

**MINUTES**  
**MEETING OF THE CENTRAL VALLEY FLOOD PROTECTION BOARD**  
**September 28, 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 meeting of the Central Valley Flood Protection Board was held on September 28 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. William H. (Bill) Edgar, President  
Ms. Emma Suarez, Vice-President  
Ms. Jane Dolan, Secretary  
Mr. Joe Countryman  
Mr. Clyde Macdonald  
Mr. Tim Ramirez  
Mr. Mike Villines (arrived shortly thereafter)

**The following members of the Board staff were present:**

Mr. Jay Punia, Executive Officer  
Mr. Len Marino, Chief Engineer  
Mr. Eric Butler, Supervising Engineer  
Mr. Dave Williams, Senior Engineer  
Mr. Michael Wright, Senior Engineer  
Ms. Amber Woertink, Staff Assistant  
Ms. Deborah Smith, Legal Counsel  
Ms. Nicole Rinke, Legal Counsel

**Department of Water Resources staff present:**

Mr. Jeremy Goldberg, Staff Counsel  
Mr. Eric Koch, Chief, FloodSAFE Program Management Office  
Mr. Noel Lerner, Chief, Flood Management Office  
Mr. Patrick Luzuriaga, Staff Engineer  
Ms. Sandy Maxwell, Senior Engineer  
Mr. Mike Mirmazaheri, Chief, Bay-Delta Levees Branch  
Mr. Michael Sabbaghian, Acting Chief, Flood Projects Office  
Mr. Ran Singh, Staff Engineer  
Mr. Keith Swanson, Chief, Division of Flood Management

**Also present:**

Mr. Rick Johnson, Sacramento Area Flood Control Agency  
Mr. Tim Kerr, American River Flood Control District  
Mr. Ryan Larson, United States Army Corps of Engineers

**1. ROLL CALL**

President Edgar welcomed everyone in attendance.

Executive Officer Punia reported that a quorum was achieved: all Board Members were present except for Mr. Villines, who arrived shortly.

**2. APPROVAL OF MINUTES – July 27, 2012**

*Upon motion by Secretary Dolan, seconded by Board Member Macdonald, the Board unanimously approved the July 27, 2012 Meeting Minutes.*

**3. APPROVAL OF AGENDA**

Executive Officer Punia stated that staff recommended to postpone Item 7E (Permit No. 18767, California Department of Transportation) on the Consent Calendar by request of the applicant. The applicant had some concerns on a few of the permit conditions.

Staff also suggested to move the Closed Session to the lunch break.

*Upon motion by Board Member Countryman, seconded by Secretary Dolan, the Board unanimously approved the agenda with the changes noted above.*

**4. PUBLIC COMMENTS**

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

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

Keith Swanson, Chief of the DWR Division of Flood Management, began by congratulating President Edgar, Secretary Dolan, and Board Member Ramirez on their Senate confirmation to the Board. Mr. Swanson then reported on the following.

- He has been stressing to all concerned to reread the Central Valley Flood Protection Plan (CVFPP), particularly Chapter 4 and the State System Investment Approach (SSIA), which lays out what we hope to be doing over the next 25 years.
- As we move forward we will have to discuss the costs to fund Operations and Maintenance (O&M), as well as the cost to deal with the residual risk associated with the flood management system.
- We need to do a better job of messaging the SSIA. Many people are still focusing on single purpose priorities. However, the SSIA is really about integrating actions associated with public safety, environmental stewardship, economic stability, and water reliability. This integration is the only practical way to make progress.

- We are far short of the amount of needed funding. The only way to obtain more is to prepare a message that will resonate with California voters about the value we will provide with additional funding, as well as the value that we provide with the funding that we have already spent.
- DWR is working hard to come up with methodology to quantify values and benefits of the CVFPP; this effort is being led by Mike Mierzwa. The methodology is likely to include both qualitative and quantitative performance indicators. It contains three components:
  1. Benefit accounting: which benefits should be considered and a way to measure them.
  2. Decision framework: how best to weigh benefits across the different areas; how to evaluate trade-offs between different benefits; and how to choose superior projects.
  3. Project financing: is it a public benefit or a user benefit?
- We are starting two major planning efforts.
  1. A state-led system planning effort. It has a large geographic scope, and is likely to bundle management actions across the various areas of public safety, environment, and water reliability.
  2. A regional planning process. Locally led, it will be a smaller geographic area. It will probably focus less on management actions because the problems at the regional level are more specific.
- The challenge will be to integrate the two processes. A Coordinating Committee has been formed to facilitate this. The performance measure of the planning process will be to get agreement on investment needs and priorities moving forward, for both system and regional.
- A goal for regional planning is to tie it with some of DWR's base program activities – Emergency Response programs and O&M programs.
- DWR is looking to transition from readiness – how it prioritizes projects – to a process that really looks at both system and regional benefits based on methodology that considers cost share and then readiness.
- If we are successful in getting these programs up and running, our performance measure will be the progress we make relative to the SSIA.
- DWR is trying to transition from a time where it had a lot of money going in via the bonds, with a limited plan, to an era with little money but a much bigger plan.

President Edgar commented that at the first Coordinating Committee meeting he had observed some pent-up frustration. He expressed the hope that DWR understands that this process of organizing regional planning and coordinating with systemwide plans will

take time and in the end it will be a good product because people will understand and buy into it.

He continued that the local planning groups will be setting their regional plans down with specific lists of projects, and will be putting a lot of pressure on the Board and DWR. President Edgar felt that the objective should be to lead them to appreciate the state's advocacy for systemwide improvements. It will be a culture change from a top-down approach to a more bottom-up collaborative approach, and it will be difficult.

Mr. Swanson agreed. He said that DWR will continue to sharpen its message, discern what to do from an outreach perspective, and practice listening.

Eric Koch, Chief of the DWR FloodSAFE Program Management Office, presented the quarterly report as requested in the Board's Resolved 11Y.

- He began by reading the Resolved 11Y.
- Resolved 11Y contains 25 different declarations. About 14 of them would require DWR to make reports on various deliverables as they become defined. Mr. Koch felt that in time, a majority of those 14 declarations will become part of the DWR monthly report.
- DWR is developing the tools, plans, actions, and results types of communications for how it will report.

President Edgar requested an Excel spreadsheet listing those items, with a short paragraph giving status.

Board Member Ramirez commented that he had been surprised to see the Proposal Solicitation Package (PSP) for the conservation strategy come out. He observed that it had not totally lined up with what Mr. Swanson had described in terms of DWR and the Board trying not to do things the way they always have.

President Edgar responded that at the Coordinating Committee meeting, the decision had been made to have Gail Newton and Marc Hoshovsky, the project planner, present the program at the next Coordinating Committee meeting. It would then be brought before the Board.

Mr. Koch added that the guidelines for the regional planning efforts have been finalized and were at the Director's office for signature. They should be posted as final early the next week; then DWR will be able to start receiving applications from the regional agencies to move forward with the funding.

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

Executive Officer Punia reported on staff activities.

- The Floodplain Management Association recognized DWR and the Board's efforts in getting the CVFPP adopted. They issued an award for excellence in floodplain management.

- At a recent Floodplain Management Association conference in Sacramento, Vice-President Suarez served on the panel entitled “California Flood Infrastructure Financing.” Board Member Ramirez served on the panel entitled “Where Do We Go From Here?”
- As previously discussed, DWR issued a PSP under the Central Valley Flood System Conservation Framework and Strategy Guidelines on September 12. Up to \$25 million is available under this program.
- The Regional Flood Management Planning teams have been established and are beginning to hold their meetings. Some of the regions are deciding to merge.

President Edgar commented that one of the results of the Floodplain Management Task Force that Vice President Suarez attended was an understanding that the projects of the Flood Plan will eventually feed into the overall Water Plan.

Secretary Dolan had attended a meeting of the regional integrated water management planning process in Chico. Vice President Suarez attended one in Redding, and President Edgar attended one in Yuba City; he had also participated on a panel at the water plenary session.

President Edgar felt that the Board needed to push the implementation of the CVFPP. If there are separable components of the plan to move forward, the Board ought to advocate for that.

Secretary Dolan agreed and shared President Edgar’s concern regarding the goal and the need to integrate the various plans. However, she expressed concern that the effort to decide how they all come together might forestall some of the momentum on the plan implementation.

Executive Officer Punia stated that he was familiar with DWR’s overall vision that the CVFPP will be integrated into the Water Plan, but he felt that DWR acknowledges that some components will be totally integrated and some can move independently. He said he would work with DWR staff on the idea of holding a briefing for the Board on DWR’s approach to integrate the CVFPP with the Water Plan.

Executive Officer Punia gave the status of levee improvement projects.

- Sacramento Area Flood Control Agency (SAFCA). Some of the different phases are coming to closure.
- Sacramento River East Levee Project Phase 2 contract. Teichert has completed about 25% of the work.
- SAFCA’s Reclamation District 1000 Pumping Plant 2 is prepared to start work.
- Sutter Butte Flood Control Agency project. The Board has toured the proposed project sites, and staff is reviewing the 60% design submittal to develop a 408 package.

- Three Rivers Levee Improvement Authority (TRLIA), Phase 4 Feather River Levee Improvement Project. All work is complete. Staff and the Corps are awaiting the final walk-through.
- TRLIA, Upper Yuba Levee Improvement Project. Construction is complete. The contractor is working on completing the punch list items.
- Sutter Levee District 1, Lower Feather River Setback Levee at Star Bend. Staff is working with the applicant engineer to close out issues. Staff is coordinating with the Corps for accepting the O&M manual prepared by the local agency, LD 1.
- West Sacramento Area Flood Control Agency, Rivers Mitigation Project. The planting is underway. For the South Port Levee Project, the applicant is planning to submit the first application in December.
- San Joaquin County, RD 17 project. Phase 2 is almost complete.
- Bridge projects. Several bridge permit applications are on today's agenda. Staff continues to work with Caltrans and other applicants.

President Edgar asked about issues Caltrans may have with the Board's conditions on their permits. Len Marino, Chief Engineer, responded that Caltrans had notified staff that they were not satisfied with the conditions, that require them to do maintenance in perpetuity on the mitigation plantings resulting from their construction projects.

Executive Officer Punia commented that some of Caltrans' districts were not up to speed on the CVFPP requirements. If the hydraulics were impacted, staff was asking Caltrans to mitigate.

Dave Williams, Senior Engineer, stated that staff had received an email from Caltrans naming seven General and Special Conditions in the permits that they uniformly did not agree with. Caltrans had interpreted CVFPB to be the overall authority on their projects. Staff had addressed their comments and would be holding a meeting with them.

Mr. Williams continued that under General Condition 4, the permit had power over elements of the project that may affect CVFPB jurisdiction. He attempted to put Caltrans at ease that CVFPB is interested in the flood control aspects of the projects, and does have authority in regulated streams, designated floodways, and federal levee systems.

Executive Officer Punia added that Caltrans' concern varies from district to district.

Eric Butler, Supervising Engineer, stated that it was very helpful to have Steve Jaques as a point person working directly with Mr. Williams. Mr. Butler added that for the first time since the last year, there is uniformity in how staff has been permitting the Caltrans bridges.

Executive Officer Punia described a few more items of general interest to the Board.

- A private citizen had requested the Board to announce that there is no private ownership in the Pocket Area levees, and the Board should remove every fence and

No Trespassing sign, and cancel any permit that furthers an adjoining owner's private right to access to the levee.

Staff had responded that CVFPB easements are for flood control purposes only, not public access for recreational purposes. However, Title 23 allows this type of use. Staff asked the private citizen to work with the City of Sacramento to acquire that type of easement; then staff would be glad to work with that person to provide that type of access.

- A Draft Memorandum of Understanding prepared by the Delta Stewardship Council is under review by Board staff. Its purpose is to implement common goals of the Delta Plan and the CVFPP.
- Staff is coordinating its response for DWR to the Corps' August 21 letter declaring 17 levee systems ineligible under the PL 84-99 Rehabilitation and Inspection Program. After a lengthy discussion with the Corps and the local reclamation districts, the Board has certified the land rights, so that the mitigation project for the repair work done under PL 84-99 in 2005 and 2006 can be started.
- Staff was recommending to cancel the October 12 Board meeting because the desired speaker was not available. President Edgar noted that Vice-President Suarez had suggested developing a plan for next year, with substantive information briefings, tours, etc. laid out. Beginning in January, the Board could get the two meetings per month going at a more rigorous pace.

Vice-President Suarez also suggested having a Board workshop to go over some key documents that relate to Board organization and function – for example, the Memorandum of Understanding with DWR and the delegation document to the Executive Officer. There are also budgetary issues and organizational issues.

President Edgar requested staff to lay out this more rigorous schedule for 2013.

Michael Wright, Senior Engineer, provided an update on enforcement activities for the month of September.

- Permit No. 18797, addressing an access ramp identified in a Corps periodic inspection, will allow the ramp to be brought into Title 23 compliance.
- The TRLIA fence relocation enforcement hearings are still scheduled for November 15 in Marysville.
- A Notice of Violation for excavation within 10' of the landside levee toe of the Mormon Slough in Stockton, is being followed up by staff with the landowner.
- The Wadsworth Canal right bank of the Sutter Bypass East Levee System was out briefed in September by the Corps. The draft report rates the system as unacceptable and inactive for PL 84-99.
- The City of Sacramento recently submitted a Corrective Action Plan for levee deficiencies identified in the Sacramento River East Levee System periodic

inspection. The information is very helpful to Board staff in addressing the deficiencies.

- San Joaquin County identified four levee systems whose deficiencies have been resolved, out of the 17 identified in the Corps' August 21 letter to the Board. They are requesting the Board to notify the Corps for a reinspection request.
- Out of the 119 levee systems, there are 79 active, 32 inactive, and eight partially inactive. This means that approximately 66% of the levee systems are active in PL 84-99.

“Partially inactive” refers to systems with multiple Levee Maintaining Agencies (LMAs) that have various ratings.

7. **CONSENT CALENDAR**

A. **Permit No. 6870-1, Joe Sanchez Farms, Inc.**

**Consider approval of Permit No. 6870-1 to install a self-cleaning, retractable fish screen system on an existing agricultural diversion pump (permitted under Permit No. 6870, to H.P. Grain Jr., et al.). This permit covers the new fish screen and facilities, as well as the name change of the permittee to Joe Sanchez Farms, Inc. (Sacramento County)**

B. **Permit No. 18682, CA Department of Fish and Game**

**Consider approval of Permit No. 18682 to restore five acres to riparian habitat inside the Colusa Unit of the Sacramento River Wildlife Area (Colusa-North Tract) on the right (west) bank overflow area of the Sacramento River (River Mile 147). (Colusa County)**

C. **Permit No. 18739, City of Reedley**

**Consider approval of Permit No. 18739 to replace the existing Manning Avenue Bridge over the Kings River with a new three-span, cast-in-place, pre-stressed concrete box girder bridge; and to plant riparian vegetation onsite. (Fresno County)**

D. **Permit No. 18766, Diablo Vineyards**

**Consider approval of Permit No. 18766 to remove and replace a 10-inch diameter steel irrigation pipe in the levee crown. (Solano County)**

E. **Permit No. 18767, CA Department of Transportation (Caltrans) (Postponed)**

**Consider approval of Permit No. 18767 to remove and replace the State Route 99 bridge crossing Butte Creek (Bridge No. 12-0126R) with a reinforced concrete box girder bridge. (Butte County)**

F. **Permit No. 18768, Burlington Northern & Santa Fe Railway**



Consider approval of Permit No. 18768 to replace the Burlington Northern & Santa Fe Railroad bridge (Bridge No. 1104.6) over Lone Tree Creek. (San Joaquin County)

**G. Permit No. 18773, Three Rivers Levee Improvement Authority (TRLIA)**

Consider approval of Permit No. 18768 to transplant an additional 228 elderberry seedlings into the Anderson Mitigation Site to meet increased mitigation requirements for the Upper Yuba River Levee Improvement Project. (Yuba County)

**H. Permit No. 18790, Yocha Dehe Wintun Nation**

Consider approval of Permit No. 18790 to stabilize an eroding portion of the streambank by constructing a low longitudinal rock toe along the right bank of Cache Creek, with four redirecting rock vanes and 2,000 willow plantings. (Yolo County)

**I. Permit No. 18797, Westlands Water District**

Consider approval of Permit No. 18797 to authorize an existing waterside access ramp and to reconstruct two tide gates for water supply and controlled water surface elevation for lands irrigated from the levee borrow channel, tributary to Shag Slough, within the Yolo Bypass. (Yolo County)

**J. Terminus Dam, Kaweah River Project – Quitclaim of Davis Ranch Excess Lands (Discussed separately)**

Consider approval of Resolution 2012-40 to approve the Quitclaim Deed to release and quitclaim to the Kaweah Delta Water Conservation District all right, title and interest in the excess 506 acres of Davis Ranch property determined unnecessary for mitigation lands for the project.

**K. Folsom Dam Safety & Flood Damage Reduction Joint Federal Project – Supplemental Environmental Impact Report**

Consider approval of Resolution No. 2012-43 to:

**1. Certify the Supplemental EA/EIR, Adopt the Findings, Adopt the Mitigation and Monitoring Plan for the Folsom Prison Staging Area and Stilling Basin Drain Project, and delegate authority to the Executive Officer to execute the Notice of Determination**

**2. Approve project refinements to the originally approved project.**

*Upon motion by Secretary Dolan, seconded by Board Member Macdonald, the Board unanimously approved the Consent Calendar items as amended.*

Board Member Macdonald expressed a concern regarding Item 7J for how much money the state was getting back. The state has a financial interest in 506 acres there, originally acquired for mitigation purposes, but later determined not necessary for the mitigation.

The proposal was to quitclaim it back to the District for a sum translating to about \$450/acre.

Board Member Macdonald felt that staff ought to take a look at whether that amount of money is appropriate, or whether there are other things the Board would want to do for this property.

Patrick Luzuriaga, DWR Staff Engineer, stated that he was working on behalf of the Board as project manager. He provided some background: the project was initiated in 2001 between the Reclamation Board and the Corps with the purpose of raising the spillway of the Kaweah Reservoir on the Kaweah River in Tulare County. The raised spillway creates additional inundated land when the reservoir is full.

The Corps determined that 4,388 acres would be required for oak woodland mitigation. The state acquired 4,900 acres, leaving 506 extra acres.

DWR entered into an agreement in 1999 with a local agency, which specified the terms of disposal of the land. Mr. Luzuriaga had spoken with Ward Tabor, DWR Senior Counsel, who recognized that the contract stated that DWR would dispose of the property according to the value assigned to it at the time of purchase.

Mr. Tabor concluded that despite his disagreement that perhaps it may be more financially beneficial for the state to get an appraisal. For that matter, based on the current real estate, the value might be less than what the state had acquired it for in 1999.

Mr. Luzuriaga stated that the Kaweah Delta Water Conservation District holds title to the land. The State of California, via the Board, does not have any title rights to this property. Its interest is strictly financial. The state would be quitclaiming its financial ownership, essentially getting a refund from the local agency to state on record that the state quitclaims all of its interests. Jeremy Goldberg, DWR Staff Counsel, gave further legal details.

Mr. Luzuriaga stated that maintaining or retaining the property would be a possibility. To achieve joint ownership, the state could work with Kaweah Delta to share the title and maintain it for some future project. He added that there may be some restrictions on future involvement in reservoir projects.

Mr. Goldberg suggested pulling the item to bring it back later for a more informed presentation. Board Member Ramirez noted that it wasn't clear what the state was going to get to wrap the agreement up.

Michael Sabbaghian, DWR Flood Projects Office Acting Chief, sought to make clear that this was not DWR standard practice. Standard practice was to value excess property at the time that it is being turned over. It is appraised based on today's value, not on when it was purchased. The agreement in question was unique. Mr. Tabor had pointed out that it was very clear in the agreement that the price had to be based on the value in 1999.

Mr. Sabbaghian continued that DWR receives cattle grazing fees from the land – around \$5,000 per year. The district plans to keep the property for future mitigation, because there is another project coming down the line.

Board Member Countryman summarized that the Board had two options: to keep the property the way it is or follow the agreement.

Board Member Macdonald noted that the district has some dam safety issues they are looking at. He raised the possibility that the state would be partially obligated for mitigation were it to retain its interest.

*Upon motion by Board Member Macdonald, seconded by Secretary Dolan, the Board unanimously voted to continue the item to the next Board meeting.*

## 8. DISCUSSION WITH POSSIBLE ACTION

### A. Review and Discuss DRAFT response to the United States Army Corps of Engineers (USACE) letter to the Board dated August 21, 2012.

**The Board received a letter from the USACE indicating that 17 levee systems were declared inactive in the Public Law 84-99 Rehabilitation and Inspection Program (RIP). Levee systems with inactive status in the RIP are not eligible for federally-funded repairs following a flood event. The Board will discuss a draft response letter to the USACE and may take further action.**

Board Member Countryman reported that a draft of the letter had been circulated to which he had made edits and circulated to the Board. President Edgar noted that the appropriate procedure is that individual comments should be emailed to the Executive Officer, who then makes them available to the Board.

President Edgar summarized the situation: the Corps had issued a press release stating that 17 of the Board's 118 levee segments were deemed to be ineligible for the PL 84-99 program. Colonel Leady had appeared before the Board at the August meeting, and explained his rationale for doing this.

Vice-President Suarez and Board Member Countryman had since spoken with the Colonel to try to develop a path forward. Two strategies were emerging.

1. Assert the superiority of the CVFPP, because it is the Board's pathway for dealing with the flood problems in the Central Valley.

The problems with this strategy as opposed to dealing with the System-Wide Improvement Framework (SWIF) (which is a variance procedure that the Corps has recommended) are that the CVFPP at present doesn't deal with the specific issues of erosion, encroachments, rodent damage, and so forth. The Board could be perceived as not wanting to address these obvious public safety deficiencies. Another problem would be that the segments would remain out of eligibility for the PL 84-99 program.

2. Pursue a non-vegetation SWIF. This approach would be more consistent with the Corps prioritization of risk. In his letter the Colonel had said that the segments would not have been removed if it were just the issue of vegetation.

President Edgar stated that the Board needed to look ahead a bit, because the Corps still wants the Board to commit to adhering to all Corps standards, including vegetation –

which it could not do. The Board does not believe that vegetation was a public safety issue at this time.

From a policy standpoint, President Edgar felt that the SWIF was a better approach. He requested for the Board to discuss and decide on the policy position; then, to give him permission to rewrite the letter.

Vice-President Suarez summarized the meeting she and Board Member Countryman had held with Colonel Leady and members of his team. She and Board Member Countryman had informed the Corps that they had found signals that seemed to indicate that the Corps had some flexibility in terms of doing SWIFs that are led by local maintaining agencies or local entities.

However, whatever process they engage, it is the Board that needs to open the door and begin by developing one or several Letters of Intent (LOIs). They had explored with the Colonel what it meant to put together an LOI. The Colonel offered to have his staff help the Board develop the LOI, making sure they met all the necessary requirements for it to be successfully received in Washington D.C.

The Colonel also encouraged them not to get too bogged down on the issue of vegetation, as it wasn't the number one deficiency. He did make it clear, though, that a SWIF would have to address all deficiencies.

Vice-President Suarez and Board Member Countryman, with the help of Mr. Marino, put together a draft letter stating their acknowledgement and receipt of the Colonel's August letter, their general statement of disagreement with its conclusions, and also a recognition that he had expressed some opportunities to a pathway forward, and a quick summary of what their discussion about a pathway forward.

DWR had a different perspective. They had edited the letter extensively. Their edits contrasted with Vice-President Suarez and Board Member Countryman's perspective, based on their initial direction from the Board, that the response to the Colonel would be positive and forward-looking, capturing what the path forward would look like based on their conversations with him.

Board Member Countryman reminded everyone that the Board is controlling the process and writing the LOI. If they send the LOI with their best faith effort to find a way to work together with the Corps, and the Corps doesn't accept it, then so be it.

He saw the current letter as a very positive way to try to reach agreement and accommodation with the Corps, and to make the system better. The LOI, or multiple LOIs, would be developed later.

Mr. Marino referred the Board to the informational package in their folders. One of the documents was a spreadsheet that highlighted the reasons that the 17 systems were removed from eligibility. Mr. Marino pointed out that the vegetation column was almost blank. The deficiencies the staff would be counting on correcting were mainly encroachments, primarily through the levee pipe encroachments.

Mr. Marino gave the staff's position on the necessary contents of the letter.

1. Acknowledge of receipt of the Corps letter with removal of the 17 levee systems.
2. Stress that the Board wants to continue working together to achieve eligibility reinstatement of those levee systems. We have a common goal for public safety.
3. State that the Board is going to file an LOI which will include some detail on the contents of the processed SWIF.
4. Acknowledge the Board's ongoing regional planning process that was recently set up for the implementation of the CVFPP. Suggest integration of the SWIF process into the regional planning process.

Mr. Marino said that he had met with Ryan Larson, United States Army Corps of Engineers Project Manager, along with the San Joaquin County Flood Control District and Water Conservation District, which has 11 systems out of the 17. They had gone through 11 systems of the 17, and found that they had everything in place to take four of the systems out and request a re-inspection for reinstatement of eligibility.

Mr. Larson stated that it would be beneficial to use the framework of the regional planning efforts as a vehicle to put these things together to achieve eligibility.

Board Member Countryman asked if it would be an acceptable procedure to have an LOI that covered a group of the submittals, and to have individual districts prepare the SWIFs for their areas. Mr. Larson assented. Secretary Dolan inquired as to whether reinstatement in every case required a SWIF; Mr. Larson replied that it did not.

Secretary Dolan commented that the Colonel's letter had left many members of the public with the impression that if a flood should occur, they are on their own. There is a lack of information. She suggested that perhaps the next press conference could be a joint effort, as the Corps is a partner of the Board.

President Edgar raised an issue that came from the local maintaining agencies of street signs and directional signs on levee roads. He suggested blanket permitting. Mr. Larson responded that if the Corps had some parameters as far as embedment depth, locations on the effective levee prism, and so on, they might be able to work on something like that.

Secretary Dolan commented that there would be huge reluctance from a county public works department to remove something that provides direction for public safety and resolves issues of liability. As local government and the Corps both are looking at public safety, the two should be able to come together at some point.

Mr. Marino continued with the last recommended point for the letter.

5. Acknowledge that the Corps' direction is to address the deficiencies on a worst-first basis. Accordingly, the vegetation issue would be set aside for the time being.

President Edgar asked if DWR or the Board have done any prioritization of the non-vegetation issues. Mr. Marino replied that the approach staff was taking was simply to remove as many deficiencies as quickly as possible, with the goal of reinstating systems.

Mr. Swanson shared DWR's point of view on the situation. DWR agreed with much of what was being said. They felt that a simple, succinct letter to the Corps, stating that they want to work with the Corps and that they have many common goals, was in order. DWR was interested in filing an LOI and getting back into the good graces of the Corps.

DWR really wants to work on the concept of worst-first and to develop prioritization techniques. Mr. Swanson felt that it is important to bifurcate O&M improvements and vegetation management. O&M needs to be better managed in general.

Roles and responsibilities need to be clear, because the management of the system has local, state, Board, and DWR-specific responsibilities. The federal government is taking some responsibility for some of these issues through their capital outlay program, and DWR should point to that when appropriate as a potential solution to some of the bigger legacy issues. DWR could also call out the Sac Bank program.

### **Public Comment**

- Rick Johnson, representing SAFCA, pointed out that the discussion goes much deeper than the PL 84-99 program. Under the American River Common Features Project, the Corps is doing a general reevaluation of the 100+ miles of levees that protect the Sacramento area. The report is due at the end of 2013.

SAFCA is anticipating quite a bit of structural work – the Corps' initial estimate is \$1-2 billion. The Corps criteria is for SAFCA to put forth a federal project that is completely compliant; SAFCA will need to address under seepage.

SAFCA will have a capital program that will go forward to Congress for an authorization, plus a longer-term plan – basically a SWIF. SAFCA plans to send its own LOI to the Corps, indicating that they will participate fully in the General Reevaluation Report (GRR). SAFCA wants to ensure that nothing is done as part of the PL 84-99 program that will complicate the levee improvement in which significant federal dollars are involved.

In response to a question from President Edgar, Mr. Johnson noted that the GRR was initially intended to look at all of the levees. When SAFCA found out that the levees in Natomas were in such poor shape and it resulted in the remapping of the FEMA, the Corps agreed to pull that part of the GRR out, and look at the structural fixes needed there.

- Tim Kerr, General Manager of the American River Flood Control District, stated that one of that district's reaches was among the 17 that had lost PL 84-99 eligibility. The Board of Trustees was looking very intently at how to get back in the federal program. They felt that the SWIF looks like a very good opportunity.

### **Board Discussion**

President Edgar summarized that the Board intended to send a short letter response to the Corps, taking some of the information Mr. Marino provided that is in some of the drafts. The letter would acknowledge receipt, indicate a path forward, indicate the need to work with the Corps, and state that public safety is a key.

The Board would file an LOI or a series of LOIs in the future. This would somehow deal with the SWIF, emphasize that the CVFPP is the Board's key issue for remediation, indicate that the SWIFs are going to be filed locally, and deal with the issues on a worst-first basis.

The requested action was for the Board to give authorization to have President Edgar rewrite the letter, and work with Vice-President Suarez to get it into final shape. They would vet the letter with DWR and the Corps before sending it formally.

Board Member Macdonald commented that Knights Landing is the only entity that had a vegetation issue. Mr. Larson stated that there were encroachment and erosion deficiencies and there may be an encroachment that has been classified as vegetation, perhaps landscaping or a garden; the report says that it is not likely to prevent the system from performing as intended during the next flood event, but it was still unacceptable.

Board Member Ramirez cautioned about having the energy of the Board, DWR, and the LMAs going into another exercise to develop another plan in addition to systemwide and regional efforts.

Vice-President Suarez addressed the issue of whether to write in the letter something to the effect that the Board was interested in doing a non-vegetation SWIF. The Colonel had cautioned not to get bogged down on the vegetation issue.

Board Member Ramirez suggested not putting the burden on the LMAs regarding vegetation. The Board had felt it important for the state to stay on the same page with DWR and the Department of Fish and Game on this issue being litigated. The position they have taken shouldn't be jeopardized.

Vice-President Suarez stated that the LOI just needed to recognize that the Board sees the deficiencies (including vegetation), and the SWIFs will, one way or another, deal with them in the appropriate ranking.

*Upon motion by Board Member Countryman, seconded by Board Member Ramirez, the Board unanimously voted to authorize President Edgar and Vice-President Suarez to develop a letter along the lines discussed.*

Board Member Ramirez noted that the Board has a standing item on every regular agenda for DWR to report on its activities. He suggested that it would be useful to offer the Corps the same opportunity. President Edgar requested Executive Officer Punia to look into the idea.

## **9. REQUESTED ACTIONS**

### **A. 2012-13 Delta Levees Maintenance Subventions Program**

**Consider approval of the staff recommended funding allocation plan under the Delta Levees Maintenance Subventions Program for FY 2012-13.**

Mike Mirmazaheri, DWR Bay-Delta Levees Branch Chief, brought to the Board's attention that Governor Brown had signed Senate Bill 200, which extends the state cost

share on the Subventions Program for another five years, and maintains the 75% maximum.

Mr. Mirmazaheri also mentioned that on the previous Board, one of the members led the Delta committee. He suggested that the new Board consider assigning someone to work on that committee.

Board Member Villines noted that there are three or four different Delta organizations. He covers the Conservancy. Executive Officer Punia stated that he would look at the Committee's roster and discuss the matter with President Edgar, then assign one of the Board members to work with Mr. Mirmazaheri.

Mr. Mirmazaheri began the report on the Delta Levees Maintenance Subventions Program. He described the physical features of the Delta.

- The primary zone is agricultural land forbidden from further development, different from the secondary zone.
- The Delta is an estuary – a network of levees. Each levee is important because it works as a system.
- The urban area is in accordance with Senate Bill 5.
- The new levee design criteria that DWR is working on eventually would have to meet the 200-year protection criteria.
- Agriculture in the Delta brings in about \$500 million of annual revenue.
- Various infrastructure is dependent on the levees: railroads, transportation routes, transmission towers, and most important, water supply that must be protected from salinity intrusion.
- Navigation is important; the two significant ports are the Port of Stockton and the Port of Sacramento.
- The Delta has several hundred different species of migratory birds and is in the Pacific Fly Zone – it is important to protect.
- The Delta Levees Program consists of two major components: Special Projects and Subventions.
  - Special Projects is a competitive program that mainly addresses levee rehabilitation. DWR has guidelines and releases project solicitation packages.
  - The levee program, both Subventions and Special Projects, addresses project and nonproject levees within the primary zone of the Delta, but only addresses the nonproject levees in the secondary zone.
  - The Subventions Program is an annual reimbursement program. It is mainly maintenance with some rehab work allowed.
  - The District prefers to do rehab work under Special Projects, because it provides higher state cost share, in some cases 100%. Under Subventions it is limited to no



more than 75%; the local cost share is 25%. (Board Member Countryman noted that although 25% is specified, over a long-term average, it has been more like 50%.)

Sandy Maxwell, DWR Delta Levee Subventions Program Senior Engineer, provided an overview of the Subventions Program.

- California Water Code 12980-12995 authorizes DWR to provide local agency funding for annual maintenance and rehabilitation of levees in the Delta.
- The Water Code also states that the Subventions Program will be an annual program beginning July 1 and concluding June 30 of the following year. The program will provide funding for nonproject levees and eligible project levees.
- Local agencies are responsible for the first \$1,000 per levee mile, and the program reimburses up to 75% of costs.
- Habitat mitigation is an important part of the program
- Subventions funds are also used for emergency response, up to \$200,000 annually.
- The latest Subventions Guidelines were adopted by the Board last year. The Guidelines discuss eligibility, requirements, reimbursement, and priority of funding, with maintenance as the main priority. If there are additional funds available, the program funds rehabilitation activities.
- Ms. Maxwell described the funding process for local agencies.
- For FY 11-12, the program was funded for \$12 million and received 62 applications for funding. Funding for this fiscal year is proposed at \$12 million and will be done through Proposition 1E.

Secretary Dolan asked how the \$12 million figure is achieved. Ms. Maxwell replied that DWR works with the local agencies and tries to come up with a good figure acceptable to everyone. Proposition 1E did not delineate a specific amount of money for the program.

Ms. Maxwell stated that the program funded a partial amount of each of the 67 applications submitted. President Edgar asked if the local agencies request large amounts of money, hoping to receive maybe 25% of the requested amount. Mr. Mirmazaheri responded that the local agencies want to make a point of how much work is needed in their applications. They submit an ambitious plan, knowing that they will not be able to complete it in a 12-month cycle.

President Edgar asked if the agencies are in consensus that this is the agreed-upon recommendation. Mr. Mirmazaheri responded that the Delta Levees Habitat Advisory Committee holds monthly meetings where they discuss issues and ideas and discuss funding. The meeting is open to all the local agencies.

In answer to a question from Vice-President Suarez, Mr. Mirmazaheri stated that the Guidelines have not changed since last year. He then answered her question about SB

200: the cost share of the State is not going to drop down to 50%; it will remain at 75% maximum.

Board Member Villines asked about extensions; Mr. Mirmazaheri responded that they had been done more than twice, with the last for 2012-13. Board Member Villines then asked if the Legislature had ever pirated those funds. Mr. Mirmazaheri replied that they had not: Proposition 1E has a Section 5096821 which links into the Water Code that 12300 is for Special Projects, and 12980 is for subventions.

Board Member Ramirez inquired as to who makes the call for funding each year. Mr. Mirmazaheri replied that the authority to make funding decisions is with DWR. However, it isn't done unilaterally.

*Upon motion by Vice-President Suarez, seconded by Board Member Ramirez, the Board unanimously voted to approve the amount of \$12 million for the fiscal year's funding for the Delta Levees Maintenance Subventions Program, and to authorize DWR to proceed with the preparation circulation of program work agreements for signature by the Executive Officer.*

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

Board Member Villines reported on his activities of the past month.

He participated in the tour of the Montna Ranch and nearby levees. He also participated in the tour of the Goldfields along with Board Member Countryman, with whom he looked at the original Paterno break location and the Linda area.

He worked on two issues, one of which was on today's Consent Calendar. He and Mr. Marino had a follow-up question on the Westlands issue.

PG&E contacted Board Member Villines on some potential future issues for the Board agenda which he would pass on to staff.

He recommended for everyone to participate in as many tours as possible, because the on-the-ground perspective was so interesting.

Secretary Dolan commented on the hit-and-miss way that the Board hears about upcoming tours. President Edgar requested Executive Officer Punia to look into keeping Board Members informed, although the limit of two attending a tour remains.

Board Member Villines commented that the San Joaquin River restoration is a huge issue for the Board. The dam and surrounding area already show evidence of more water, activity, wildlife, and so on. President Edgar noted that a Board tour of that area would be important; Executive Officer Punia said that staff would coordinate one.

Deborah Smith, Staff Legal Counsel, explained the Rule of Two and the Rule of three.

- A specific section in the Bagley-Keene Act states that for advisory committees set up by the Board, a maximum of two people can attend an event that has a topic pertaining to one of the committees.

- If an event involves a topic that isn't under one of the committees, up to three Board Members can attend.
- If the event is publicly noticed, the public can come and different rules apply. At such a meeting, Board Members cannot talk amongst themselves about issues under the jurisdiction of the Board.

### (13.) CLOSED SESSION

- **To discuss litigation (Giudice v. State of California et. al; San Joaquin County Superior Court Case No. 39-2011-00256176-CU-OR-STK) pursuant to Govt. Code section 11126(e)(1).**
- **Pursuant to the authority of Government Code section 11126, subdivisions (e)(1), (e)(2)(B)(i), and (e)(2)(C)(i), the Board will meet in Closed Session to consider potential litigation involving the Board.**

The Board recessed into Closed Session at 12:58 p.m., reconvening at 1:34 p.m.

### 10. INFORMATIONAL BRIEFING

#### A. PL 84/99 2005-2006 Rehabilitation Effort – Mitigation Plantings

**The Department of Water Resources issued a real estate certification package to the United States Army Corps of Engineers to allow mitigation plantings for PL 84-99 2005-2006 rehabilitation sites. Mitigation plantings are planned at some sites which required vegetation variance approval under Engineering Technical Letter 110-2-571, while other sites do not require the variance. Plantings are proposed at locations within Reclamation Districts 3, 17, 150, 551, 755, 765, 2098, and Tehama County.**

Noel Lerner, DWR Flood Management Office Chief, gave a follow-up presentation to a briefing presented by the Corps in March on PL 84-99.

(Executive Officer Punia made the statement that the PL 84-99 program is administered by DWR on behalf of the Board, which was why Mr. Lerner was giving the presentation.)

- PL 84-99 is the federal authority used by the Corps to repair damage caused by declared emergencies, especially in this case flood events. The Board is the non-federal sponsor under a cooperative agreement; part of that agreement covers O&M after completion of the work.
- In March, the Board asked that DWR – representing the Board as staff – meet with LMAs and the Corps to discuss the Vegetation Variance Request, which laid out prescriptive procedures for maintaining the mitigation site.
- There was a concern that through the requirements for trimming trees when they reach a certain diameter, and further trimming as they grow on the levee slope, that this would promote a thick growth and impeded visibility or accessibility, as well as place a real burden on the LMAs.

- DWR hoped to have further discussions with the Corps on some of the maintenance requirements to achieve a performance objective of accessibility and visibility, especially on the waterside.
- The Department of Fish and Game has made the point that if the LMAs have to cut back vegetation, there may be permits required. This burden would be on the locals.
- DWR was hoping through meetings with the LMAs and the Corps to have an opportunity in the amended VVR to look at having a performance rather than prescribed obligations.

The Board discussed the issue with Mr. Lerner. He stated that DWR would like planting strips with a minimum setback of 7', and what they had been shown on plans was oftentimes less than that. If it were 1 or 2', the LMAs would have to be trimming perhaps yearly. With 7' the hope is that it would be much less frequently.

Ran Singh, DWR Project Manager, stated that Fish and Wildlife Service wants a coverage on the shoreline; they do not care where the planting is done. The way the VVR is written, the Corps can plant the willow pole cuttings right at the waterside toe. However, the LMAs want clearance between the waterside toe and the proposed plantings to prevent the need for constant trimming.

Mr. Singh stated that the LMAs do selective cutting when the willows grow greater than 2" but smaller than 4". The LMAs will have to go to Fish and Game to seek permits. The Corps' opinion is that since they are a federal agency, they don't need to seek a permit from a state agency. Thus the burden of acquiring permits has been passed on to the LMAs.

Mr. Lerner stated that the balancing act is finding enough places where there is a planting strip with a minimum width. The Corps felt that they could live with 7' and find adequate linear footage of planting strips to meet the requirements.

President Edgar summarized that the Corps has been provided the certification of the rights of way, so they can do the planting. DWR staff is concerned that instead of having a performance standard, where a levee has access, clearance, and sight, the Corps has prescriptive requirements for maintenance – a big problem.

Board Member Ramirez foresaw a cycle where Fish and Game has its own rules and requires mitigation in perpetuity. If a site can't be maintained in perpetuity the way they think it needs to be, it's unacceptable. This is the current path and it is why Fish and Game have sued.

Mr. Lerner agreed – the corridor management strategy that DWR has been promoting for streamlining permits allows them to plant habitat in channels where it will not impact flood flows. But as you bring in habitat and get new species, and you have to do maintenance, you may be hamstrung.

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

- President Edgar reported that he and Secretary Dolan had been working with Yolo County to see if they could deal with their issues of greater participation in the regional planning process and so on.

He had attended the Floodplain Management Conference on vegetation, where he participated on a panel in the water plenary session – kind of a status report on the Water Plan. He had been surprised to learn that the CVFPP was going to be a feeder into the Water Plan. All of that was going to come together in one large plan of priorities that would then be subjected to review and funding.

Secretary Dolan, Vice-President Suarez, and President Edgar attended meetings that involved the integrated water management planning reports, in Chico, Redding, and Yuba City respectively.

President Edgar and Board Member Macdonald had spent a great deal of time on the Coordinating Committee.

- It had been formed in response to the concern expressed by a number of people that the systemwide planning and regional planning were proceeding on separate paths, and would not be merged until the end of the planning process. The Coordinating Committee is an informal information sharing and discussion group with no membership.
- A possible subcommittee of the Coordinating Committee will deal with the issue of the lack of a standard for rural levee design.
- A staff person will be dedicated to help the Board and DWR about the work of the regional groups, and to engage the Board and DWR in working with the planning groups and stakeholders on issues they have in common. The consultant to be hired is Kim Floyd.
- Ms. Floyd will report to a steering committee made up of representatives from the Board, DWR, and the Flood Control Association, and probably an NGO. Ms. Floyd's duties will be to keep the information flowing as to the activities of the planning groups; to make sure the proper technical assessments from DWR are provided; to make sure that the Board Members are attending the regional planning meetings; and so forth.
- Board Member Countryman reported that as the San Joaquin representative, along with Board Member Ramirez, he attended the Lower San Joaquin regional meeting which went well. They were tasked with looking to a long-range program. They wanted to expand their area, looking at the Paradise Cut and the Delta.
- Board Member Countryman had learned that the Kings River interest had expressed concerns about the San Joaquin River Restoration Project – that it was potentially going to interfere with their flood operation. The restoration program is considering increasing the capacity of the 2,500 cfs reach of the San Joaquin River at the Chowchilla Canal Bypass diversion point. This is causing great concern with the Kings River people.

Board Member Countryman had said that the Board would reassess the actual regulations as far as what the releases should be downstream from the Chowchilla Canal Bypass.

As mentioned by Board Member Villines, Board Member Countryman had participated in the tour of the Goldfields. Paul Brunner from TRLIA had discussed the plan for the Goldfields: with the cooperation of the mining companies, they would establish a cobble berm to act as a blockage of flow.

Mr. Butler stated that TRLIA is considering a high ground route that actually goes through the mining operations. There are multiple interests. The mining operation does not want to be constrained by something that becomes an official component of the flood control project, where the Board would tell them that they couldn't mine through the levee.

Another issue there is how to get the fish passage around Daguerre Point without having to remove the dam itself.

Board Member Countryman stated that he had spoken on one of the panels at the Vegetation Conference.

He had attended the Floodplain Management Conference and attended an interesting 2D modeling workshop.

Vice-President Suarez spoke about the recent federal appellate court decision that held that the Corps is not liable for the damages to property resulting from Hurricane Katrina, which was a reversal from a trial court decision. She suggested that Ms. Smith consult with colleagues at the DWR Legal Office to analyze the implications of that court decision.

- Secretary Dolan reported that she and President Edgar had spent a considerable amount of time between meetings in communications with various people in Yolo County, particularly the Board of Supervisors.

She had attended the public meeting of the Integrated Regional Water Management Planning Group of the Northern Sacramento Valley. The group is trying to create a decision-making process covering six counties, and all of the public entities within each of those six counties.

She and President Edgar had gone to the Mid-Sacramento Valley Regional Planning meeting. The Mid-Sacramento and Upper Sacramento are planning to do a joint effort. At the meeting, they had heard the common concerns regarding regional plans:

- Who gets them and what is done with them?
- How do the regional plans interrelate with the systemwide planning?
- Who is going to assure that we know what the systemwide components are being addressed?
- What are the ideas and the concepts?

The regions need to be informed and have some input as well.

- Board Member Macdonald reported that he had gone to the Vegetation Conference and worked the development of the Coordinating Committee.

He had worked with DWR on messaging to illustrate why we need to improve our flood control system. He had met with the graphics people regarding the two-panel photograph of the Sacramento River from the Business 80 bridge with one shot that includes trees, and one with the trees photoshopped out.

- Board Member Ramirez reported that he had connected with Mike Mierzwa at DWR, who had been assigned the lead role in integrating all of the programs: how they would recognize water supply reliability benefits, flood management benefits, and ecosystem benefits.

He had participated on a panel at the Floodplain Management Association conference, then discussed with Mr. Mierzwa the possibility of holding a webinar.

The Board discussed the situation in the San Joaquin region, where President Edgar related that there are two groups to contend with – one on the flood control side and the other on the restoration side. Board Member Ramirez reported that it has been a long-standing problem. Board Member Countryman felt that what is needed for flood flows is very different from what's needed for fish flows, and it seemed possible that the Board could help the two sides reach agreement.

## **12. FUTURE AGENDA**

Executive Officer Punia pointed out that the Consent Calendar has been condensed, with projects now being placed under the staff delegation. Staff will continue to move in that direction.

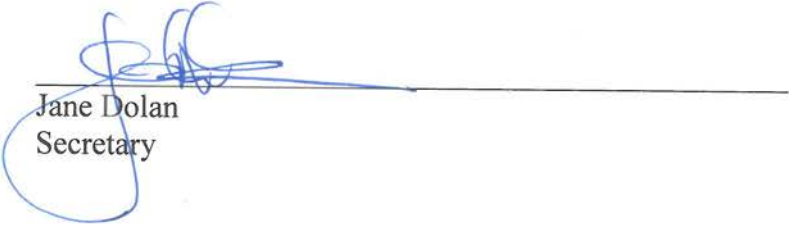
He noted that the Consent Calendar for October was small and there were no hearings. Sutter Butte Flood Control Agency 408 had a Requested Action. The rest of the items were standard on the agenda.

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

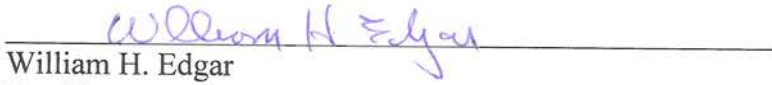
President Edgar adjourned the meeting at 3:00 p.m.

Dated: November 16, 2012

The foregoing Minutes were approved:



Jane Dolan  
Secretary



William H. Edgar  
President