

**REPORT FOR THE MEETING OF
THE ADVISORY WATER COMMISSION OF THE SAN JOAQUIN COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
October 21, 2009**

The regular meeting of the Advisory Water Commission of the San Joaquin County Flood Control and Water Conservation District was held on Wednesday, October 21, 2009, beginning at 1:00 p.m., at Public Health Services, 1601 E. Hazelton Avenue, Stockton, California.

Roll Call

Present were Commissioners Nomellini, Roberts, Taro, Herrick, Kamper, Edwards, Alternate Conarro, Secretary Lytle, Vice Chair Price and Chairman McGurk. Others present are listed on the Attendance Sheet. The Commission had a quorum.

Approval of Minutes for the Meeting(s) of September 16, 2009.

Motion carried unanimously to approve the minutes of September 16, 2009 with grammatical corrections to page 3. (Conarro/Taro).

Public Comment (Non-Agenda Items)

None.

SCHEDULED ITEMS

I. Discussion Items:

A. Update on Recent U.S. Court of Appeals Decision SEWD and CSJWCD v. United States

Ms. Jennifer Spaletta, Herum Crabtree Brown and Lead Counsel for the court case, announced a significant win on September 30, 2009 from the Federal Circuit Court of Appeals. This case was actually initiated in 1993 at the completion of the New Melones water project by local districts Central San Joaquin Water Conservation District and Stockton East Water District, the same year the Central Valley Project Improvement Act was passed and implemented resulting in the Bureau of Reclamation not delivering water under the existing water supply contract. The case was stalled in the mid 1990's while the Bay Delta hearing was in process. The case was re-initiated and filed with the Court of Federal Claims in Washington D.C. where monetary damages are awarded from the government. The trial began in 2006 and sought to dispute twelve years of breach of contract (1992-2004). In this case, the District Court judge ruled in favor of the Bureau of Reclamation; however, the Appellate Court realized that the U.S. Government had not fulfilled their contract obligations to this local area in the years 1999-2004. Damages will be determined for breaching the contract during the years. Also, whether an unconstitutional taking occurred will also be determined for the other years in dispute, and this may require a trial or summary judgment process. A return to court is expected in March of 2010 for a status conference where a schedule will be set for determining damages and proceeding on this case.

Commissioner Edwards asked how this decision will affect people south of the Delta that have been limited due to environmental impact. Ms. Spaletta stated that contractors who have CVP contracts south of the Delta entered into an amended contract with the U.S. within the last 10 years. These amended contracts refer specifically to issues beyond the control of the federal government, while other contracts do not. Contractors are reviewing their respective provisions concerning this decision. Commissioner Nomellini stated the reason the case sat so long was Judge Wanger wanted to refer the case back to the State Water Resources Control Board (SWRCB) to decide on the issues first. The SWRCB wanted the County to pay Stockton East Water District \$400,000 as a deposit toward costs. So, the County waited until the State Board ruled in D-1641.

B. Discussion on the Freeport Element of the American River Use Strategy Draft Engineering Feasibility Study Report

Mr. Brandon Nakagawa, County Water Resources Engineer, offered a brief update regarding the Freeport Element of the American River Use Strategy report. This report supports the application for the State Board of American River Water (pending since 1990), and also supports negotiations with Sacramento County and EBMUD. The two-year study is near completion and includes an examination of the project from the point of diversion at Freeport including conveyance, and recharge either directly or delivered in-lieu of groundwater. This included north/south and east/west conveyance, pipelines, canals and waterways, costing, project operations, design and capacity. The Freeport report will be publically released over the holiday season for a leisurely review and brought back to the Commission for recommendation to the Board of Supervisors in the first part of 2010.

C. Update on Flood Protection and SJAFCA Activities

Roger Churchwell, San Joaquin Area Flood Control Agency ((SJAFCA), stated the Provisional Accredited Levee (PAL) submittals are moving forward as scheduled. Also, submittals for 14 Mile Slough and Shima Tract have been submitted. Additional analysis is in progress on the north bank (possibly, south bank) of the Calaveras River with an end date of November. The conditional letter of map revisions regarding the closure structure for the Smith Canal is scheduled for the end of this year.

Mark Connelly, County Flood Management Division, stated that public outreach meetings regarding Federal Emergency Management Agency (FEMA) have been met. All residents in the Smith Canal area, as well as, other residents impacted by the new flood maps were invited to the public meetings. All residents in the effected areas have been given the chance to purchase flood insurance.

Mr. Connelly stated the purpose for the D.C. trip was to meet with the Flood Insurance Administrator from FEMA to discuss extensions on rates and BRP rates. Another request for consideration is to limit or minimize building restrictions in areas where there is an active feasibility study underway, such as the Smith Canal. The request would limit or minimize building restrictions, to be placed in an A-99 or AR zone so that rebuilding can take place without elevating homes 6 to 10 feet. FEMA offers a community rating system program that offers discounts to communities who are pro-active with flood insurance. Following the hearings held by the Central Valley Flood Protection Board regarding urban encroachments, enforcement actions will follow regarding Bear Creek and Twin Creeks subdivision. To date, no hearings have been held regarding the encroachments along the Calaveras River. Provisional accreditations will expire in March 2010; there are 8,000 more properties (\$6 billion assessed valuations) to be addressed. This is the state's levee and should be their action to resolve these issues along the Calaveras River.

Also, a new inspection program is being started by the United States Army Corp of Engineers (USACE) which is described as a more rigorous periodic inspection of levees, and they're starting along the San Joaquin River. There is a concern of redundancy and the cumulative impact. The California Water Conference is being held in Sacramento on October 26-28. There will be discussion on the Delta and the Lower San Joaquin River Feasibility Study. Commissioner Will Price asked if the deadline for PAL encroachments is important, and will decisions delay the acceptance of the canal. Mr. Connelly stated this is a project levee (Smith Canal) that used to be fully certified (both the Bear and Calaveras) by the U.S. Army Corp of Engineers which allowed federal reimbursement for disaster and floods. The County is no longer eligible for public law 84-99 rehabilitation funds. If we are able to certify these levees through our local certification to determine the encroachments or deficiencies are not significant, they may be accredited by FEMA. The state should rectify these deficiencies so that we can be reinstated.

II. Action Items:

A. Discussion and Possible Action on Delta Legislation Package, 5-Delta Counties Coalition and Other Activities

Dr. Lytle gave an update on the Delta Legislative Package, as the battle at the State Capital continues. The joint hearings between the Assembly and the Senate regarding the legislative package have been cancelled until next week due to lack of new legislation being submitted to the committees for review. Independent letters by different agencies, water districts, and associations show significant opposition to the Delta package primarily from Northern California. These letters have been submitted prior to the weekend with the concern for a large push over the weekend by a coalition in favor of the package.

The Delta Counties Coalition continues to be very active, and updates are provided weekly to the Supervisors by staff and advocates. A trip to D.C. is planned for the first week of December on behalf

of the Coalition. Also, a letter was sent to Senator Steinberg concerning the protection of water rights for the 5-Delta counties and positions regarding the current Delta legislation. Another letter was submitted to the state by a very large environmental coalition (23 various agencies) stating their opposition to the current Delta legislation, as it is written. A number of California Water Policy recommendations are presented with regional self-sufficiency being the very first key value listed, this is also one of the Better Way concepts for San Joaquin County. The L.A. Economic Development Corporation assessed nine water supply options for southern California. In their analysis, they found that urban water conservation and local stormwater capture were both more cost effective strategies than importing water, and provided the added benefits of creating near-term improvements positively impacting the environment in reducing greenhouse gases. So, people in the L.A. basin are stating concerns for more cost effective alternatives other than building the Peripheral Canal.

Dr. Lytle stated there should be parallel efforts being made to oppose the Delta package as an alternative. If the Integrated Regional Water Management Program (IRWMP) is elevated, it could solve many of the water supply problems with 50 different water plans developed. The Department of Water Resources was unaware of many of the benefits these 50 plans could provide. The CSAC conference brought Delta counties' supervisors to voice concerns of opposition for the Peripheral Canal. Both Dr. Lytle and Commissioner Nomellini gave presentations describing the impacts of the Canal; Alternate Zuckerman gave a presentation on regional self-sufficiency, and Tom Flinn, Director of Public Works and Mark Connelly, County Flood Management Division gave discussions regarding flood management issues. Regarding federal issues, Senator Feinstein has addressed interest in developing legislation for the Delta, and an MOU has been signed by the federal agencies to cooperate on the Delta issue.

Commissioner Price stated his concern with the process; he asked if we are making the argument on engineering grounds or political arguments. Commissioner Nomellini stated they don't have a two-thirds vote; there is no policy document or draft. He stated the legal aspects are all still there. Dr. Lytle stated building the Peripheral Tunnel Alternative would be the largest underground construction project in history (two tunnels 33' diameter and 150' below the surface for nearly 40 miles). The issue of cost (~\$78 billion) for the project, legislation and mitigation fees is hard to accept for California. The tunnel would yield no new water and would use energy, not generate it. In comparison, China built the Three Gorges Dam for \$23 billion, it has 26 turbines that generate 85 million mega-watt hours of electricity and has 32 million acre-feet of capacity in its reservoir. The generation of this dam is equal to 18 nuclear power plants. Commissioner Nomellini stated there is a California Energy Commission study showing the kilowatt acre-feet to pump water from Tracy to southern California is approximately 2500-2700 kilowatt/acre-feet. Desalting ocean water is 4500/kilowatt acre-feet, but desalting brackish water and municipal waste water is approximately one-third of this and is less than pumping water to southern California.

Dr. Lytle continues to hold this as an action item, even though there is no specific action to be taken at this time, but may be at a later date.

III. Communications:

- A. Woodbridge Irrigation District Announcement – Notice of Intent to Adopt a Mitigated Negative Declaration for Water Transfer to the City of Stockton
- B. S.F. Chronicle Article: EBMUD Board Votes to Boost Water Supply
- C. Contra Costa Times Editorial: Fix Delta Levees Now, Get Local Buy-in on other Water Projects

Public Comment: None

Possible Future Agenda Items: None

Adjournment: 2:15 pm

Next Regular Meeting: November 18, 2009, 1:00 p.m.
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