

**REPORT FOR THE MEETING OF  
THE ADVISORY WATER COMMISSION OF THE SAN JOAQUIN COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT  
FOR MAY 16, 2007**

The regular meeting of the Advisory Water Commission of the San Joaquin County Flood Control and Water Conservation District was held on Wednesday, April 18, 2007, beginning at 1:00 p.m., at Public Health Services, 1601 E. Hazelton Avenue, Stockton, California.

**Roll Call**

Present were Commissioners Chapman, Kamper, Gilmore, Nomellini, Roberts, Weybret, Edwards, Secretary Lytle, Vice-Chairman Alternate Williams, and Chairman McGurk. Others present are listed on the Attendance Sheet.

**Approval of Minutes for the Meeting of March 21, 2007.**

Motion carried to approve the minutes with corrections to the Roll Call. (Gilmore/Edwards).

**Public Comment (Non-Agenda Items)**

None.

**SCHEDULED ITEMS**

I. **Discussion Items:**

A. *Update on COG "One Voice Trip" to Washington D.C. and ACWA Conference Items*

Dr. Mel Lytle, Water Resources Coordinator, reported that approximately sixty representatives from all over the County participated in the One Voice Trip to promote projects varying from transportation, water hospitals, and education among others. Representatives met with the staff of Congressmen Jerry McNerney and Dennis Cardoza; and Senators Dianne Feinstein and Barbara Boxer.

Representatives also met with the Bureau of Reclamation Staff to push the completion of the MORE WATER Project's Appraisal Study which is currently in Washington D.C. awaiting approval.

Dr. Lytle further noted that the County submitted a \$500,000 appropriation request for the MORE WATER Project. It had also gained the support of Senator Feinstein who pledged \$1.5 million towards the Project. However, Congress has announced that it will not have earmarks for appropriation budgets this year. Whether this will jeopardize the appropriation promised by Senator Feinstein is unknown.

Later following the One Voice Trip, County representatives also attended the Spring ACWA conference held in Sacramento. Their purpose was to capture County interests whether for water storage, groundwater recharge, state budgets or bond measures.

In attendance was Governor Arnold Schwarzenegger who promoted SB 59 introduced by Senator Dave Cogdill. SB 59 proposes the issuance of bonds totaling \$3.95 billion for the purpose of financing a water supply program.

ACWA also promoted its development of action plan named *The Time is Now*. The intent is to generate support and assist ACWA members with local outreach and legislative contacts. More specifically, the plan requires ACWA members to take a formal position in support of a comprehensive water package that includes water storage, a Delta solution, and water use efficiency. This position is then to be conveyed to Assembly and Senate members and local leaders. Lastly, ACWA members are expected to follow up with legislators to give the support they need to take action.

*B. Update on Flood Control Technical Advisory Committee Activities – Roger Churchwell/Steve Winkler*

Mr. Roger Churchwell, County Senior Civil Engineer, reported that the County promoted the San Joaquin County Urban Flood Protection Project while on the One Voice trip and have requested an appropriation for USACE support and to perform a feasibility study. At the local level, the Technical Committee developed an MOU to bring a unified approach and address commitments to the Project. The MOU will also help to initiate discussions on forming a joint powers authority. Thus far, the County Board of Supervisors adopted the MOU along with Reclamation Districts 1608 and 2074, and the Cities of Manteca and Lathrop. The San Joaquin Area Flood Control Association and the City of Stockton have yet to decide whether to adopt the MOU.

Mr. Churchwell also reported that the US Army Corp of Engineers performed levee inspections along Bear Creek, Calaveras River, North Little Johns Creek, and Duck Creek. After inspection, USACE had concerns with Bear Creek regarding vegetation, rodents, encroachments, and erosion. The Lower Calaveras levees were also found to have problems with maintenance and vegetation in addition to encroachment issues. Along North Little Johns Creek, USACE found problems with vegetation and blockage. Mr. Churchwell also noted that a State project was built in the area in the early 1950s and was never provided easements to perform maintenance at the location. Currently, the County is working with the California Reclamation Board to develop these easements. Along Duck Creek, there are concerns with vegetation in which the County is working with USACE to resolve. USACE warned that not meeting the standards of maintenance would result in a PLA 499 status indicating emergency repair or assistance from USACE.

With the problems that USACE found under inspection, USACE is allowing a one year grace period for all the issues to be resolved. Encroachments and easements will in part be handled by the State Water Resources Control Board by providing support to the County under a timeline that the SWRCB will provide.

At the Federal level, FEMA has announced through emails that meetings will be held to discuss provisionally accredited levees. Under this program, FEMA will allow agencies to collect information on levees to indicate whether levees will meet the standards of 6510 to obtain accreditation. Mr. Steve Winkler, County Deputy Director conveyed areas that are not likely to be certified or will be offered provisional accreditation. These areas include south of Mossdale Wide, Port of Tracy, Reclamation Districts 2056, 2095, 2075, 2085, 2064, 2094, and 2096.

To receive provisional accreditation for a levee, the maintaining agency must have all appropriate agencies involved to sign an agreement (to be distributed at the FEMA meeting) indicating that all agencies believe that the levee is capable of meeting a one hundred performance criteria, but does not have all the appropriate documentation to support this claim. Provisional accreditation will not be offered for levees with serious concerns. If an agency offered a PAL status is unable to acquire all signature approvals from the appropriate agencies, the levee will then return to flood plain status.

*C. Update on Efforts to Defend Mokelumne River Water Rights & Filings: NSJWCD Permit 10477 & Application 29835*

Dr. Lytle reported that the North San Joaquin Water Conservation District (NSJWCD) had its Petition for Reconsideration granted. NSJWCD was scheduled for a pre-hearing on May 23<sup>rd</sup> and a two-day hearing beginning on June 21<sup>st</sup>.

Commissioner Fred Weybret informed that the State Board commented that NSJWCD did not use due diligence in utilizing the 20,000 af of water. Commissioner Weybret claimed that this is because NSJWCD is under-financed; therefore NSJWCD took action to impose a groundwater use charge to generate funds. NSJWCD held three public hearings and, overall, received a 19% objection to the proposed groundwater charge. According to Prop 218, an objection of over 50% is needed to terminate the proposal.

The groundwater charge will begin in NSJWCD's 2007-08 fiscal year. Commissioner Weybret added that the NSJWCD may also face a lawsuit. A small group of dissidents claimed that NSJWCD may not be conforming to Prop 218 and should have implemented a ballot process.

San Joaquin County had also filed a Petition for Reconsideration on April 12<sup>th</sup>. Thereafter, the State Water Resources Control Board has 60 days to respond. Commissioner John Edwards asked what

the process is if the County loses the hearing. Mrs. DeeAnne Gillick, of Neumiller and Beardslee and County Special Water Counsel, suggested a lawsuit.

II. **Action Items:**

A. *Discussion and Possible Action on DWR/USBR Proposed Intent to Violate South Delta Water Quality Standards*

Alternate John Herrick was unavailable to lead the discussion.

B. *Discussion and Possible Action on Eastern Water Alliance – East Bay Municipal Utility District Principles of Agreement*

\*Transcribed from the audio recording of the May 16, 2007 Advisory Water Commission Meeting (Beginning Time 00:01:23 on Audio File)

**Mr. Kevin Kauffman:** I will be brief. I do want to give Rob a chance to say hello...to give the Commission here some additional information. I think Dr. Mel wants to also say a few words but I think...what's in your packet is these Principles of Agreement that were (inaudible) by Eastern Water Alliance. Have you seen them? Fred...you're trying to hear me? Alright, that's better? That volume's good?

**Commissioner Weybret:** Thank you very much.

**Mr. Kauffman:** Alright. So you have a copy of these principles in your packet. This is something the Alliance approved two Saturdays ago and has been discussed among the parties of the Advisory Water Commission at the Brown Bag just prior to this meeting. We received comments, or I have received comments now from the County. The Board of Supervisors acted yesterday to support these principles for beginning negotiations with East Bay MUD with some suppletive, but I consider fairly minor and good changes to the principles along with comments from Woodbridge Irrigation District and South Delta Water Agency, and then verbal comments today from Central Delta Water Agency. So, it looks like the next step will be to take these principles as they will be amended by all these other comments and sit down with all the interested parties on the San Joaquin side and see if we can come up with a final list of principles to present East Bay MUD to begin these negotiations. Our goal is to at least have an agreement on the principle..on the principles with East Bay MUD prior to North San Joaquin's hearing before the State Board on June 21<sup>st</sup> so we could report that progress at the State Board hearing. So with that I'll stop and see if Rob's got anything to add.

**Commissioner Gilmore:** Kevin, how verbal were those Central Delta comments you got?

**Mr. Kauffman:** Well they weren't very...not as loud as I'm speaking to Fred right now, but they were things that we heard before and nothing that was frightening.

**Commissioner Nomellini:** There weren't any swear words.

**Unknown:** Good. I thought that was pretty positive.

**Mr. Rob Alcott:** Thanks, Kevin. My name is Rob Alcott. I'm the Director of Water Management Resources with East Bay MUD. Tom Flinn, as from meeting head of the Farm Bureau in Sacramento last Thursday, asked that someone be here that would talk a little about the principles. I'm not even sure exactly what the Advisory Water Commission would do in terms of your all discussions. So...I was primarily prepared to respond to questions if you had some but, I guess you wanted me to talk first so I got a couple thoughts to share. You know, here early enough to hear the Brown Bag discussion about the principles and...you know, the way I view the discussions that have taken part so far over the past month or so with Senator Machado and Kevin and my boss, Dennis Deamer. It's been a little awkward and, you know, I talked to my friends at San Joaquin, read the newspaper

articles. I think there was a little uncertainty why North San Joaquin wasn't at the table and how come people weren't aware of these communications, and I think it's a...there's a lot of good faith effort. Those first couple discussions but I think it's a much better effort when it's all transparent, and we have these kind of discussions in a process that works for both, and folks aren't wondering what one another's doing in terms of side bar communications. One of the things that the District (EBMUD) is very insistent about, and that is, not to have an agreement with some subset of San Joaquin interests at the expense of another subset of interests. And similarly, we're not interested in working a deal that works for San Joaquin that works adversely. It does not work for the Amador and Calaveras folks which makes this stuff pretty complicated and as Tom Shepherd pointed out and Dante pointed out, I mean, it's a lot of work. You can't come up with agreements that are vague and are allowed to be interpreted differently by different parties. Extent folks have different expectations of what an agreement is, and it's just a recipe for a long-going new battle field which is over an interpretation over an agreement that everybody felt said two different things. So...we're in clarity. We want some transparency, and we want it to work for the folks on the river that are potentially affected by the arrangement. So...the only other thing I'd like to offer here is as I watched the process unfold, the District (EBMUD) offered in response to the first meeting with Senator Machado, and Kevin, and Dennis. We offered up a one-page set of principles that address some issues that have been discussed at that meeting. I presume Kevin...the folks who have seen those. Now the principles that you are all talking about today are San Joaquin's current draft of a response to the one-page set of principles the District offered.

**Mr. Kauffman:** The only clarification I'll make there is 'No', I don't think everybody's seen the progress and we'd be happy to share those if anybody's interested.

**Mr. Alcott:** It's...I think things are going to roll on, and the first documents are going to be aged quite quickly, but there's a couple things inherent in the principles that were in our one-page document that I think are important to keep in mind. I think that the two cornerstone...the two big items on the top of the list in the principles. The first one is for a lack of a better term, is backstopping North San Joaquin's 20,000 acre-feet, and that was characterized in our proposal and characterized in the Eastern Water Alliance's draft counter-proposal that is being subject to State Water approval, and need to be clear, East Bay MUD doesn't have the ability unilaterally to backstop North San Joaquin. That would require some kind of ...(inaudible) here is that...that would be some kind of contract and that would require State Board endorsement per (inaudible) to be valid. So...just to be clear, we're talking about things that require a third party's approval. The other main part of the water supply component here is the additional 20,000 acre-feet of water, and we similarly believe the State Board approval of any allocation of that 20,000 acre-feet is necessary for it to become real, and importantly East Bay MUD believes that Amador and Calaveras' concurrence with that 20,000 acre-feet of water is necessary too, and that's because of an agreement...two agreements..the agreements... '58 Agreements as we refer to that were entered into back during Camanche permit hearings. East Bay MUD by agreement has pledged not to develop additional water development on the Mokelumne. The Amador and Calaveras folks believe that provision precludes East Bay MUD from unilaterally agreeing to provide additional 20,000 acre-feet or any other amount of water to North San Joaquin. Consequently, in that document that we presented, that one-page document, that's why we put that 20,000 acre-feet in the context of the Mokelumne Forum process, because that's the table that the Amador and Calaveras people are sitting in, and that's the present thing for us to figure out a project that works and meets San Joaquin's needs, Foothill needs, as well as East Bay MUD's needs. That was some of the thinking behind those provisions and draft principles that we intended earlier in April.

**Commissioner Nomellini:** Now we got 'em.

**Alcott:** And I believe him.

Laughter.

**Chairman McGurk:** Anybody on the right...left?

**Commissioner Nomellini:** Years ago we entered into negotiations with, the County I mean, with East Bay MUD and with the community came up with principles for agreement. We were talking in the context of developing a groundwater bank in the concept of that our community was putting forth towards East Bay MUD was let's take the assets we have and the assets you have and see if we can't develop a plan recognizing that, you know, one party shouldn't have to pay the other party cost or anything like that, but the sense that we were advocating was kind of a partnership trying to solve all of East Bay MUD's future problems as well as San Joaquin's. That negotiation progressed to the point where basically, we were told by Dennis that if you want to attach something on our project, kind of shift over to your Freeport Diversion Project deal with Sacramento (inaudible), it was one of these where you want to tack something on, as long as it doesn't cost us or hurt us, you can go ahead. Now I was one of the attorneys representing the County interests. I was on loan from Central Delta, and I refused to go into negotiation until I had all the principals involved. City Council, City of Stockton, everybody signed off on it. I reported that back to my clients as 'Go pound Sam position', and I understand English like I was talking about earlier. I see a little different attitude here on the part of East Bay MUD with regard to these principles. I assume it arises out the fact that East Bay MUD's permit extension is an important element in this process. So I hope I'm reading it correctly. Maybe you can confirm. We're trying to reach for broader consensus here than rather tack something on and (inaudible) perhaps. You have some enthusiasm for reaching a broader accord on the river?

**Mr. Alcott:** Yes we do. A couple of interesting points in your...I'm not personally familiar with prior discussions. Well I think, you know it's interesting Mokelumne Forum process...one of the motivations was following the what turned out to be a pretty long but successful process. In Sacramento, where it was a lot of conflict and the lesson there is...it took a long time but they hammered out a deal and that deal's been sound and a lot of other projects have been built in Sacramento without opposition from the environmental community, or the competing water districts, and those kind of things. The idea was before a number of State Board actions, before the State Board action adverse to North San Joaquin, the State Board action adverse to San Joaquin's water right application, and that of noticing our permit extension. All of those discussions that took place before kind of have that off, you know, over looking your shoulder not sure exactly when those things will unfold if at all. Right now we've got...I think there's an urgency about what we've got going. We've got a level of uncertainty of perspective of what the State Board is going to do on all three of our items, and you know, as Art Bag has said on day at a conference, he said he'd observed and participated in a lot of decisions the State Board has made that hasn't satisfied anybody. And he advocated the audience the best solution to water problems is not to leave to the State Board hands, but to work it out on a regional basis. I believe that's our enthusiasm...we agree. We're better off signing a deal with all honesty and we all agree it works for us, and having to accept something that the State Board always gives a...really ends up in frustration about...don't know what else to do. So...yes, sorry for the long answer.

**Unknown:** Alright. I see that as a change in...

**Mr. Alcott:** At least in short? (laughter)

**Commissioner Weybret:** We're talking about getting together before our June 21<sup>st</sup> meet. Who's going to take the leadership in setting this up? Kevin, is that going to be...(inaudible) ?

**Mr. Kauffman:** I had suggested that at the Brown Bag, Fred, yes.

**Mr. Alcott:** Now that's a meeting amongst you all.

**Commissioner Weybrett:** I understand that, but I wanted to be sure of what's was in store.

Persons talking at the same time.

**Commissioner Nomellini:** (Jokingly) They weren't planning on inviting you.

**Commissioner Weybret:** I didn't hear you.

**Commissioner Nomellini:** I said 'They weren't planning on inviting you.' (laughter)

**Mr. Alcott:** Thank you, everybody. Appreciate the accommodation on the agenda.

**Chairman McGurk:** Now, did you leave something out, Kevin, or...?

**Mr. Kauffman:** No, I (inaudible) to the...there was just a number of people that participated in the Brown Bag discussion. Dr. Mel, Tom...is Tom is still here? There he is...Tom Flinn, Ed Steffani. I would just suggest...

**Commissioner Nomellini:** Tom, Tom, Tom, and Mel.

**Mr. Kauffman:** So that...the Commissioner would like to hear from either of those folks to get their points. It could be valuable to the Commission.

**Chairman McGurk:** Yeah, let's finish 2B.

**Unknown:** Tom Flinn.

**Mr. Tom Flinn:** Yeah, I think our discussion before the Board (County Board of Supervisors) were...yesterday, were...I think as Kevin would hope as pretty simple. Basically, conceptually try to accomplish two things. One of which is looking to all the efforts we've had in this County over the last fifteen years to pull ourselves together from a water point of view. We think that was important. (inaudible) But all the parties affected by this should be party to these discussions. (inaudible) You couldn't deal without them because you were asking them to drop their objections to the East Bay MUD project. Secondly, we felt it was important to get Supervisors in there to support the MORE Water Project. Not only do you have East Bay MUD drop their protest (inaudible), but also you can ask them to go to the...supporting the project and giving us access to their facility to develop the project. I think (inaudible) good ideas too. The main thing is we think it's a good idea. We're just trying to hone it down a little tighter level there, and make sure that everybody in the County stays together on this. I think that's probably the effort of having unity in this County is a real strength. (inaudible) Questions?

**Chairman McGurk:** Who wants to say...Mel Lytle?

**Mr. Kauffman:** Only if they want to, but Ed? (inaudible) Or Andy? I did point out to the Brown Bag group is that we did get comments from Woodbridge Irrigation District and their similar comment to what Rob mentioned about the upland folks of Amador and Calaveras. There's these agreements between East Bay MUD and these water districts about the use of that water. So I think if we end up coming up with principles that recognizes those agreements and doesn't infringe on those water rights. I think they'll be easier to resolve with the folks that have disagreements.

**Chairman McGurk:** Rob, for clarification, you called...inhouse, you refer to those as the '85?

**Mr. Alcott:** 1958.

**Chairman McGurk:** '58?

**Mr. Alcott:** '58 Agreements, yeah. Resolved during that period. About '52 to 1960 when the whole Camanche thing was going. There was a lot of that (inaudible) between, well, all the communities in the San Joaquin, and then Amador and Calaveras sued the State Board and the '58 Agreements were mitigations that caused Amador and Calaveras to remove their protests to East Bay MUD's Camanche water right application. (inaudible) ended up being issued as the Camanche permit. So, those agreements go way back and they're attached to this whole Camanche issue.

**Chairman McGurk:** Well, thank you, all.

(Ending Time 00:19:06 on Audio File)

III. **Communications:**

A. *Bureau of Reclamation Announcement – Planning for the Future at the New Melones Lake Area*

**Public Comment:** None.

**Possible Future Agenda Items:**

- Update on Delta Water Supply Project

**Adjournment:** Meeting adjourned at 2:07 p.m.

**Next Regular Meeting:** **July 18, 2007, 1:00 p.m.**

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