize that the structure located on parcel APN 020-121-021, that is owned by Michael King, be allowed to remain on state land subject to permitting; to rescind the Notice of Violation 2011-268 subject to voluntary compliance with this Resolution; to direct the staff to file a Notice of Exemption; and finally to direct the Executive Officer to execute the conditional easements subject to review and concurrence from the Board President.

President Edgar added that the language amendments agreed to in the 4A Resolution were also applicable to this Resolution 4B.

The Board deliberated further and added additional clarifying language regarding the structure currently on the state land (on parcel APN-020-121-021):

“If, for whatever reason-fire, flood or otherwise-the structure is destroyed and a future owner wishes to rebuild it, no portion of any rebuilt structure will be allowed to be constructed on the state property.”

Upon motion by Board Member Macdonald, seconded by Secretary Dolan, the Board unanimously adopted Resolution 4B as amended above.

**4C. Enforcement Hearing for Susan Lagrand (Enforcement No. 2011-287)
(Continued from March 2, 2012)**

Staff Engineer Caliso gave the project description and history related to the enforcement actions and concluded with the staff recommendation that the Board adopt the Resolution to authorize the removal of the fence on state property in accordance with Permit 18690, and that this would include giving reasonable access to TRLIA and their consultants for the removal of the elderberry shrubs located on state property; that a conditional easement be granted for the use and maintenance of the state property that is adjacent to the Feather River East Levee; to authorize the structure on the parcel that is owned by Ms. Lagrand to remain on state property and be subject to Board permitting; to rescind the Notice of Violation 2011-287 subject to voluntary compliance with this Resolution; to direct the staff to file a Notice of Exemption with the State Clearinghouse; and to direct the Executive Officer to execute the conditional easements or agreements that would be subject to review from the Board President.

Ms. Susan Lagrand, owner of the land and structure, discussed her family’s history on the property and presented evidence disputing that the land was owned by the State. She disputed the claim that more than one survey of the property was ever conducted. She also presented a counterproposal to the Board regarding the fence’s location and then answered questions from Board Members and staff.

Vice President Suarez commented that Board Members struggle with this difficult situation. The Board is trying to balance public safety and the need for these improvements with the realization that some property owners believe that they own property that all the evidence before the Board indicates they don’t and the State does. President Edgar echoed her comments.

The Board deliberated further and noted that the amended language in Resolutions 4A and 4B above also applied to this Resolution 4C.

Upon motion by Secretary Dolan, seconded by Board Member Countryman, the Board unanimously adopted Resolution 4C as amended above.

**4D. Enforcement Hearing for Carol Miller (Enforcement No. 2011-272)
(Continued from March 2, 2012)**

Staff Engineer Caliso gave the project description and history related to the enforcement actions and concluded with the staff recommendation that the Board adopt the Resolution 2012-05 to authorize the removal of the fence on state property, in accordance with Permit 18690, and that this would include giving reasonable access to TRLIA and their consultants for the removal of the elderberry shrubs located on state property; that a conditional easement be granted for the use and maintenance of the state property that is adjacent to the Feather River East Levee; to rescind the Notice of Violation 2011-272 subject to voluntary compliance with this Resolution and, in the event the respondent fails to sign the conditional easement, then the fence would be constructed at the state right-of-way; to direct the staff to file a Notice of Exemption with the State Clearinghouse; and to direct the Executive Officer to execute the conditional easements or agreements that would be subject to review from the Board President.

Mr. Philip Miller discussed the perceived conflicting nature of information provided by TRLIA and CTA. Further, he was contesting the survey of the property determining what is and is not state land. He and Ms. Carol Miller then answered Board Member questions.

Mr. Kevin Heeney, CTA, engineer and surveyor, stated that CTA had conducted a survey that was peer reviewed and there was agreement regarding survey conclusions; that the old map from 1921 matched what they found in the field and that this map, which originally created the subdivisions that are now built up around the railroad, was the very best evidence available.

Mr. Mike Bailey, Atkins, stated that he was contracted by DWR to do the peer review and he could find no issues with the survey. The professional standards of care for the industry applied through everything Atkins and CTA did.

Upon motion by Board Member Countryman, seconded by Secretary Dolan, the Board unanimously adopted Resolution 4D, including the clarifying language from Resolutions 4A and 4B.

4E. Enforcement Hearing for Magdalena and Jose G. Vasquez (Enforcement Nos. 2011-266 and 2011-278) (Continued from March 2, 2012)

Staff Engineer Caliso presented the project description and history related to the enforcement actions and concluded with the staff recommendation to authorize the removal of the fence that is within state land, including miscellaneous obstructions, in accordance with Permit 18690; to provide adequate access to TRLIA and their consultants for the removal of elderberry shrubs; to grant the conditional easement to Mr. and Mrs. Vasquez for the use and maintenance of the state land that is for the portion of the land that is adjacent to the Feather River East Levee; to rescind the Notices of Violation 2011-266 and 2011-278, subject to voluntary compliance with this Resolution, and in the event the respondents refused to sign said agreement then the fence would be placed at the state right-of-way; to direct the Executive Officer to file a Notice of

Exemption with the State Clearinghouse; to execute the conditional easements to be prepared at the direction of the Executive Officer, subject to concurrence from the Board President; and finally to direct the Executive Officer to execute the conditional easements subject to review and concurrence from the Board President.

Upon motion by Board Member Macdonald, seconded by Secretary Dolan, the Board unanimously adopted Resolutions 4D and 4E, including the clarifying language from Resolutions 4A and 4B.


5. **BOARD COMMENTS AND TASK LEADER REPORTS - *Postponed***
6. **FUTURE AGENDA - *Postponed***
7. **ADJOURN**

Prior to adjournment Mr. Paul Brunner, Executive Director of TRLIA, provided some perspective and timeframes and expressed his appreciation to the Board for their help in dealing with the encroachments. He anticipated that TRLIA will be in the field next spring to complete the design and construction of the levee fence.

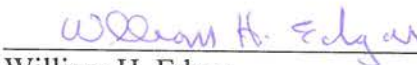
Upon motion by Board Member Macdonald, seconded by Secretary Dolan, President Edgar adjourned the Special Meeting at 1:42 p.m.

Dated: January 25, 2013

The foregoing Minutes were approved:



Jane Dolan
Secretary



William H. Edgar
President