

MINUTES
MEETING OF THE CENTRAL VALLEY FLOOD PROTECTION BOARD
April 5, 2013

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 April 5, 2013, beginning at 9:07 a.m. in The Bonderson Building Cafeteria, 901 P Street, Sacramento, California.

The Members of the Board:

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

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
Ms. Nicole Rinke, Legal Counsel
Ms. Amber Woertink, Staff Assistant
Mr. Michael Wright, Senior Engineer

Department of Water Resources (DWR) staff present:

Mr. Noel Lerner, Chief, Flood Maintenance Office
Mr. Mark List, Supervising Engineer

Also Present:

Ms. Kim Floyd, Kim Floyd Communications
Mr. Justin Fredrickson, California Farm Bureau Federation
Mr. Mike Hardesty, Reclamation District 2068/2098
Ms. Meegan Nagy, the United States Army Corps of Engineers (the Corps)

Also Present (continued):

Mr. Scott Shapiro, California Central Valley Flood Control Association (CCVFCA)

Ms. Melinda Terry, CCVFCA

Mr. Greg Zlotnick, San Luis and Delta Mendota Water Authority

1. ROLL CALL

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

2. APPROVAL OF AGENDA

Upon motion by Secretary Dolan, seconded by Vice President Suarez, the Board unanimously approved the Agenda "as is."

3. PUBLIC COMMENTS

Mr. Mike Hardesty, Reclamation District (RD) 2068/2098, speaking on behalf of the RD Boards of Trustees, commented and answered Board Member questions. He noted that in recent years there has been a number of planning actions and suggestions for proposed projects within the Yolo Bypass (of which RDs 2068 and 2098 are a part). Agencies that maintain the levees have an interest in not damaging the level of flood protection that is made available by the Bypass, which is the largest component of the Sacramento River Flood Control Project.

Mr. Hardesty reminded the Board Members of the Flood Board's purpose—ensuring that the functioning of the Flood Control Project is not impaired or modified or encroached upon in any way that impairs the effectiveness of the flood protection system and the level of protection provided by it.

He asked that the Board live up to its obligations and prohibit any and all interference with flood control functions in the Bypass, as it now exists or in the future under the existing flood easements. Some of the various actions and projects proposed have the potential to cause serious threat to the integrity and function of the Sacramento River Flood Control Project.

In addition, the Board of Trustees have every expectation that under these circumstances the flood control function should not be balanced against or compromised, in any way, in order to enable or promote any other potential purposes within the Bypass, including conservation and habitat development. Their expectation is that the Flood Board will live up to its obligations to vigorously defend and protect public safety and the property interests of the districts and the landowners within and adjacent to the Bypass, as well as the other agencies who are dependent on the primary function and purpose of the Sacramento River Flood Control System.

President Edgar responded by remarking that this is the dilemma that the Flood Board has had for some time—trying to walk the tightrope between good flood protection, ensuring that there is enough conveyance capacity for flood control, and at the same time responding to the requirements that ecosystems and wetlands be restored. It is imperative that the Board make the regional planning efforts work and continually move towards implementation--that is the real key.

Executive Officer Punia added that Board staff will be engaged in these processes to ensure that there are no structural impacts to the levees in the Yolo Bypass, and no net loss of its' carrying capacity. Board staff will be working very diligently to make sure that the primary function of the Yolo Bypass--as Mr. Hardesty alluded to--is maintained.

Chief Engineer Len Marino commented that, as part of the Board's Encroachment Permitting processes, it does a very rigorous analysis of any proposed project within the Yolo Bypass, and RDs 2068/2098 are now and always will be asked to weigh in on the logistics of a project, as their opinion is always valued. In addition, the Corps typically will weigh in and give Board staff a letter expressing their opinion regarding whether or not a proposed project will affect the flood control project. That is also an integral part of the process.

4. REPORT OF ACTIVITIES OF THE EXECUTIVE OFFICER

Executive Officer Punia gave his Report and answered Board Member questions. Some highlights:

- DWR and the Corps have provided several technical comments to the Delta Stewardship Council, and the Council has incorporated a chapter dedicated to the water supply into the Delta Reform Act. The current plan proposes to increase water deliveries to southern reservoirs and groundwater basins during wet years, and limit deliveries during the dry years. Staff feels that, with the comments provided by the Board and the Corps, DWR's proposal meets the intent of the legislation.
- Several planning efforts are ongoing in the Yolo Bypass—the Yolo Bypass Fish Passage Project, the Prospect Island Project, and the Lower Yolo Bypass Restoration Project near Yolo Ranch. Board staff will remain engaged in these projects to ensure that they do not impact the functioning of the Bypass.

Mr. Michael Wright, Board Senior Engineer, provided a quick synopsis of Board staff enforcement efforts, including the ongoing Letters of Intent process with the Corps, and answered Board Member questions.

Briefing by Kim Floyd on the status of regional flood management planning activities.

Ms. Floyd, Kim Floyd Communications, briefed the Board on the following:

- The last Coordinating Committee Meeting was held on March 27. It contained an overview of conservation strategy goals and objectives and a primer on tools and strategies for the integration of recreation into flood management projects and regional planning.
- The Committee will next meet on April 24 at the Lower San Joaquin River Levee District in Dos Palos. There will be a presentation on FloodSAFE implementation; a roundtable discussion on regional planning to date; and reports from focus areas such as NGO participation, communications and public outreach, financial planning and emergency response.
- The April 24 meeting will also include the six-month check-in. It's been about six months since the Coordinating Committee process began and the Board will receive feedback from Committee participants to find out what's going well, what they'd like to see improvement on, and whether or not the Committee is worth continuing.
- Also, the Upper San Joaquin Levee District will discuss some of the challenges faced in the region, and there will be a presentation on the Three Amigos Project, a case study in the integration of recreation and ecosystem restoration.
- The Coordinating Committee website has added a central calendar to help clarify the dates and times of scheduled meetings in the various regions.
- All of the regions have received their Letters of Commitment and kick-off meetings and plan development processes are well underway.

5. U.S. ARMY CORPS OF ENGINEERS (THE CORPS) BRIEFING

The Corps Levee Inspection Results:

- **Lower San Joaquin Levee District System**
- **Reclamation District 556, Brannan Andrus LMD**
- **Maintenance Area 5, Butte Creek Systems**

Ms. Meegan Nagy, the Corps' Sacramento District, provided the Briefing and answered Board Member questions. She stated that the inspections for all three systems resulted in an unacceptable rating; i.e., all three would be ineligible for PL 84-99 funding subsequent to a flood event.

DWR Supervising Engineer Mark List and DWR Flood Maintenance Office Chief Noel Lerner clarified some of the challenges impeding proper maintenance of the areas and answered Board Member questions.

6. REQUESTED ACTIONS

A. Senate Bill 753, An Act to Amend the Water Code Relating to Flood Protection

Consider approval of legislation to broaden the Board's authority, primarily related to encroachment permitting and enforcement including the authority to issue administrative fines for uncorrected code violations.

President Edgar opened the discussion by remarking that at the previous Board Meeting the members had gone through the proposed Bill line by line in hopes of attaining consensus on the language and it was apparent that several language problems remained; thus, the matter was referred to a drafting committee, which included several Board staff, Board Legal Counsel Rinke, Vice President Suarez and Board Member Macdonald, and others.

Board Member Macdonald commented that the drafting committee met with the Flood Control Association, the Farm Bureau, and DWR and CCVFCA attorneys. As a result of their discussion much progress was made in moving closer to bill language that people could support.

Ms. Nicole Rinke, Board Legal Counsel, summarized the language changes resulting from the committee meetings.

Board Members then continued their deliberations.

Mr. Scott Shapiro, CCVFCA General Counsel; and Mr. Justin Fredrickson, California Farm Bureau Federation, commented on aspects of the proposed bill, suggested some additional clarifying language, and answered Board Member questions.

A recurring question during the various deliberations concerned who would be liable for removal or restoration costs? Also, who would pay for attorney fees should legal assistance be sought or required?

Secretary Dolan, as well as other Board Members, commented that the meetings of the drafting committee, as well as today's discussion, had resulted in some significant changes from the draft language in the original bill now sitting in committee at the Legislature. Members deliberated on how best to ensure that today's finalized bill language would be properly reflected in the actual bill proposed to the Legislature.

Upon motion by Secretary Dolan, seconded by Vice President Suarez, the Board unanimously approved the changes and amendments to the bill as presented today (April 5, 2013), incorporating the comments made at today's meeting from the Central Valley Flood Protection Association, except for those issues dealing with

who pays for removal of now non-conforming encroachments, and the seeking of attorney fees by local maintaining agencies.

The Board deliberated further regarding the attorney fees question.

Upon motion by Secretary Dolan, seconded by Vice President Suarez, the Board approved, by a vote of 6-1 (Countryman-No), to authorize language to be amended into the bill to allow local maintaining agencies to also seek attorney's fees when they are acting as a designee of the Board (and to insert Counsel Shapiro's suggested language on this subject).

Vice President Suarez and other Members expressed their concern regarding this current point in the legislative process, where they are in effect hostage to the actions of others to ensure that the updated draft bill language be presented in the Legislature. She remarked that the Board's only remaining leverage would be that appropriate players in the process be made to understand that, unless the bill gets amended with the language as authorized by the Board today, the Board would have no choice but to oppose it.

Upon motion by Secretary Dolan, seconded by Board Member Macdonald, the Board unanimously approved the draft language of the bill as submitted by Mr. Shapiro, with the exception of not inserting the sentence in red on page five.

Secretary Dolan reiterated that the Board needs to communicate with the bill's author, and other appropriate personnel in the Capitol, that the Board's actions today define what the Board supports. As previously mentioned, this is especially important because the language decided upon today is distinctly different from what is in print now. Therefore, the Board is requesting that the bill be put over (delayed) so that what has been voted on today can be properly integrated into the existing bill. The refined bill language is the result of much good communication with the partners and creates a bill that defines a process and allows the Board to move forward effectively for the safety of the people and property of California.

President Edgar remarked that, after much discussion with stakeholders, the issue of enforcement fees remains a work in progress. The Board further deliberated and decided to postpone any decisions on fees to a future meeting.

B. Outreach Plan Re: Senate Bill 753

The Board's Executive Committee and the Board staff will present an Outreach Plan to ensure that the stakeholders and the public are informed of the specific provisions of Senate Bill 753 and are afforded the opportunity for early comment and input.

Secretary Dolan presented the basics of the Outreach Plan:

- The legislative leads, currently President Edgar and Board Member Macdonald, will ensure communication with their legislative counterparts regarding Board actions, especially as changes are made.
- Each Board Member currently has assignments to liaison with various regional planning movements going forward, and need to remain conscious of using that process to report and discuss with them what the Board has done, and to ask for feedback that can then be reported to the Board as a whole.
- The Executive Committee will be conscious of the need to work toward other entities—County Supervisor’s Associations, the League of Cities, Rural Counties Associations, etc.—that may need some information if they are not part of the regional flood management groups.

8. CLOSED SESSION

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.

To discuss litigation (Hardesty et. al. versus Sacramento Metropolitan Air Quality Management District et. al; United States District Court, Eastern District of California—Sacramento Division, Case No. 2:10-cv-02414-GEB-JFM), pursuant to Government Code Section 11126(e)(1).


To discuss litigation (Fay Island Reclamation District v. California Department of Fish and Game, et. al; California Superior Court, County of San Joaquin, Case No. 39-2009-00228660-CU-BC-STK) pursuant to Government Code Section 11126(e)(1).

10. ADJOURN-REGULAR BOARD MEETING

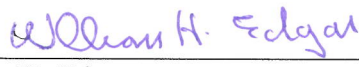
The Board unanimously adjourned the Open Session at 12:34 p.m.

Dated: June 28, 2013

The foregoing Minutes were approved:



Jane Dolan
Secretary



William H. Edgar
President