MEETING

STATE OF CALIFORNIA

THE RESOURCES AGENCY

CENTRAL VALLEY FLOOD PROTECTION BOARD

THE RESOURCES BUILDING

1416 NINTH STREET

AUDITORIUM

SACRAMENTO, CALIFORNIA

FRIDAY, DECEMBER 3, 2010

8:35 A.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

APPEARANCES

BOARD MEMBERS

Mr. Benjamin Carter, President

Ms. Teri Rie, Vice-President

Mr. Butch Hodgkins, Secretary

Mr. John Brown

Ms. Emma Suarez

STAFF

Mr. Jay Punia, Executive Officer

Mr. Len Marino, Chief Engineer

Mr. Dan Fua, Supervising Engineer

Mr. Ali Porbaha, Supervising Engineer

Mr. Curt Taras, Supervising Engineer

Mr. Gary Lemon, Staff Engineer

Mr. James Herota, Staff Environmental Scientist

Mr. Amber Woertink, Office Technician

Ms. Deborah Smith, Legal Counsel

DEPARTMENT OF WATER RESOURCES

Mr. Gary Bardini, Chief, Flood Management Division

Mr. Bill Croyle, Chief, Flood Operations Branch

Mr. Arthur Hinojosa, Chief, Hydrology & Flood Operations

Mr. Noel Lerner, Chief, Maintenance Support Branch

Mr. Danny Meyersohn, Senior Engineer

APPEARANCES CONTINUED

DEPARTMENT OF WATER RESOURCES

Mr. Mike Mirmazaheri, Chief, Bay-Delta Levees Branch

Mr. Merritt Rice

Mr. Maury Roos

Mr. Jennifer Stephenson

Mr. Ward Tabor, Assistant Chief Counsel

ALSO PRESENT

Mr. Paul Brunner, Three Rivers Levee Improvement Authority

Mr. Larry Dacus, Three Rivers Levee Improvement Authority

Mr. Paul Devereux, Reclamation District 1000

Ms. Ali Forsythe, U.S. Bureau of Reclamation

Mr. Reggie Hill, Lower San Joaquin Levee District

Colonel William Leady, U.S. Army Corps of Engineers

Ms. Meegan Nagy, U.S. Army Corps of Engineers

Mr. Jason Phillips, U.S. Bureau of Reclamation

Mr. Scott Shapiro, California Central Valley Flood Control Association

Mr. Robert Sieglitz

Mr. Jeffrey Twitchell, Levee District 1

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PROCEEDINGS

PRESIDENT CARTER: Good morning, ladies and gentlemen. Welcome to the Central Valley Flood Protection Board meeting for December 3rd. We would like to go ahead and get started with our meeting.

Mr. Punia, would you please call the roll.

EXECUTIVE OFFICER PUNIA: Good morning. Jay Punia, Executive Officer of the Board. All the Board members are present today.

PRESIDENT CARTER: Very good. Thank you very much. I'll move on to Item 2, Approval of the Minutes from September 23rd, 2010.

BOARD MEMBER BROWN: So moved, Mr. Chairman.

PRESIDENT CARTER: We have a motion to approve. Is there a second?

SECRETARY HODGKINS: I'll second.

PRESIDENT CARTER: Second.

Any discussion, corrections?

I have a couple minor ones.

On page 2, Item 3, Approval of the Agenda, "Upon motion by Board Member Brown and seconded by Vice-President Rie", that should probably be Board Member Rie, because Ms. Rie was not quite Vice-President. That happened under Item 5.

And a couple typos that I will submit to staff

that don't have any bearing on content. Let's see, there was one other one. I guess that's it. That's all my notes show. So if the motioner and the seconder would consider that change.

BOARD MEMBER BROWN: So considered.

SECRETARY HODGKINS: Accepted.

PRESIDENT CARTER: All right. So we have a motion and a second.

Any further questions or corrections?

Okay. All those in favor of approving the minutes of September 3rd -- September 23rd as amended, please indicate by saying aye?

(Ayes.)

PRESIDENT CARTER: And opposed?

Motion carries unanimously.

We'll move on to approve the agenda. There are -- are there any suggested changes to the agenda as published for today?

Mr. Punia.

EXECUTIVE OFFICER PUNIA: Staff is recommending the following changes to the agenda as published:

Item number 8A under Consent Calendar, staff is recommending this item be postponed for a future date. The reason for this recommendation is staff is still talking and discussing the hydraulics of this project, so

some issues are still not resolved, so staff is recommending that this be postponed.

Item 8F, Permit Number 18623. Staff is recommending that this item be postponed for a future date also. The reason for this is, the real estate issues we were hoping to resolve, but they are still being discussed.

And in addition to this, the closed session, counsel has advised that we don't need a closed session, so staff is recommending to postpone the closed session.

Those are the changes staff is recommending for the Board's consideration.

Thank you.

PRESIDENT CARTER: Okay. Are there any other suggested changes to the agenda as published for today?

All right. The applicants for Items 8A and 8F are in concurrence with the postponement of those items?

EXECUTIVE OFFICER PUNIA: Yes. The staff has talked to the applicant and they've been informed. And they agree with this recommendation.

PRESIDENT CARTER: Okay. All right. Any other questions?

If not, we'll entertain a motion to approve the agenda as published with the removal of Items 8A and 8F for a future meeting and removal of the closed session

Item 15 for today.

BOARD MEMBER BROWN: Mr. Chairman, I move that the agenda be revised as stated.

PRESIDENT CARTER: We have a motion to approve as amended.

A second?

SECRETARY HODGKINS: Second.

PRESIDENT CARTER: We have a second.

Any discussion?

All right. All those in favor indicate by saying aye?

(Ayes.)

PRESIDENT CARTER: And opposed?

Motion carries unanimously.

At this time, it gives me great pleasure to welcome Colonel William Leady from the Sacramento District who is joining us today. Colonel Leady is the new District Engineer and Commander of the Sacramento District here of the Army Corps of Engineers.

And Colonel Leady has about 24 years of experience with the Corps in a variety of assignments and leadership positions. He lead the Detroit District of the Corps of Engineers. He has deployed and served in Somalia, Haiti, Afghanistan, Iraq. He has a very distinguished career, and we look forward to many more

distinguishing service achievements here in Sacramento.

He has a bachelor of science mechanical engineering from the military academy at West Point and a Master of Science in Environmental Engineering from Purdue University.

So with that, I'd like to welcome Colonel Leady, thank him very much for taking some time out from his busy schedule and to come and meet the Board and address the Board. Good morning, welcome.

COLONEL LEADY: Good morning, sir. Well, first of all, I'd like to thank the Board for allowing me to address you. It's a pleasure to be here. The Central Valley Flood Protection Board and obviously the State of California is our largest civil works partner or certainly the one that is central to our existence.

You know in 1917, the federal government passed what was then called the Flood Control Act. It was the first time the Corps got permanently involved and routinely involved in flood control, what we called at the time. Now we call it flood risk reduction and that's an important distinction.

But two things were mentioned in that legislation, the Mississippi River and the Sacramento River. And a lot of history gets lost in that Sacramento part of it, and mostly focus on the Mississippi. But

certainly that is the origins of this District, which existed out of San Francisco at that time, but where we got today.

The other thing I'd like to say, I always like to talk about why is an Army officer staining here today. And I use that to springboard in to a little bit about the Corps of Engineers. It seems very strange to -- it should seem very strange. It seems strange to me. Why is an Army officer worried about levees in Sacramento? That's not a model that any other nations uses.

And it goes back to a little bit of history, where Congress -- the U.S. Congress really in the 1820s first started thinking about commerce and a federal responsibility to promote commerce. Before that, the federal government had no role in promoting commerce.

So they appropriated some money for clearing snags on the Ohio River, improving harbors on the east coast. And they had no one to give that money to, because there were no engineers in America outside of the army, because the only engineering school in the United States at the time was West Point.

So they appropriated that money directly to the Department of the Army. The Army used it to clear snags on the Ohio and the Allegheny River, and to improve some harbors on the east coast. And that was the origin of

what today is the United States Army Corps of Engineers, which is about 36,000 people serving around the world, mostly in the continental United States with the role of civil works, water resource management for the nation, at the federal level, and then also for supporting our military with construction on Army bases, and Air Force bases around the world.

And then as the nation changed in the sixties and the federal government became much more environmentally aware and the Clean Air Act and the Clean Water Act, the Corps picked up a regulatory role, where we, for the EPA, regulate and manage Section 404 of the Clean Water Act. So that's why an Army officer and the Army Corps Engineers is involved in all those things.

But I use that to springboard in what about the Sacramento District. The Sacramento District is about 1,150 professionals right now. Of that, 10 are military, and the other 1,150 are DA civilians like Brandon and Meegan. So the Army provides kind of the leadership and maybe just a little bit of oversight to this large, very professional Department of the Army organization. We are the Department of the Army, but it's largely a civilian organization.

And the military officers kind of come and go out of it. So I've had 2 tours in the Corps of Engineers. As

Mr. Carter noted, I am an educated engineer, but not really a practicing engineer. I'm kind of a practicer of management and leadership, and our engineers do the technical piece of the work. And I think it's important to just talk about that a little bit as we get here.

So a little bit of background. And Jay -- or Mr. Carter, I really appreciate the introduction. It's pretty kind, maybe overly so.

You know, where are we right now? The Sacramento District -- I've been here for 6 months, extremely proud of the District. We're doing, what I think, are great things all over the place. You know, we span the Central Valley. We go into Nevada and Utah and all the way to Colorado with our civil works mission. We do a lot of construction for the Air Force and the Army in those states, mostly in California and Utah. So a lot of great people doing things all over the place.

I also think a great organization is great because they're always working to get better. And we are working to get better. We're far from a perfect organization. I have several problems. Several problems that people know about, and we're working with those. Several problems that people don't know about and we're working on those too.

But great organizations aren't great because

they're perfect. Great organizations are great because they're good and they're always working to get better, and that's what we're doing.

And you know, we have lots of challenges that we're working with the State of California, with our other local agencies, and with some of our military partners who actually are of great interest to this Board.

But I think that federal, State, and local government mix, when sometimes it adds lots of challenges, sometimes lots of frustration to the process, but I think it adds a lot of strength to the process.

I'm a big believer in democracy and the way our government is set up with a federal -- you know, a federal republic where states are sovereign, have independent processes and rules. There's a federal government, and local governments play a huge role in that. And in every State it's different. You know, a lot of similarities, but different.

I think that adds strength to the process. Sometimes it slows things down, but I think that's probably good, though sometimes very frustrating.

So, you know, as we work through lots of issues that affect this Board and our mission, and missions like the agencies of SAFCA and other local government agencies that we work with, you know, I always see those frictions

and those challenges as adding strength to the process and really coming out with a better result in the end as opposed to being a frustration of three levels of government working together. So that's just how I see it.

I know that we have lots of challenges, especially with vegetation, you know, with some levee certification issues that are coming. Funding is a challenge at the State, local, and federal level, and will always be a challenge. The nation has tons of priorities. You know, I think my job and our District's job is to fight for our priorities and let Congress and OMB and everyone else, you know, pick and choose and set those priorities. Our job is to compete as best as possible for those.

So I take that as a very important role. And that's something we do spend a lot of time and a lot of effort on, and maybe not seeing, because it's kind of our internal Corps process. But the District always has and, under my leadership, will continue to always fight for federal funding for what we see as Sacramento priorities, Sacramento District priorities, which is Central Valley, as far as flood control.

And then one more piece about the Corps of Engineers is for people who aren't completely aware of it. You may be. We are divided by watershed, so we work with

3 districts in the State of California, Sacramento, San Francisco, and Los Angeles. You know, we cover the entire Central Valley, which is kind of nice on a watershed basis. Kind of makes it rough sometimes on a political basis when we cross state lines and, you know, several districts in one State. But it works well from a scientific and an engineering standpoint for water management.

So with that, I add that, because we work closely with the those two districts in the State of California to ensure we're speaking -- you know, we have one common set of goals in working together. And then we work together internally, which probably is invisible to the Board, but the goal of that working together internally is just to be efficient and effective.

So whatever we do, we do it, you know, wisely spending taxpayer dollars.

So with that, I'd like to say again, it's a pleasure to be here. I'm new to California. My family is new to California. We live in Davis. We love it. What a beautiful state. One of the great things about being an Army officer is you get to move around a lot. That's one of the bad things about being an Army officer too.

So we've lived in, you know, many places. And this is by far right at the top of the list. What a

beautiful place to live, beautiful place to raise your family.

I would entertain any questions if the Board has any.

PRESIDENT CARTER: Are there any questions for Colonel Leady?

Well, if there are none, I want to reiterate our sentiment. We welcome you here to Sacramento. We look forward to working with you and continuing to build and strengthen our partnership with our federal partners, the Corps of Engineers.

Thank you very much for taking the time out to come.

COLONEL LEADY: Thank you, sir. And we see that exactly as that, it's a partnership. And we are working hard to be great partners.

Thank you.

PRESIDENT CARTER: Thank you.

All right. Ladies and gentlemen, at this time, we have Item 5, which is time where the Board has allocated time for public comment. We invite members of the public to address the Board on non-agendized items. People will have an opportunity to address the Board on agendized items as they come before the Board throughout the day, but this is the public's opportunity to address

the Board on non-agendized items.

We ask that you do fill out, there's some 3 by 5 cards that are on the table at the entrance to the auditorium, as well as from Ms. Woertink here up front.

I do not have any cards. I'm not aware of anybody that wishes to address the Board under public comment on non-agendized items.

Is there anybody that would like to address the Board?

Okay. We have no public comment.

Thank you.

With that, we'll move on to the Report of the Activities of the Department of Water Resources. And we welcome Mr. Bardini. Good morning. Welcome.

DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

Good morning, President Carter and members of the Central Valley Flood Protection Board. Gary Bardini, Division Chief, California Department of Water Resources, Division of Flood Management.

I'm going to make mine brief. We have a little bit the honor of annually providing an update over our flood readiness. And so today, I have a number of staff ready to brief you on specifics of where we're at.

We also will have a quick briefing from Merritt Rice on aspects of the Central Valley Flood Protection

Plan. A lot of activity.

So I really just want to touch a few things, and I think it's really related to our aspects of communication related to the Flood Management and FloodSAFE Programs for the State.

And then I want to quickly turn it over, because the presentations probably will take at least 15 minutes or so to get through all the folks. A lot of information to share today.

So on the advocacy part, I'd like to maybe highlight some of the things, since we're fortunate today to have Colonel Leady here with us. And I'd like to talk a little bit about our ongoing efforts of aligning both at the federal, State, and local level, I would say, the common mission, as we've talked about, the shared responsibility at a federal, State, and local level in providing public safety through the State here.

One of the highlighted activities that we've had in terms of coordination and communication is, is that on October 28th we did have our Corps, DWR, FEMA coordination related to Delta and Board staff on our quarterly meeting of where we're going, in terms of our flood risk reduction and Delta activities. And this is something we've been doing for at least the last 2 years, and it's something we continue to do to make sure that our programs are all

aligned as best as possible in moving in the common direction. So we're still progressing on that.

We've also progressed on a number of meetings. November 10th, we had our coordination with FEMA and the Corps to discuss mapping and flood risk education and outreach. We also have had a number of coordinations related to our Delta -- or our regional coordinators working with local agencies. There are a number of briefings done.

A lot of this is related to just particularly the handbook that you've all seen related to the flood legislation, and particularly the land-use -- you know, 200-year requirements and trying to educate communities of what those requirements are. So there's been an ongoing effort to work at a local level.

And then lastly, we've have met with the Central Valley Flood Control Association related to how to continue to shape our programs and helping the maintainers. We're in discussions now about looking where we can strengthen our support and grant programs to some of our, I would say, LMAs, in terms of how we might get over the extraordinary deficiencies, legacy deficiencies that we know we have across the system. And this is something we'll be developing. Keith Swanson will be taking the lead to develop this program over the next few

months. Something that we'd like to come back to the Board and give you a status as we go.

So I just wanted to give you a little flavor of some of the internal coordinations.

There was also a briefing done related to our advocacy in D.C. in October. This is a number of the flood control projects that the Board sponsors. I know Board Member Hodgkins was there. So again we've been doing -- or was asked, sorry, to attend.

And so again, we've been progressing that effort as to help align the programs at the federal level.

And then lastly, I would like to, you know, talk specifically about our communication and coordination related to progressing the Central Valley Flood Protection Plan. There have been a number of forums. There's -- Merritt will give you more where we're coming up this month.

In regards to that, we're really assessing the closure of the Phase 2 process. And really we're sharpening where we need to go in Phase 3. Phase 3 is the more place-based, very specific phase. We're doing everything we can to look at our schedules where we can sharpen it up, something that we'll continue to do.

I think next month we'll be able to give you specifically how that will layout for Phase 3 and how we

think we can get through that. But this is -- we're doing that while we're closing up the Phase 2 process.

So a lot of activity going on right now on the Central Valley Flood Protection Plan. Merritt will give you a little bit better idea of just the number of products that are going to be coming out for the Board's review. This is obviously a big issue. I think one thing to note is that we've been able to align and been aligning with the Corps of Engineers under their Central Valley Integrated Flood Management Study.

This is something that we've finally been able to pull together on our cost share agreement. So again, we're doing this not just as a State, local level, but we're trying to bring the nexus to the federal interest with us as we do it. And that's something that will be discussed a little bit, even in the forum that's coming up.

So that's my quick briefs. And then from there, like I said, I'd like to have our emergency operation folks give their annual briefing, and then we'll have Merritt give a little bit of brief on the plan.

PRESIDENT CARTER: Any general questions for Mr. Bardini?

BOARD MEMBER BROWN: No questions, Mr. Chairman. But while Colonel Leady is here, I'm pleased to hear you

mention that we're integrating our studies with the study that they're doing. I visualize ours as more of a conveyance system, while yours is addressing it on a watershed basis. And as an engineer, I like to hear you say that, and it was presented.

So what we can do on a watershed basis in the way of water soil conservation practices, you know, soil retention, detention basins, stabilizing the channel inverts within the watershed themselves to prevent erosion upstream and downstream siltation and all of those range management practices, that it's important that you integrate that with what we're doing and vice versa. And we're going to be looking at that pretty hard.

DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

That's one of many. One of many.

PRESIDENT CARTER: Great.

Mr. Hodgkins.

SECRETARY HODGKINS: A brief comment, Gary. I was extremely pleased and surprised to see moving forward with the modeling library. I think that can become an incredible tool to help everybody who's working on improving flood management

DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

Yeah. Thank you. I think this is one big effort. Again, this is in partnership, just as Colonel

Leady had described, is this is one that we are doing in coordination with his staff and Division engineering, in terms of how we handle the modeling. We want to make sure that essentially three things that are achieved.

One is, is that we don't duplicate efforts. Two, that we're basically working from a common set of tools that we've agreed on. And then 3, particularly is that the State and the Corps have made a huge investment here. And we owe it to basically hold the institutional aspect of those tools and information sets and data sets, so that they can be used to progress projects, and even be available to local agencies and their consultants.

So this is something, there's a bit of management. Something that we've taken very serious. We know we've got to do this the long term.

Thank you.

PRESIDENT CARTER: That's wonderful. Very good. Thank you, Mr. Bardini.

DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

All right, with that, I'd like to turn it over to Art Hinojosa, Chief of the -- well, I'll let him introduce himself.

DWR HYDROLOGY & FLOOD OPERATIONS CHIEF HINOJOSA:

You could have introduced me. That's all right.

Good morning. My name is Arthur Hinojosa. I'm

the Chief of the Hydrology and Flood Operations Office. And if I can use one of these things. I've got a few staff with me today to review with you our preparedness going into this year's flood season. We're already a good month and a half into it. And I have a few slides to help us out on part of it, if I can get this thing to work for me here.

(Thereupon an overhead presentation was Presented as follows.)

DWR HYDROLOGY & FLOOD OPERATIONS CHIEF HINOJOSA: No, that wasn't it. That was the one I gave to the staff. You don't want that. It's fun though, but another day.

Okay, I have with me Bill Croyle our Chief of the Flood Operations Branch, and Daniel Meyersohn, who's acting for Don Rasmussen, our Chief of our Flood Project Integrity Inspection Branch. Jon Ericson of my staff is the Chief of the Hydrology Branch, but he's on military leave today.

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DWR HYDROLOGY & FLOOD OPERATIONS CHIEF HINOJOSA: So we're going to talk about -- Daniel is going to come up and talk to you about inspections and the progress we've done over the last year. Bill is going to talk about our training and coordination that we've done

leading up to this year. And then I'm going to fill in for Jon and go into our hydrologic outlook for this coming season.

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DWR HYDROLOGY & FLOOD OPERATIONS CHIEF HINOJOSA:

A little recap on what we do and why we do it. This is a little graphic we've had in our implementation plan for awhile now. It sort of shows you the cycle of emergency response.

Starting at the top at 12 o'clock and moving across clockwise, preparedness, that's the bulk of our activities throughout the course of the year, leading into a response, where this time of year, we, in many respects, are at the ready stage waiting for something to happen and being prepared to respond to it. Should something happen, we go into recovery and mitigation.

Ideally, nothing happens and after the flood season is over, it's right back into preparedness getting ready for the next season. So what Bill and Daniel are going to talk about mostly falls into what happens in the preparedness and planning season. And I'll get into some of the response, in terms of our readiness with regards to hydrologic cycle.

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DWR HYDROLOGY & FLOOD OPERATIONS CHIEF HINOJOSA:

So, Bill, you want to start off.

DWR FLOOD OPERATIONS BRANCH CHIEF CROYLE: I have to load my presentation.

DWR HYDROLOGY & FLOOD OPERATIONS CHIEF HINOJOSA: You have the slides too?

DWR FLOOD OPERATIONS BRANCH CHIEF CROYLE: Yeah, it's already there.

Good morning, members of the Board. My name is Bill Croyle. I'm Chief of the Flood Operations. What I want to do this morning is just quickly go over some of the things that we've been doing, a lot of the activities that are typical for our Flood Operations Center and our group in HAFO, our Hydrology and Flood Operations. We rely on a lot of emergency response partners, as I refer to them, such as the Army Corps Engineers, to really come together throughout the year, as Art talked about preparedness, in preparing for our wet season.

As many of you know, we're concerned about the Delta on a daily basis. And so I always like to remind people of that.

This slide is really an overview of the kind of the typical activities that we push through. This has been somewhat of a challenging year for us with budgets and delays on receiving funding and furloughs and things like that. But I think we've tried to come together, pull

off those critical high priority projects. They're important to really maintain those lines of communication, the collaboration at all levels of government.

We've had a really unique year this year with Army Corps of Engineers. We've been able to have bimonthly meetings with their ER team to make sure we're all talking the same issues and trying to provide support both to the Army Corps, if they need it, and then the Army Corps to us.

As an example, we've brought them into our Flood Center. We've been to their ER operations center. We've talked about, you know, where do we sit, how do we share data, how do we have passwords for each other's systems. And that way, as we develop our agency reps in time of emergency, we can proceed farther towards being on the same page during the event.

Some of the key things for us is this past year and will continue here for a number of more months is we're doing division-wide rostering and training. What that means is, at Gary's direction, we're mobilizing almost 380 people to become more familiar with the emergency operations trained and rostered into specific positions.

So that will be an ongoing process. We are going from about 80 to again 380. And then we're also reaching

out throughout the Department of Water Resources.

As part of that activity, we're using the Golden Guardian 2011 training exercise, which is a statewide exercise, but it's focused this year in the Central Valley, and primarily in the Sacramento, San Joaquin, and the Delta region focused on a major flood event.

So that's kind of driving almost all of the training and skill set development, updating our data systems, and a lot of interagency coordination.

One big accomplishment this year, under Gary's direction we were able to secure, what I refer to, as our Flood Response Fund. So that gives us a little bit of a bank account, so we can get started in those early days of a flood fight, instead of waiting for somebody to approve us to work in a deficit.

--o0o--

DWR FLOOD OPERATIONS BRANCH CHIEF CROYLE: Just real quick, here's a list of our communities that we've reached out to. Again, this is a multi-agency coordination meeting, where we bring in Army Corps of Engineers. We've had CalEMA, Cal Fire, CCC, and the local flood control and response agencies attend these meetings. And again, the idea is to make sure we all have the same phone numbers. If there's issues, such as PL 84-99, which is an issue every year that we always tried to prep up the

locals, that we're going to move fast, the Corps is going to move fast, but we need information. That's a common subject that we spend a lot of time talking about.

We have continued our coordination meetings with all levels of Army Corps, as well as, we've spent a lot of time with CalEMA this year, again, working through roles and responsibilities as they update some of their systems. Like us, they have a lot of new staff, et cetera, and then participating in a lot of the Golden Guardian planning and design team activities.

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DWR FLOOD OPERATIONS BRANCH CHIEF CROYLE: Real quick, we've continued to update our technology within our Flood Center. Our CDEC system, under Art and Jon Ericson, have come up with some new web applications this year. One of which is come up with a snapshot picture of our reservoir conditions, which is a fantastic tool that came out of a dialogue between my flood staff and John Ericson and Art's CDEC staff on trying to take the data we have and really address a user's need.

And so it was a pretty interesting tool. It's interactive, and we've got really a lot of positive feedback on that. Another thing is we are integrating in, what I call, environmental support right into our emergency response teams. And so we have a huge effort

within DFM to integrate the emergency -- or the environmental specialists right into field teams, as well as into the Flood Center to deal with some of the past concerns.

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DWR FLOOD OPERATIONS BRANCH CHIEF CROYLE: We continue to maintain our 3 ICTs, work on our communication and radio systems, that I think all levels of the emergency responders are trying to work through. Certainly, some of the concerns within the Delta have put a little more effort and energy behind that concern.

And in addition, we continue to do our annual flood fight training classes. Again, this has been a little bit difficult with our given staffing and furloughs. But our staff has been pushing out and continuing to process those classes.

One thing looking forward is we've stepped out with the CCC, California Conversation crew to really start training them as trainers, so we can leverage their resources and a little bit of our time to expand our ability to train flood fighters throughout California.

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DWR FLOOD OPERATIONS BRANCH CHIEF CROYLE: And then we just have our standard contact information.

I'll be happy to answer any questions you have

before I hand it off to Daniel.

PRESIDENT CARTER: Any questions for Mr. Croyle?

Thank you.

DWR FLOOD OPERATIONS BRANCH CHIEF CROYLE: Thank you.

BOARD MEMBER SUAREZ: Mr. President, I actually have a question for Mr. Punia. In terms of coordination, flow of information between the emergency team at DWR and our office and our Board, how does that work?

EXECUTIVE OFFICER PUNIA: Jay Punia.

The emergency responsibility is more aligned with DWR Flood Center and the U.S. Army Corps of Engineers, but we are engaged. As Bill was saying, our staff and we will be part of their emergency teams. If we go into the big flood event, I'm sure, based upon our rosters, they will be pulling staff from the Board, so that we can staff the Flood Center, and they will be utilizing our experience also during the emergency.

But the primary responsibility for emergency response lies with the Department of Water Resources, local partners, and the U.S. Army Corps of Engineers.

And I want to attest what Bill is saying, I used to have Bill Croyle's job before becoming the Executive Officer, that I want to commend the partnership with the U.S. Army Corps of Engineers that Meegan is sitting here,

that in previous high-water event, the Corps has provided great partnership. And usually people don't want to see the Government officials. But when the levees are stressed they are glad to see that the Corps is there on levee with DWR and local partners.

Thank you.

DWR SENIOR ENGINEER MEYERSOHN: Good morning, President Carter, members of the Board, Danny Meyersohn, Senior Engineer and Acting Chief of the Flood Project Integrity Inspection Branch. And this is a summary of our activities in the months of October and November.

The branch is finishing field activities for the fall 2010 levee inspection and is preparing the 2010 inspection report. Due to resource constraints imposed by furloughs, cancellation of overtime and alternate work weeks, we have been unable to inspect about 400 miles of project levees covering 31 LMAs. However, we're still continuing to inspect as many miles of levee as we can.

The LMAs that haven't been inspected are those that receive and overall rating of acceptable during the 2009 fall inspection. And we're not subject to the U.S. Army Corps of Engineers recent periodic inspection.

Affected LMAs have been informed that inspections in their areas may not occur this fall and we encourage them to perform their own inspections and continue

maintaining their levees per State standards.

The 2010 inspection report will be issued by January of this coming year. The branch continues to inspect Board-approved encroachments for compliance with Title 23 on permit conditions.

Due to the resource constraints imposed by furloughs, we prioritized permit inspection activities during the month of October and November of this year to focus on encroachments that affect levee integrity over the levee prism. This primarily includes pipe replacements, pipe installation, and embankment alterations.

Numerous time variances requests have been issued and approved by the Board during the flood season and we continue to inspect those encroachments.

The branch is moving forward with preparation of the AB 156 report, and we expect to submit a draft report to the Board by December 31st of this year.

Fifty-nine LMAs have reported information to the Department by the due date of September 30th. And we received 9 additional reports after that date totaling 68 reporting agencies.

Erosion surveys along the San Joaquin River and tributaries have been completed. A total of 52 erosion sites were surveyed, but non-use sites were observed

relative to the 2009 erosion surveys. Of these sites, 15 have been repaired, either by the State or the local LMA.

A summary of the erosion surveys will be included in the 2010 reports.

Thank you.

PRESIDENT CARTER: Any questions for Mr. Meyersohn?

Thank you very much.

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DWR HYDROLOGY & FLOOD OPERATIONS CHIEF HINOJOSA:

All right, hydrologic outlook for 2010. Let's back up a little bit.

You're familiar, I'm sure, with our California Data Exchange Center website. Our partner agency, the National River -- the California-Nevada River Forecast Center, operated by the National Weather Service, produces a graphic that is very quick and easy to use as well, giving you a snapshot of the current forecast conditions at the official forecast locations across the State.

This is a picture of what it would look like this morning, I checked, and everything is green, which means everything is good, meaning the next forecast probably is anywhere between a day to five days. Nothing is forecast to exceed its monitored stage across the State and in Nevada.

Because we're in Operations Season, they are now forecasting twice a day, 7 days a week with DWR and Weather Service staff.

If you're not familiar with this, if you click on any of these dots, you'll get a hydrograph of what's going on in that particular location. This is an example of Sacramento River at Tehama Bridge. This was as of -- this was an image from last year. You see where the bars at the top are forecasted precip snowmelt. It's a culmination of what actually is going to be running off, not what's just fallen but what's expected to affect runoff.

The blue is what's happened. The green is what's forecasted to happen based on model runs. On the line graph, that's the blue line of the observed stage at this location. The green is the official forecast point usually about 24 hours, and then the magenta is a guidance forecast. They're forecasting out a good week. In the olden days, they would just keep that to themselves, the Weather Service and the Department now show what they have, as far as they have it. They don't put a lot of credence behind it. A lot can change weather forecast-wise, but it's the best we have, so everyone seems to appreciate knowing that.

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DWR HYDROLOGY & FLOOD OPERATIONS CHIEF HINOJOSA:

All right. Bill mentioned some of the applications on CDEC. I wanted to touch upon a few that we have going.

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DWR HYDROLOGY & FLOOD OPERATIONS CHIEF HINOJOSA:

One of the ways we track the wetness of the year is the northern Sierra 8-station index. A couple years ago we instituted, what we call, the San Joaquin 5-station index. It's not as well used, because we're still developing it and people getting a feel for it. We have retroactively -- or retrospectively come up with what the indices would have been in the past to help us get a feel for trends and stuff.

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DWR HYDROLOGY & FLOOD OPERATIONS CHIEF HINOJOSA:

The 8-station index, shown here -- you can find this on CDEC and actually look at past months and past years. It's comprised of these stations in the Cascades and northern Sierra. This was updated as of yesterday. You can see our precip through yesterday was 15 inches. And you can see the graphic here following the wettest year on record the '82-'83. The blue shaded area is the average over the course of the record. And the -- it ends up in the year of 50 inches. You can see where we were

last year in the magenta. We're considerably above that now. We had a very good October and November, as I'm sure you're aware. December is off to a decent start. We expect another couple of inches over the course of the coming weekend.

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DWR HYDROLOGY & FLOOD OPERATIONS CHIEF HINOJOSA:

On the San Joaquin side, a similar story. Things are better than they have been in years past, and akin to some of the wettest years that we've seen so far. But it's still very early, so do not expect that line to follow the '82-'83 trend.

We also, of course, have to monitor snow. On a day-to-day basis snow might not impact our flood operations, but it has a significant impact on water supply operations for the reservoirs, and therefore their operations for flood control, especially on the San Joaquin side of things. There isn't a lot to see snow-wise. We haven't done any surveys. The snow surveys will begin officially for our forecast in February, but we'll be out with crews as early as the beginning of the year, end of December to get a read on things.

These numbers are based on snow pillows and what we've observed so far. And as you can see, things are off to a really good start. Percent of normal is well above

100 percent statewide, with the highest percentage deviation in the central Sierra.

But still, compared to the peak where we measure things in April 1, there's a long way to go. From a water supply standpoint, from a rainfall 8-station index, we've got about 30 percent of the water year. From a snow perspective, we've gotten about what we hope to see 26 percent. That's assuming it all remains there. There's a good chance that it will.

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DWR HYDROLOGY & FLOOD OPERATIONS CHIEF HINOJOSA:

These graphics come -- January, we'll start being updated. It's too early yet, because these are based, in large part, on what we observe with our snow surveys, but there's something to keep an eye out for when those dates come.

One of the graphics Bill was mentioning is reservoir conditions. Here's a snapshot of where some of the major reservoirs are through Monday or through Tuesday night. You can see most reservoirs are doing fairly well. The blue shows what they're at. The red line is the historical average for that date. And the overall box is the capacity. And in text, you can see where they are as a percentage of capacity in blue, and a percentage of historical average in red.

And as you can see, most reservoirs are at or above they're historical average for this date, with a notable exception being Oroville, still considerably below its historical average. This last year was very wet for many reservoir -- or for many basins. The way the storms came through, there was a lot of shadowing into the Feather Basin, and they didn't see nearly the wetness that much of the rest of the State saw.

You can also look at these type of data in a tabular form and other graphical forms specific to the reservoir.

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DWR HYDROLOGY & FLOOD OPERATIONS CHIEF HINOJOSA:

For example, this is Lake Shasta. The blue line going through the shaded area is the actual reservoir elevation or storage, I should say. The shaded line is their flood control diagram, their conservation pool, if you will. The lines at the bottom, the blue and red, are inflow and outflow, blue being -- or green, I'm sorry. Green and red, green being outflow, red being inflow. And as you can see they're releasing more water than they're taking in, because, as you can see in the shaded areas, they are at their flood control space, which is exactly where they need to be. This line will continue down, I think, for a little bit, so they need to continue

releasing. And up above, you can see some of the precip that might have affected some of the operations.

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DWR HYDROLOGY & FLOOD OPERATIONS CHIEF HINOJOSA:

Folsom is above its flood control space currently, as defined by the Corps -- as defined by their agreement with SAFCA. It is now below the elevation required by the Corps of Engineers. They are, as you can tell by the graph below, making releases in excess of what they have come in.

Part of the reason I believe the Bureau has gotten to this position is because of fish flow releases and restrictions on Salmon migration that force them to hold reservoir releases constant or within certain tolerances throughout most of October, where, from a flood control perspective, they probably would have kicked up releases sooner, they had to hold for Salmon. That's speculation on my part. But having worked with them for a good 10 years, I'm pretty confident that that's what happened without speaking with them.

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DWR HYDROLOGY & FLOOD OPERATIONS CHIEF HINOJOSA:

And then at Camanche, you can see they are still above their flood control space there too. They are making releases. I haven't spoken with East Bay MUD, but

knowing their pattern of operations, they should probably be within compliance probably within the next few weeks.

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DWR HYDROLOGY & FLOOD OPERATIONS CHIEF HINOJOSA:

All right. So you've all heard of ENSO, El Niño-Southern Oscillation. Here's a little graphic showing you where things have been. The top graph is just a deviation from sea surface temperatures across the globe. The graphic shows the particular region, I think it's called 3.4, that we look at when we designate El Niño or the existence of El Niño or La Niña. You can see up in -- and then when it's in the orangish gold color it was above normal. And for the last 7, 8 months it's been below normal.

It takes a 3-year -- or sorry, 3-month continuous average of, I think, below 1.5 to be designated officially La Niña. And we're well on our way to that, if we haven't reached it yet.

What does this mean? This graphic over here to the right shows graphically what this tend to means. It means usually a blocking high -- this is typical. Not every day, not continuously, not every La Niña, but typically we see a blocking high over in the Gulf of Alaska, taking most of the jet stream north. A lot of times some jets cut underneath and that's what hammers the

Pacific Northwest.

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DWR HYDROLOGY & FLOOD OPERATIONS CHIEF HINOJOSA:

So the Climate Center says on the typical -- based on the typical La Niña pattern, they expect above average conditions in the northwest, below average conditions in the southwest, much of Central California equal conditions, meaning they're not hedging their bets one way or another.

Some of their discussions and some of the climatologists I've talked to would -- have for the last more forecasted a wet start to the year, equal chances throughout the year. And that has proven to be the case, we've had a very wet October and November. December still we see a wet pattern continuing for the foreseeable week or two. If they're right, then things might start drying up to a normal pattern at the very least whatever you want to consider normal for the winter. That's not to say it will happen. That's just, you know, if they were to place bets, if such bookies took such things, that might be where to put their money.

I personally wouldn't put any money on anything of that nature, because climate science is still very uncertain, in terms of forecasting for the short range. By that, I mean within a year.

And that's all we had today. Are there any questions you have for me or any of my staff?

PRESIDENT CARTER: Any questions for Mr. Hinojosa?

That's very informative. Thank you very much.

DWR HYDROLOGY & FLOOD OPERATIONS CHIEF HINOJOSA: You're welcome.

PRESIDENT CARTER: Do we have -- Mr. Rice is next?

MR. RICE: Good morning, Board. My name is Merritt Rice, and I'm a Project Engineer with the Central Valley Flood Planning Office in the Division of Flood Management. I'm here to brief you on recent program Environmental Impact Report screening meetings for the 2012 Central Valley Flood Protection Plan, and the status of that 2012 plan and the State Plan of Flood Control.

With me here this morning is Crystal Spurr. Crystal is with FloodSAFE Environmental Stewardship and Statewide Resources Office or FESSRO.

Crystal is working with the Central Valley Flood Planning Office on the 2012 plan. And I'm going to be looking to Crystal to answer any questions that you might have regarding the program EIR process.

In any event, I'll start with that. A Notice of Preparation of the program EIR was released for a 30-day

public review period on 27 October. Three public scoping meetings were held the week of November 15. That was Chico on the 15th, Sacramento on the 16th, and Modesto on the 18th. The meeting objectives were to share information about the Central Valley Flood Protection Plan. And the associated California Environmental Quality Act process, and to seek public and agency input on the content and scope of the program EIR.

There were only about 17 attendees at the three scoping meetings, which included members of the public and representatives from several federal, State, and local agencies. It's believed that the meetings weren't heavily attended primarily because of the public and agency representatives have been participating to a significant degree on helping develop the 2012 plan through our communication and engagement process.

In addition, since the 2012 plan will focus more on developing a broad based plan and vision for the future of flood management in the Central Valley, the public and agencies might not have felt the need to commit now on the scope of the program EIR document.

Since then, we've received 14 comment letters and 11 of those letters from local, State, and federal agencies. The comments that we received were, as you would expect, they're very typical comments on CEQA

documents, of projects within the jurisdictions of those 8 agencies. They included comments on water quality issues, impact and land uses, biological impacts, cultural resources, greenhouse gases, sea level rise and air quality.

So those would again be the typical kinds of comments that you would receive. Some comments specific to flood management was that there was a -- they identified a need to evaluate changes in flood storage and flood releases from reservoirs, impacts if the flood project system were not properly designed and maintained, and impact of any proposed regulatory changes.

That's all I had on those scoping meetings. So if you don't have any questions, I'm going to move on?

PRESIDENT CARTER: Ms. Suarez.

BOARD MEMBER SUAREZ: Thank you, Mr. President. I do have a question. I actually attended one of the scoping meetings. And having been involved in these processes, I wasn't surprised you didn't, you know, see a lot of people in those usually, unless it's something that's very, very, very, controversial. And hopefully this isn't.

But one thing that was discussed during the scoping meetings briefly was the possibility that the plan will not be ready on time as dictated by Senate Bill -- AB

5 or SB 5, the 2012 deadline.

So I want you to comment on that, since that was brought up during the public meeting, scoping meeting, not only in terms of why that is the case, but what DWR is planning to do in order to get such an extension, if you're looking for such an extension and how you plan to coordinate on the Board, because at the end of the day, the deadline really is the Board's deadline. It's our deadline to approve the plan.

MR. RICE: Well, I think about all I can say is that we're working vigorously to meet that deadline. And I think that the message that we would have been sending at the scoping meetings and a series of other outreach meetings that we've had during November was that we're reevaluating the schedule.

I think that the intent certainly is to complete the plan by 1 January 2012. But within the next -- and I'll talk about this in a few minutes, you're going to be receiving a progress report, probably in mid-January that's going to be describing where we've been, where we're going, and it's going to address that issue in a little bit more detail.

Again, we're going to do the best we can to meet that schedule, but there's a lot going on. And the 2012 plan is -- it's really focusing on developing a framework

to move forward. That plan needs to be adopted by this Board in the middle of 2012. There are issues associated with what can the Board adopt, what kind of environmental documentation -- or in other words, what will the Board adopt and what kind of information needs to be developed to allow you to be able to adopt the plan. So about all I can say is please stay tuned.

BOARD MEMBER SUAREZ: Mr. Bardini, it looks like you wanted to add. I specifically want to know what kind of communications you've already with the Legislature regarding the possibility that the deadline is not going to be met?

DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

Yeah. Right now, there's no communication to the Legislature. I think the best way to put it is, is that our full intent is to meet the schedule. We will have -- my sense of it is, is for sure we'll have a plan and a document on the deadline that we've laid out. The question will be, do we have all the things that make it executable or actionable. That's what we need to assess exactly what that is. We right now are making that assessment. So really what we're trying to do is look to the way we've been doing the engagement process and how do we streamline the efforts, targeted, much more focused and try to get it back on schedule. And that's the assessment

we're making right now.

So my sense is we're still good to go and we're going to make it. The question is, is by focusing it a little quicker, more efficient on our engagement processes and how do we do that effectively with our local agencies and the Corps is going to be a big step. So right now, we're making that assessment and having those conversations.

My sense of it is, is we will have the document in place and get to where we want to be. My question do I everything necessary that make it actionable for the Board? I'm still trying to make that assessment with staff. So stay tuned on that.

I'm hoping, as Merritt described is, we will have the progress report, and I think probably by next month we will probably have a clear sense of what that schedule looks like and what it's going to be. But my sense is, is it's pretty much what we've been doing. It's more do we have to combine the Phase 3, Phase 4 processes and consolidate it a bit and make some efficiencies in our processes. That's where we're trying to go right now to try to meet it.

BOARD MEMBER SUAREZ: Just one final thought. I would hope and encourage, I'm sure this will happen, coordination with our Executive Officer and our President

on this matter, because again, we don't want to face this Board find itself come mid-2012 with nothing to act upon and having to be accountable to the legislature on the matter.

DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI: Yes. And we share your concerns on our side too.

PRESIDENT CARTER: Yeah, I believe the Board is supposed to hold a couple of public hearings on the document, which are going to require some additional time. So we're really counting on that 6 months from January through June to conduct that process.

DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI: Absolutely, we agree.

PRESIDENT CARTER: Thank you.

MR. RICE: So moving on with the Central Valley Flood Protection Plan. The Division of Flood Management completed the final round of 5 regional condition work group meetings for Phase 2 of the 2012 plan in early November.

Now, this phase focused on identifying individual management actions that address the planning goals that we put together and identified during phase 1. These management actions are described in a management action report. And that that report was posted on the Central Valley Flood Management Planning Program website earlier

this week. The project development team for the 2012 plan will now start to use the management actions that were formulated in Phase 2 to help -- to develop regional and system-wide solutions in Phase 3 and 4 for the 2012 plan.

These regional and system-wide solutions will be important in identifying the framework in the 2012 plan for flood management in the Central Valley as we move forward towards the 2017 plan and beyond.

We also completed our second interim progress summary report in November. And this too has been posted on our website this week, and I think may also be up on the Board's website by now. But the focus of this in-progress or interim progress report number 2 is to describe and summarize the results of the Phase 2 investigations and how we're moving forward for the 2012 plan.

The management actions report and the interim progress summary number 2, as well as a host of other information will be displayed at the upcoming second valley-wide forum for the 2012 plan. This forum will be held in the City of West Sacramento at their Galleria from 1 to 4 next Thursday, that's 9 December. The purpose of the forum is to conclude Phase 2 of the public engagement process and provide a successful launch for Phases 3 and 4 of the 2012 plan.

I understand that President Carter plans to attend and provide some remarks. Also, Executive Director Punia is to sit on a panel, along with Jeremy Arrich of the Central Valley Flood Planning Office, and Alicia Kirchner, who's Chief of Planning Division with the Sacramento District.

And that panel will discuss recently initiated Central Valley Flood Management Study and the relationships of that study with the Central Valley Flood Protection Plan.

Section 9610 of the California Water Code calls for the Department to prepare a status report on the progress of the Central Valley Flood Protection Plan, and to post that report on the Board's website by December 31 of this year.

We're in the final phases of preparing the progress report. It's a high level document that describes the Central Valley Flood Protection Plan, relationships to other projects and programs, progress to date, key topics, and next steps in completing the 2012 plan. Based upon the remaining reviews it must go through, we project that it will be available for posting by about the middle of January 2011.

The last item I -- or items I wanted to relate to you relate to the status of the State Plan of Flood

Control descriptive document and the flood control system status report.

You may remember that the State Plan of Flood Control descriptive document is an inventory of facilities of the State Plan of Flood Control. In other words, it's an inventory of those facilities where the State has provided assurances of non-federal cooperation to the federal government to operate and maintain completed flood projects in the Central Valley.

We circulated a draft of the descriptive document for review earlier this year. We've incorporated all the comments, developed additional drafts and got a lot of internal comments and resolved those. In any event, we completed that document in November. And we posted the document on our website in mid-November. And I think by now, it should have been placed on the Board's website as well.

Now, the intent of the second document, the flood control system status report, which was also identified in legislation, is to describe the performance of the State Plan of Flood Control. That's really important, because the Central Valley Flood Protection Plan is then going to take that performance, those identifications of deficiencies and those are going to be a major part of the regional and system-wide solutions that we're going to be

putting together in the Central Valley Flood Protection Plan.

In any event, we're scheduled to have completed a final draft of the status report later this month. We intend to make that draft available for review, at minimum, to the Department of Water Resources, Board staff, as well as the Corps. And we're looking to have a public review draft probably in February of 2011 and a final document a month or so later.

And that ends what I wanted to say. So if you have any questions, more questions?

VICE-PRESIDENT RIE: Yes, I have a question. I still have the draft January document and then I have the January DVD.

MR. RICE: Yes.

VICE-PRESIDENT RIE: Can I get the latest draft?

MR. RICE: Yes.

VICE-PRESIDENT RIE: Or is it the final?

MR. RICE: It's final now.

VICE-PRESIDENT RIE: Okay, can I have a hard copy of the final document and then the final DVD that goes with that?

MR. RICE: Yes. I'll get you a copy.

VICE-PRESIDENT RIE: Okay, great.

PRESIDENT CARTER: It would be great to supply

copies to all the Board members.

MR. RICE: Okay.

PRESIDENT CARTER: Appreciate it.

Any other questions for Mr. Rice?

SECRETARY HODGKINS: Merritt, there's now a history document that will complement, I guess, the description of the State Plan of Flood Control. Can you explain a little bit about what that document will do and its purpose.

MR. RICE: It was intended, as part of the State Plan of Flood Control, part of the legislation that in addition to defining the facilities and the performance of the facilities to also define or describe how is the system evolved? We put together a preliminary draft of the history report, gosh, about a year ago, now. But it was a very nuts and bolts kind of a thing, dates and authorizations.

It didn't give the reader -- or a lot of the comments on it was that it didn't give the reader a flavor of what was in people's minds at the time, why was -- why was the levees just adopted, or why were they -- or how did they evolve? And, you know, because we're finding in this flood control system status report now, one of the major observations is that we've got a system that has evolved, people are living behind facilities that when you

started, and had you planned on that, you wouldn't have built those facilities in that way.

So when flooding occurs, it's -- it's important in the future to be able to describe how did the system evolve, how did we get in the situation that we're in. So that's what we're doing now. We're preparing a new and an updated history report. It's still in its formative stages. It will be based upon what we had before, but it will bring much more of what was in people's minds as the system was developed.

I suspect that we'll see and we'll coordinate it with you, a draft of that, probably by about April or May of next year. And I would hope that by the fall to have a final of that.

PRESIDENT CARTER: Any other questions for Mr. Rice?

VICE-PRESIDENT RIE: Yes. Regarding the NOP, the written comments closed at the end of November. You had mentioned there were 17 members of the public who attended the public workshops. What about written comments? How many written comments did we receive and can you give us some examples of the type of comments you received?

MR. RICE: We received, like I indicated, 14 comment letters. And 11 of those were from local, State, and federal agencies. And as I mentioned, those were

very -- the comments would be ones that you would expect to see early in a process. You know, they would cover things like you need to make sure that you cover water quality issues, biological issues, sea level rise and those types of things.

But there wasn't any major comments that would significantly change our direction one way or another. Many of the comments -- as the PEIR progresses and through our process, that's when we'll start to get the real comments, the ones that are really going to be formative to how the process is or how the Central Valley Flood Protection Plan is evolving and coming together.

PRESIDENT CARTER: Thank you very much. Mr. Bardini, anything else?

DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

Yeah. A couple little housekeeping things I wanted to do. Actually, Mike Mirmazaheri has a critical hire and I wanted to introduce a new member of our Delta-Suisun program. And so, Mike, could you make a quick introduction.

BAY-DELTA LEVEES BRANCH CHIEF MIRMAZAHERI: Good morning, President Carter and members of the Board. Just for the record, Mike Mirmazaheri Program Manager for the Delta Levees Program.

I'd like to take this opportunity and introduce

John Wilusz to you. John, please stand up. John is a new Senior Engineer. He's been with the program for about 3 years. He is going to be working on the subventions program. I think that's why it's important for the Board to get introduced to him. And John is a licensed land surveyor. He's also a registered civil engineer.

As I said, he's been with the program for about 3 years. Prior to that, he was doing some consulting work for a number of years. And prior to that, he was working with Placer County Water District.

So you'll see more of John at this Board meeting. And if there are no questions for me or John, I appreciate your time.

PRESIDENT CARTER: John, welcome. You'll want to get plugged in with Vice-President Rie. She's the Board's liaison with the Subventions Program.

Thank you.

DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

With that, that's our -- I'm sorry for our lengthy presentation. A lot of in-depth both on the plan and on our emergency operations and our preparedness this season. I appreciate you indulging us in giving you a lot of information today. So thank you very much.

PRESIDENT CARTER: Thank you, Mr. Bardini.

Ms. Suarez.

BOARD MEMBER SUAREZ: Yes. Thank you. Simply because it's kind of new to me anyway, we are embarking on a transition process when it comes to administrations. Is there anything in the short-term that you can think of or perhaps be prepared to share with us in January on transition issues that this Board might want to keep on top of?

DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

Yeah, certainly. One of the things we're doing -- and I kind of talked about it earlier. Just a couple of things. One thing we're doing from the FloodSAFE, Division of Flood Management is put in kind of an accomplishments report of where we're at today with our programs, performance measures, et cetera, that are interesting I think for -- you get the normal monthly updates. This is something that we're using to help brief the new administration and staff.

We're also trying to put a number of policy issues that we know that are highlighted right now for the transition. So there's been a number of activities working with executive on briefing material for that. Right now, there hasn't been any new appointments with the new administration.

To be honest, what is taking the majority of the time right now with the transition team that we're seeing

is, you know, there's -- you've heard there's been a fiscal issue with the State. And essentially that right now is taking front and center.

So what we're seeing is a real interest to try to work on that, and so there has been a lot of communication of the desire by the administration or the current incoming administration to essentially to the existing leadership that there -- essentially no decision is to be made, that they're pushing it out for some time. So my sense is, is that a lot of folks that are currently in their roles as directors or et cetera will probably be in that role if they choose to want to be there because of the kind of the bigger issues that are hitting the new administration coming in. There's a real desire to keep continuity in the existing program, so that's what we're seeing so far.

BOARD MEMBER SUAREZ: On that note then, perhaps I would invite, encourage if there's a possibility that this Board can put together a transition briefing document that either joins yours or is a separate standing might be something to consider.

DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

That would be great. We'd be -- in fact, we'll work with your Executive Officer on that. That would be great.

BOARD MEMBER SUAREZ: That would be great.

PRESIDENT CARTER: Yeah. I've asked Jay to -- a month ago to pull that -- start pulling that together. I have not seen anything yet. And if -- hopefully, we'll get a draft of that. Board members can have an opportunity to input on that, and we'll have it ready in January, I hope.

BOARD MEMBER SUAREZ: Thanks.

DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

Well, thank you again.

PRESIDENT CARTER: Thank you very much, Mr. Bardini. Very informative.

Move on to Item 7, Report of the Activities of the Executive Officer

Mr. Punia. Good morning.

(Thereupon an overhead presentation was

Presented as follows.)

EXECUTIVE OFFICER PUNIA: Good morning once again. Jay Punia, Executive Officer. I'm going to give you a quick synopsis of activities of your direct staff, and then I will entertain any questions you may have.

--o0o--

EXECUTIVE OFFICER PUNIA: On the personnel side, Mike Petersen, long time DWR and Board staff is planning to retire by end of December.

And Joo Chai Wong, civil engineer, working as the Board staff has accepted a position with the Department of Water Resources, Division of Flood Management in the River Forecasting Section. So Joo Chai Wong will be leaving us.

In addition to that, Eric is still on leave of absence, and Curt Taras, although he's here today, but he's still taking care of his newborn son and still on a leave of absence.

And on my home front, I'm glad to share with you and the public that my daughter passed the bar exam and she will be working pretty soon. And I'm glad that I don't have to continue to write her a check for living in San Francisco.

(Laughter.)

EXECUTIVE OFFICER PUNIA: On the Title regulation updates. I'm sure, as the Board members are aware, that we are in the process of updating our regulations. And I'm glad to report to you that our Phase 1B we will be asking for your approval to take the regulations to the Office of Administrative Law.

And the second -- the next phrase is our Tier 2, which involves updating our technical regulations. And I'm again glad to report it to you that that draft is almost ready for the Board's task force to review those proposed changes. And I want to commend the Board's

committee, their leadership, Board Member Emma Suarez and Butch Hodgkins to keep the staff working on this and providing the leadership, so that the staff can continue to make progress.

And the staff, Curt Taras, Eric Butler, Dan Fua, Debbie Smith and a couple other people who are in the driver's seat of these regulations have made substantial progress and we will have these regulations updated soon.

As we mentioned to you sometime back that there were some issues with the permit compliance for local Reclamation District 17. As you are aware, that we issued them the permit and that work is being done by the local reclamation districts. And I'm glad to report that DWR staff and our Chief Engineer, Len Marino, they are -- they brought to their attention that the work that's being done has some problems, that they were not in fully compliance with the permits.

Out of the 26 items, 13 items they have resolved those issues, but they continue to work with the applicant, so that the work is completely in compliance with the Board permit.

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EXECUTIVE OFFICER PUNIA: There's a permit application from the City of Colusa to put some stairways on the levees, so that application will be -- the staff is

reviewing the application and working with the U.S. Army Corps of Engineers with the hope to bring that permit application to the Board in January.

On the -- Merced County asked our staff to testify on the County's behalf in the federal court regarding a lawsuit brought by Crane-McNab, LLC.

A quick update on the enforcement side. As you're aware, the Bear Creek staff will meet and confer with Mr. Ross and his attorney to resolve the encroachment issues discussed during the Board hearing in July. The goal is that we should work with their attorney and Mr. Ross to reach a consensus, so that we don't need to bring this hearing back to the Board. But we will assess the situation, and if we cannot reach a consensus, then we will be bringing that hearing back to the Board. And then the plan is to bring the remaining Bear Creek encroachment for the Board's consideration, if we cannot resolve them at a staff level.

And recently, staff met with CalTrans District 10 Deputy Director to discuss resolution to the erosion noted beneath the I-5 bridge over the Calaveras River.

And as you may recall, Mr. Jay Schneider stopped by here for expressing his concerns and for a potential Enforcement Action for a violation in the designated floodway. Subsequent to that meeting, staff has visited

the site and the Board's Chief Engineer, Len Marino, and Dan Fua visited the site. And they're hopeful that they can resolve this issue without proceeding with enforcement proceedings.

So they are working with Mr. Jay Schneider and their attorney, and they will be sending some correspondence to them and asking some actions. And we are hopeful that we can reach resolution on this without the need for proceeding into the Enforcement Action arena.

--o0o--

VICE-PRESIDENT RIE: Mr. Punia.

EXECUTIVE OFFICER PUNIA: Yes.

VICE-PRESIDENT RIE: Going back to Crane-McNab lawsuit.

EXECUTIVE OFFICER PUNIA: Yes.

VICE-PRESIDENT RIE: What is the nature of that request? And has staff already testified? Are you considering it? What's your decision on that?

EXECUTIVE OFFICER PUNIA: I will ask Board's Chief Engineer, Len Marino, to provide the details.

CHIEF ENGINEER MARINO: Thank you, Mr. Punia. The question is as regarding Permit 16204, which was issued about 10 years ago. The floodplain below the castle dam is a designated floodway within the Board's jurisdiction. We granted a permit for the applicant to

operate an orchard on that property. And the applicant received the permit back in, I believe it was, '97, and did nothing with it for approximately 8 years. And then suddenly, our inspectors went out there and an orchard operation was being set up, and they were planting trees and irrigation and so on and so forth.

In 2006, I want to say, there was heavy releases from Cassel Dam, which resulted in a great deal of debris being sprayed over the floodplain. The plaintiff is a alleging that he suffered damages due to the debris that accumulated after the flood water releases.

Our permit expressly exonerates the Board and the Corps from rectifying any damages that might occur as a result of a flood water release. And apparently, the plaintiff thinks otherwise.

So the County contacted us. The County is being sued because they're the local maintaining agency. And they're asking us to testify on their behalf. And it's scheduled for Fresno Federal Court, I think, the week of January 26th. And yours truly will be their star witness.

VICE-PRESIDENT RIE: Is the Board named in the lawsuit?

CHIEF ENGINEER MARINO: I'm sorry, I didn't hear you?

VICE-PRESIDENT RIE: Our Board, are we named in

the lawsuit?

CHIEF ENGINEER MARINO: No, we're not named. We are not named. We are being asked to testify. And I guess I'm going to be an expert witness. That's the way it's set up. And I'm going to testify and just provide information to the court regarding permit 16204. But no, the Board is not being sued and they're not part of the lawsuit.

VICE-PRESIDENT RIE: Well, thank you. I appreciate that you're very candid with the information. Thank you very much.

CHIEF ENGINEER MARINO: Thank you.

EXECUTIVE OFFICER PUNIA: San Joaquin River Restoration Program. As you may recall, the State Water Resources Control Board issued a permit for temporary interim flows. And as part of that permit, there was a condition that the U.S. Bureau of Reclamation will confer with the flood control agencies. Subsequently, there were meetings held with the Board staff and the Department of Water Resources.

And we have invited Mr. Jason Phillips to brief the full Board. So he will be coming in the afternoon to brief the Board his plan of action to report back to the State Water Resources Control Board regarding his coordination with the flood control agencies.

BOARD MEMBER BROWN: What about the landowners?

EXECUTIVE OFFICER PUNIA: I think they're in touch with the landowners too. And we're trying to address their concerns. And Mr. Phillips will be able to elaborate more about their coordination with the landowners.

Yes, please.

VICE-PRESIDENT RIE: Mr. Punia, when is the hearing scheduled before the State Water Resources Control Board?

EXECUTIVE OFFICER PUNIA: I don't have the schedule, but Jason will be able to answer that question in the afternoon.

VICE-PRESIDENT RIE: Is he going to come before our Board before the State Water Board hearing?

EXECUTIVE OFFICER PUNIA: He's coming today.

VICE-PRESIDENT RIE: Oh, he's coming today.

EXECUTIVE OFFICER PUNIA: There's an informational briefing scheduled for today, so he will be able to provide you the information.

VICE-PRESIDENT RIE: Okay.

SECRETARY HODGKINS: I think the State Board has issued the permit.

EXECUTIVE OFFICER PUNIA: That's correct. For the 2011 in-flows, they have already issued the permit.

But for the long term, the process is still underway.

Gomes Lake, a quick update. As you may recall, that the joint power authorities for providing the operation and maintenance in this area had some difficulties. Some of the partners were thinking that other partners are not paying their fair share. I think I want to give the credit to the Board's Chief Engineer. He got involved with Keith Swanson and convinced the local partners of the joint power authority, that it's in their interest that the maintenance should be done by the JPA rather than State coming and making a State Maintenance Area, because it's going to cost them much more by making it a State Maintenance Area.

So they are renegotiating the cost-sharing formula that each partner should pay their fair share for the operation and maintenance. And they have made substantial progress where they will be back in operation and maintenance business.

Len, do you have more update on this subject.

BOARD MEMBER BROWN: And where is Gomes Lake?

CHIEF ENGINEER MARINO: Gomes Lake is basically kind of a sump the land side of the levee down in Stanislaus county. And before the levees were built for -- along the San Joaquin River, the drainage used to flow naturally into the San Joaquin River. When the

levees were built, it precluded that from happening and there's a great amount of surface runoff and drainage that has to get into the river somehow. So they built this sump and they call it Gomes Lake.

Gomes Lake has a pump station on it that sends water through the levee during flood events. They have a capacity of like right around 310 cfs. And what they did was we -- a JPA was formed between 5 different parties, including 2 RDs, to operate this thing. And about every 5 years the JPA kind of blows up, because the partners disagree over who's paying what amount of money for the O&M of the system.

And it happened again in August. It kind of blew up. And the State just came in and said, "Okay, fine. We'll make it into a Maintenance Area, and here's what our bill is going to be". When they saw that, they -- you know, they had sticker shock, and they realized that they'd better reformulate the JPA and get along and be able to operate it like they were in the past.

So I'm working with them. We've had several meetings to reconstitute the JPA. We think we've got the cost share part done. There's some details that have to be worked out. I'm going down again next Tuesday to meet with them again in Turlock. And then on top of everything, the pumps were vandalized over the summer and

they took all the copper out. And so they had to restart those. And then there was a little bit of an argument over who gets to pay the electric bill. So we talked about that for 2 hours the day before, last week.

BOARD MEMBER BROWN: Is this in the Oakdale Irrigation District?

CHIEF ENGINEER MARINO: This is -- it is Stanislaus county. And the partners are Stanislaus County, City of Turlock, Turlock Irrigation District, RD 2091 and RD 2063, I believe. Those are the 5 members of it. And the City of Modesto has a little bit of a role in there too, but I won't bore you with the details.

All I can say is, is that we're making good progress, and I'm very optimistic that we're going to be able to get this back together, and we won't have to create Maintenance Area 14 after all.

PRESIDENT CARTER: Thank you.

EXECUTIVE OFFICER PUNIA: And I just want to share that the Board staff's approach is that wherever we can -- whatsoever we can do, we want to keep the maintenance at a local level rather than make another maintenance area, because the State maintenance is very expensive as compared to the maintenance done by the locals. So we are working diligently, so that they can provide the maintenance rather than making another State

Maintenance Area.

When we requested the Board not to have the meeting in November, our plan was to have a trip for the whole staff, but we were not able to pull this through. But at least we were able to send the Board Chief Engineer and Board Engineer Angeles Caliso for a Board -- a tour of the flood control project with Mr. Don Meixner of the Sacramento Flood Control Project. They both enjoyed the tour and learned the physical layout of the project. And we will be arranging a similar tour for the rest of the staff.

Encroachment permit application update. We are making progress, but we are asking that -- Eric and Nancy Moricz is not here, so we are going to skip this briefing today, but we will be back during the January Board meeting and give you a more detailed update on that update.

That concludes my presentation. If you have any questions for me, our staff will be glad to answer those questions.

PRESIDENT CARTER: Any questions for Mr. Punia?

Terrific.

EXECUTIVE OFFICER PUNIA: Thank you.

PRESIDENT CARTER: Thank you very much.

Ladies and gentlemen, let's take a 10 minute

recess. We'll come back and do our Consent Calendar and then move on to Item 9.

(Thereupon a recess was taken.)

PRESIDENT CARTER: Ladies and gentlemen, hopefully you've done some laps around the building to get warmed up. So we will go ahead and continue with our meeting.

We are on Item 8, our Consent Calendar. As you recall from our earlier discussion this morning, we are postponing to a future meeting Items 8A and 8F. Are there any questions on the Consent Calendar?

If there are no questions, we'll entertain a motion on the Consent.

BOARD MEMBER BROWN: Mr. Chairman, I'll move that we approve the Consent Calendar as revised with the postponement of 8A, 8F and the removal of the closed session.

PRESIDENT CARTER: Okay. The closed session is not on the Consent, but yes we did vote to remove that.

BOARD MEMBER BROWN: Oh, that's right.

PRESIDENT CARTER: Okay. So there's a motion to approve the Consent Calendar Items 8B, C, D, E, G, and H.

Is there a second?

Do we have a second?

Going once.

BOARD MEMBER SUAREZ: Yes, second.

(Laughter.)

PRESIDENT CARTER: We have a second okay.

No questions.

Mr. Punia, would you call the roll, please.

EXECUTIVE OFFICER PUNIA: Board Member Emma Suarez?

BOARD MEMBER SUAREZ: Aye.

EXECUTIVE OFFICER PUNIA: Board Member Butch Hodgkins?

SECRETARY HODGKINS: Aye.

EXECUTIVE OFFICER PUNIA: Board Member John Brown?

BOARD MEMBER BROWN: Aye.

EXECUTIVE OFFICER PUNIA: Board President Ben Carter?

PRESIDENT CARTER: Aye.

EXECUTIVE OFFICER PUNIA: And Board Member Teri Rie is absent temporarily.

PRESIDENT CARTER: Well, the Consent Calendar passes, 4 votes aye and 1 absent.

Thank you very much.

Now, we'll move on to Item 9. This is a Hearing and Decision.

Item 9A, proposed decision and order, Enforcement

Action number 2010-49, Mr. And Mr. Sieglitz, 2817 Garden Highway, Sacramento, California.

I'll give you just a couple minutes to set up. I want to confer with counsel, so one moment.

Okay. Good morning, Mr. Lemon. You are going to present the proposed decision and order that was published and submitted to the respondent and the Board.

STAFF ENGINEER LEMON: Correct.

PRESIDENT CARTER: So we'll have a presentation from Board staff, Mr. Lemon and Mrs. Smith, on the proposed decision. We'll give the Board staff an opportunity to comment on the proposed decision. We'll give the respondent an opportunity to comment on the proposed decision. And the Board will then discuss and deliberate and decide.

I want to remind everyone that the hearing has been closed. There's no new evidence that will be admitted, unless the Board decides to admit new evidence that would -- that in the Board's opinion, would materially affect its deliberation and consideration of the proposed decision.

So we reserve the right to allow new evidence, but do not anticipate needing any new evidence on this.

Okay, so Mr. Lemon, if you would proceed.

STAFF ENGINEER LEMON: Good morning, Board

members. For the record, Gary Lemon, Floodway Protection Section, Board Staff Engineer.

The proposed decision and order before you is authored by myself and Board's counsel, Ms. Debbie Smith, as directed by the Board this past October 29 for the hearing that was held on this matter. My thoughts on this was just to give the Board the summary of the order, unless there's some other wishes.

Would that be appropriate.

PRESIDENT CARTER: That's fine.

STAFF ENGINEER LEMON: Okay. Going right to 5.0 of the Summary and Order. This is in your packet that starts on page 11. The proposed summary and order is as follows:

Number 1, the Board finds that the following encroachment violations listed in the encroachment removal enforcement notice for Enforcement Action 2010-49 violate California Code of Regulations, Title 23, Waters, Division 1 and Water Code Sections 8708 and 8709; as well as threaten the successful execution, functioning, operations, or maintenance of the left east bank levee of the Sacramento River Flood Control Project at 2817 Garden Highway.

And those items that are listed to be removed is Item 2, placement of a storage unit (2 Conex storage

containers) with metal roof within 10 feet from the water-side levee toe. Item 4, from the Enforcement Action 2010-49, is placement of utility lines associated with the storage unit. Item 5, from the same order, placement of flushed concrete pad within 10 feet from the water side levee toe. And item 6, placement of fill material adjacent to the waterside slope.

Continuing with number 2 of the summary and order. The Central Valley Flood Protection Board hereby orders respondent to remove all encroachments and appurtenants listed in paragraph number 1, which I just read, Items 2, 4, 5, and 6, at his own expense within 120 days of adoption of this order by the Central Valley Flood Protection Board.

Further, respondent shall comply with all enforcement conditions attached to the encroachment removal enforcement notice for Enforcement Action 2010-49 dated April 12th, 2010, except the respondent shall not be required to comply with Condition number 5, which was to restore the slope of the levee to a 3 to 1 slope. Restoration of the encroachment removal sites associated with the concrete pad, utility lines, and the fill material shall be completed in accordance with the specifications found in California Code of Regulations Title 23, Division 1, Article 8, Section 120 levees, which

are summarized in the Enforcement Conditions.

In addition, the Central Valley Flood Protection Board or any of its staff may make reasonable inspections before, during, and after removal and may request in writing, at any time, any reports or data, including, but not limited to, a description of all work done. Respondent shall provide all such requested information within the time frames requested by the Central Valley Flood Protection Board or its staff.

Number 3 of the order. If respondent does not comply with this order within 120 days of adoption by the Central Valley Flood Protection Board, the Central Valley Flood Protection Board may take actions to abate the encroachments listed in paragraph 1 above, which I first read, Items 2, 4, 5, and 6, such as physically removing them using a contractor or the local maintaining agency, in this case RD 1000, and recover its costs from respondent.

In addition, the Central Valley Flood Protection Board has the authority to seek judicial enforcement and commence and maintain a suit in the name of the State for the prevention and abatement of the nuisance.

Continuing with number 4 of the order. The Central Valley Flood Protection Board hereby dismisses Item 1 of the Enforcement Action 2010-49, which was

excavation of waterside levee toe to accommodate a storage unit. That is from the enforcement notice. And then continuing on, therefore, respondent is not responsible for returning the water-side levee slope to design grade.

VICE-PRESIDENT RIE: What page is that on?

STAFF ENGINEER LEMON: I'm still on page 11 at the bottom, number 4.

PRESIDENT CARTER: Please proceed.

STAFF ENGINEER LEMON: Continuing on with number 5, the Central Valley Flood Protection Board hereby dismisses Item number 3 of Enforcement Action 2010-49. And I'll list -- I'll read that number 3, placement of a boat and boat carrier within 10 feet from the waterside levee toe. Continuing on, the trailers and vehicles on the water side of the levee may remain so long as they are easily removable.

And finally number 6 of the proposed order, the Central Valley Flood Protection Board acting as lead agency finds that this decision and order is categorically exempt from the California Environmental Quality Act in accordance with CEQA guidelines Section 15321, and under Class 21(a), actions of regulatory agencies to enforce standards or revoke a permit to enforce standards. And Section 15301 under Class 1, minor alteration of existing public or private structures and facilities.

That's the end of the proposed order.

PRESIDENT CARTER: Okay. Do you have anything else you'd like to add?

STAFF ENGINEER LEMON: I have no more to add.

PRESIDENT CARTER: Are there any questions for Mr. Lemon?

Okay. Ms. Suarez, did you --

BOARD MEMBER SUAREZ: Just wondering what this piece of paper that we just received, which appears to address some of the proposed order.

PRESIDENT CARTER: I think this is for the Board -- the staff that is -- what is the correct term? We have our bifurcated staff, Mr. Lemon. Then we have the Board staff who is bringing the action before the Board. This is from the Board staff that's bringing the action before the Board.

LEGAL COUNSEL SMITH: I would say probably Enforcement staff --

PRESIDENT CARTER: Enforcement staff.

LEGAL COUNSEL SMITH: -- is a good way to refer to them.

PRESIDENT CARTER: Okay, so this would be Mr. Porbaha and his team, okay.

BOARD MEMBER SUAREZ: Okay.

PRESIDENT CARTER: I think that will be clearer

as we move forward through this.

BOARD MEMBER SUAREZ: All right.

PRESIDENT CARTER: So I'd like to give the opportunity of the Enforcement staff to comment on the proposed Board action.

SUPERVISING ENGINEER PORBAHA: Good morning, President Carter and members of the Board. Ali Porbaha, Staff Engineer. And with me are Angeles Caliso, Board Engineer. And we have a representative from the U.S. Army Corps of Engineers and Reclamation District 1000.

I would like to present the Board staff recommendations regarding the proposed decision and order.

The Enforcement Board staff supports the proposed decision and order for Enforcement Action 2010-49 related to Mr. Robert and Mrs. Carrie Jo Sieglitz. However, Board staff recommends that the respondents who admitted cutting the embankment be responsible for restoring the waterside levee toe for the following reasons.

Reason number 1, the respondent admitted to cutting the embankment during his testimony on the October 2010 hearing, in which he stated quote, "So we just by hand took off and cut out fairly vertically the fill that was right adjacent to those boxes". This statement is referenced in proposed decision and order Exhibit 4, page 30 of the transcript line 24 and line 25.

Reason number 2. Respondent also admitted to cutting the embankment in his written statement submitted to the Board on October 2010 hearing, in which he stated, "After the Conex boxes had been installed, the Sieglitzes cut away a portion of the fill adjacent to the levee, but not the levee itself to create a narrow tunnel". This statement is referenced in proposed decision and order Exhibit 3, page 1, last paragraph.

Reason number 3, the survey performed by the independent firm Psomas clearly showed that cutting the so-called fill material to create the walkway behind the Conex containers was actually a portion of the levee embankment and not a fill. This document is referenced in proposed decision and order Exhibit 1, Attachment E.

Reason number 4, the respondent knowingly and intentionally cut into the embankment without the Board permit, despite his personal experience in previously obtaining Board permits.

Please note that the Board staff is not recommending the respondents to restore the levee slope to its original as-built slope of 4 to 1, as shown in the U.S. Army Corps of Engineers as-built drawings, as referenced in the proposed decision and order Exhibit 2, slide number 41.

However, the respondent who decided not to apply

for a Board permit, despite his full knowledge of the need for a permit, should be at least responsible for restoring the waterside levee slope to minimum inclination of 3 to 1.

Accordingly, Board staff recommends the following revisions to the proposed decision and order:

Requested revision number 1, Section 2, page 3. After 3rd paragraph add in text of, "Water Code Section 8710".

Requested revision number 2. Section 4.1, on page 7, paragraph 2, which states, "However, respondents shall not be responsible for reconstructing the levee to a 3 to 1 slope". Staff recommends this sentence be revised as follows: "However, respondents shall be responsible for restoring the waterside levee slope to a 3 to 1 slope".

Requested revision number 3 on Section 4.1, page 7. In the last paragraph add to existing sentence as follows, "And respondents shall provide the Board RD 1000 and DWR Flood Maintenance Office emergency phone numbers to ensure that the moveable items will be moved upon short notice, if necessary".

Requested revision number 4. In Section 4.2, page 7, in the first sentence, delete the word "except".

Requested revision number 5. In Section 4.3,

page 9, paragraph number 3 add the following, "Respondent knowingly and intentionally cut into the embankment or the levee or into the earthen material on the levee".

Requested revision number 6. In section 4.3, page 9, paragraph 4, in the section heading the word "not" should be deleted. And at the end of that paragraph add "Respondent knowingly and intentionally cut into the embankment or the levee or into the earthen material on the levee".

Requested revision number 7. In Section 4.3.2 on page 10, in the 7th line change reference to Water Code Section 8708-8710.

Requested revision number 8. On Section 5, page 11, paragraph 1, should include item 1 that says, "Excavation of the waterside levee toe to accommodate a storage unit".

Requested revision number 9. In Section 5, Paragraph 2, delete the Board "except" from the second sentence and add to the third sentence before, "concrete pad", the following, "Conex containers".

Requested revision number 10. In Section 5, Paragraph 3, first sentence, add in item number 1.

Requested revision number 11. In Section 5, delete paragraph number 4.

Thank you for giving the opportunity to present

Board staff's recommendations regarding the proposed decision and order.

PRESIDENT CARTER: Thank you. I'd like to invite the respondent up to comment on the proposed order and decision.

MR. SIEGLITZ: Thank you, Chairman Carter and Board members. My name is Robert Sieglitz.

I think I need to respond to the last gentleman's presentation first. It seems to me it's insulting the Board members that they can't remember from one Board meeting to the next. As you recall, we placed the Conex boxes on a flat driveway that was already there. We added -- we added sandbags along to create a walkway at places we had to cut away part of the slope, yes, and we admitted that. The slope was never 3 to 1.

We demonstrated and showed photographs of places along the levee, and we also showed a copy of the Corps of Engineers report that showed many places along that area are less than 2 to 1 vertical slope.

The slope at our particular location with the fill on it was never even 1 to 1. In fact, it was pretty much vertical as it shows. And, yes, we did chip away some of the brick and stone work that was sitting out -- sticking out, so I couldn't walk away -- walk along to get the tools and we addressed that.

I would like to say just in -- a couple of things regarding the decision. Just in the spirit of trying to get this resolved, we have -- since the Board meeting, we have disconnected the electrical power that serves our fence from the Conex boxes and are making provisions to serve it from another location.

The Conex boxes have been emptied. The concrete walk pads adjacent to the Conex boxes have been removed. And I've scheduled for the Conex boxes to be trucked out of there on Monday. So we plan on doing that.

I would like to request that the Board allow us to complete the development of the driveway that we have started at the south end of the property.

Although, the staff stated noted the question to allowing driveways into properties on Garden Highway, I think we've demonstrated clearly or shown clearly that Title 23 specifically allows, in Section 133(c)(1) that allows driveways to be installed into Garden Highway properties at any orientation to the levee.

And conceding that our permit had expired and that's Permit number 1163-AGM for riprap, which did show fill and driveways on the drawings and was submitted to the Board, along with my attorney's letter, we would like to -- we would like to complete the development of the driveway and complete the driveway as it is.

Any questions?

VICE-PRESIDENT RIE: President Carter, I have a question.

PRESIDENT CARTER: Ms. Rie, go ahead.

VICE-PRESIDENT RIE: So the -- I don't know if I got this Permit number correct 1163?

MR. SIEGLITZ: 11636-AGM.

VICE-PRESIDENT RIE: Okay. So back when you applied for 11636 --

MR. SIEGLITZ: Yes, ma'am.

VICE-PRESIDENT RIE: -- included in that application you applied for a second driveway or the first driveway?

MR. SIEGLITZ: No, in that particular application, that application was for riprap. In that application, it included within the drawing of that application and it shows -- I've got to reference the sheet number. I believe the sheet is number 17 from my attorney's letter to you. And sheet number 25 showed the drawing. It showed that along with that riprap portions of the property would be filled, and then temporary driveways were going to be built down in order to place the riprap. But the materials that were being used on this new driveway I was constructing are the same materials that were approved for the back construction.

VICE-PRESIDENT RIE: Okay. So --

MR. SIEGLITZ: It wasn't specifically a driveway permit.

VICE-PRESIDENT RIE: Okay. So it was a temporary ramp to get the riprap in?

MR. SIEGLITZ: It a riprap permit, which included fill and the driveways, yes.

VICE-PRESIDENT RIE: But you didn't specifically apply for a second driveway with that permit?

MR. SIEGLITZ: I did not apply for a permit for this driveway. And that permit, frankly, was expired back in 1980. The one that I'm referring to.

VICE-PRESIDENT RIE: Okay. Well, we'll let our staff comment on that, but you may need to reapply.

MR. SIEGLITZ: I think that's appropriate.

VICE-PRESIDENT RIE: Okay, thank you.

MR. SIEGLITZ: Thank you.

PRESIDENT CARTER: Okay. At this point, I open it up for questions of Board staff, Enforcement staff, or the respondent, and discussion.

Any questions for any of the 3 parties involved?

BOARD MEMBER SUAREZ: Mr. President, I'll give it a try.

To the Board staff, not the Enforcement staff. To Board staff, I'm looking at the recommendations from

the Enforcement staff. And because I just got this, I don't -- I'd like your comments regarding which of these recommendations are technical -- just cleanup sort of changes and which are substantive in nature, meaning different than what the decision the Board had made?

PRESIDENT CARTER: I had a similar question perhaps. There was some -- I don't know whether this is more appropriate for Board staff or Enforcement staff. Maybe it's easier for the Enforcement staff to sort this out, which apply to the request of Enforcement staff to ask the respondent to be responsible for restoring the bank and which are -- which request or changes of these 11 apply to things other than that?

One example is, for example, one applies to the emergency phone numbers to ensure the moveable items will be moved on short notice. That applies to the boats and whatnot. The Board -- or that the Board order -- the proposed order is proposing to allow.

So Mr. Tabor.

DWR ASSISTANT CHIEF COUNSEL TABOR: Yes. President Carter, members of the Board, Ward Tabor on behalf of Enforcement staff.

I worked with the Enforcement staff to prepare these proposed changes. Fundamentally, the proposed changes are all about the obligation of the respondent to

restore the levee slope where the Conex boxes are located. There are two, and you did identify the one relative to the moveable materials.

You know, while we agree that these things can be moved, we are concerned that they can present a hazard. And people are gone in the winter time and these things may be in the way. We want to make sure that they will, in fact, be moved, if they need to be moved.

So we just added -- we added a couple references -- proposed a couple references to Water Code Section 8710, which is the basis of the Board's police power authority in this matter. We think it's relevant, because in this case the items that are the subject of the Enforcement Action did not get this Board's approval before they went in. And we think that's a very relevant consideration here.

But fundamentally, we are recommending to the Board that the respondent be ordered to restore the levee slope. You had evidence before you from the as-built drawings from the Corps that there was a robust levee slope here. The drawings from the Psomas company also verify that there was, at one time, a substantial levee slope here.

There is no entity that's clearly responsible for restoring this levee slope, other than the person who

admitted cutting into it. Okay, there may be a disagreement as to what he cut into, but there is no dispute that he cut into something attached to the levee. Clearly, required a Board permit and it seems appropriate to the Enforcement staff that the respondent be ordered to restore that slope.

LEGAL COUNSEL SMITH: Mr. President, if I may. To address the specific question as far as which of these items are cleanup and which refer to restoring the levee. I went through, and it appears that the cleanup items are number 1, 3, 7, and the last part of number 9 dealing with the Conex containers. I would consider those to be cleanup.

PRESIDENT CARTER: So on that portion -- or number 9, that you say is cleanup, you're referring to add to the third sentence before "concrete pad" the following, "Conex containers"?

LEGAL COUNSEL SMITH: Correct.

PRESIDENT CARTER: Okay. That is helpful.

Did that answer your question, Ms. Suarez?

BOARD MEMBER SUAREZ: Yes, sir. Thank you.

PRESIDENT CARTER: Okay.

VICE-PRESIDENT RIE: President Carter, I have a question.

PRESIDENT CARTER: Okay.

VICE-PRESIDENT RIE: Perhaps Ms. Smith can answer this question. Did the applicant get the proposed order in advance of this hearing?

LEGAL COUNSEL SMITH: I believe Mr. Lemon can address that.

STAFF ENGINEER LEMON: We sent the package to Mr. Knox and Mr. Sieglitz on the 19th --

VICE-PRESIDENT RIE: Okay.

STAFF ENGINEER LEMON: -- of November.

VICE-PRESIDENT RIE: So when you sent the proposed order on November 19th, did these edits go with it?

STAFF ENGINEER LEMON: No. I was directed by the Board to come up with a proposed order.

VICE-PRESIDENT RIE: And you did a good job of following our instructions, by the way. You should be commended for doing that.

STAFF ENGINEER LEMON: But I was instructed not to have any conversation with Enforcement staff, so no.

VICE-PRESIDENT RIE: Well, you did a fine job.

So when did these proposed edits go to the respondent, does anyone know?

DWR ASSISTANT CHIEF COUNSEL TABOR: Yes, ma'am. Board Enforcement staff and Legal staff prepared these edits late yesterday afternoon. We gave them to Mr.

Sieglitz this morning.

VICE-PRESIDENT RIE: Okay. Well, yeah, I see that as being problematic. Whatever our proposed decision is, we need to give them at least 10 days notice. And I don't think the respondent has received adequate notice with these proposed changes.

PRESIDENT CARTER: I would disagree with that. I think -- what the Board proposed, in terms of a proposed notice was published timely by Board staff. And this particular proceeding that's before us is to solicit comments from the Enforcement staff, and the respondent, and that is what they have supplied in this written document.

And the Board, whatever the decision the Board makes, the Board can change the proposed order that is before us today and make that final and not require any notice on action that the Board takes today. So I disagree with that assessment.

VICE-PRESIDENT RIE: Ms. Smith, do you see -- I mean, we gave them one decision. The decision said we're deleting Items 1 and 3. And the Enforcement staff is just today adding those back in. And the respondent hasn't had adequate notice to respond to these changes, is that reasonable?

LEGAL COUNSEL SMITH: I would agree with Mr.

Carter's statement, as far as the legal procedure here. The proposed decision is going to be acted on by the Board today. The Board can change -- the final decision comes today if the Board chooses to do so. It's at the discretion of the Board if they want to take additional time and continue the matter, but I believe that the Board can act today, even with these comments that have been submitted. As Mr. Carter stated, the purpose of this proceeding today is to get comments on the proposed decision from both the respondent and enforcement staff and that's what has been done.

VICE-PRESIDENT RIE: Okay, thank you.

DWR ASSISTANT CHIEF COUNSEL TABOR: And keep in mind, the respondent has had the notice of the enforcement proceeding that put this issue into play from the very beginning.

VICE-PRESIDENT RIE: Okay.

BOARD MEMBER BROWN: Mr. Chairman.

PRESIDENT CARTER: Mr. Brown.

BOARD MEMBER BROWN: I like the order as originally drafted. I'm not convinced that the respondent changed the slope of that levee significantly to justify going back in and reworking that slope to 3 to 1. That slope is pretty irregular all up and down that river, some of them almost vertically. And I'm not convinced of that

right now.

And I would be receptive to go ahead and approve the order, as drafted, without having to rework that slope.

PRESIDENT CARTER: Are you making a motion? And if you are, would that motion consider the proposed, shall we call them, cleanup suggestions that the Enforcement staff have made, and perhaps we ought to solicit Board staff's comments on the cleanup suggestions from Enforcement staff.

BOARD MEMBER BROWN: Yes. I'm receptive to the cleanup suggestions. I think they're appropriate. And when you're ready, I would be so willing to make a motion if it appears the other Board members are -- when they're ready to discuss it or vote on it.

VICE-PRESIDENT RIE: Would someone be so kind as to summarize what the cleanup items were again?

PRESIDENT CARTER: I can try that, and Ms. Smith if you can make sure I'm accurate here. Referring to the Enforcement staff's requests for changes to the proposed order, on the second page of that there's a list of 11 items. Is everybody with me?

So the cleanup issues that were proposed by Enforcement staff are Items number 1, number 3, number 7, and the second line of Item number 9. Those four items.

LEGAL COUNSEL SMITH: And may I make one other suggestion as I'm looking at this. For number 3, that language should probably also be added to the actual order, which is in 5.0. I'm looking to see where it would be most appropriate to put that.

BOARD MEMBER BROWN: Okay.

PRESIDENT CARTER: Okay. Did that answer your question?

VICE-PRESIDENT RIE: Yes, thank you.

PRESIDENT CARTER: Okay. All right. Any other discussion?

Mr. Hodgkins.

SECRETARY HODGKINS: I have a question. Maybe Mr. Devereux could come forward. I thought as we went through the hearing that there was a lot to support Enforcement staff's position that the respondent cut the levee.

But I also heard the Board members articulate that they hadn't seen enough evidence to be convinced that he was responsible. So my question here for Mr. Devereux is, if the order goes out and doesn't require the respondent to restore the levee, we're left with a levee -- with a slope that is unsafe perhaps, probably. Are your forces capable of restoring that and would you be able to do that?

MR. DEVEREUX: Mr. Carter, members of the Board, Paul Devereux, General Manager of Reclamation District 1000. And to answer Mr. Hodgkins' question is yes, our district is prepared to come in, upon removal of the Conex boxes, under suitable weather conditions and do work necessary to stabilize that levee slope. And I just said that to Ms. Nagy in the audience here to give assurances to the Corps that the District would step forward and could take care of that slope, if necessary.

SECRETARY HODGKINS: Okay. I might add that I didn't argue about this in the earlier hearing, because it needs to be put back in, in a way that makes it engineered fill. And I think the situation where we're asking the respondent to do that, means he has to get a contractor with that kind of capability. And so I also felt that, to some extent, because it's so important to the safety of the levee, even though we can inspect it and all of that, to get it done more speedily, it makes sense to me to let the local maintaining agency do it.

So all of that said, I like Mr. Brown's motion or thinking. And I'd like to put it in a motion, if I could.

And the motion would be that we improve the Enforcement Order with the addition -- the Enforcement Order as submitted with the addition of the changes requested by Enforcement staff in their document

Section -- or Item 1, Item 3, Item 7, the last or second line of Item 9, and that the provisions of Item 3 also be added to the specific Enforcement Order.

LEGAL COUNSEL SMITH: And I found the location where that would go. That would be in paragraph 5 of Section 5.0.

SECRETARY HODGKINS: Okay, in paragraph 5 of Section 5.0.

BOARD MEMBER BROWN: I'll second the motion, Mr. Chairman.

PRESIDENT CARTER: Okay. We have a motion and a second.

VICE-PRESIDENT RIE: Mr. Hodgkins. Okay, so you're adding cleanup Items 1, 3, and 7, and what else?

SECRETARY HODGKINS: The last line of Item 9, which is simply to add in the third sentence in Section 5, paragraph 2 before the word "concrete pad", "the Conex containers". I mean, I think it's implied that the Conex containers have to be removed, but specifically adding them certainly makes it absolutely clear.

VICE-PRESIDENT RIE: So we're not deleting the "except" clause --

SECRETARY HODGKINS: No.

VICE-PRESIDENT RIE: -- as specified in line 1 of Item 9?

SECRETARY HODGKINS: No.

VICE-PRESIDENT RIE: Okay.

PRESIDENT CARTER: Any other questions?

Ms. Suarez.

BOARD MEMBER SUAREZ: This question is for, I guess, Enforcement staff. Where does the 3 to 1 slope reference come from? How does that -- how was that established?

SUPERVISING ENGINEER PORBAHA: Title 23 requires the waterside slope of the levee to be 3 horizontal to 1 vertical. This is where it comes from?

BOARD MEMBER SUAREZ: So you're not saying that that's what actually was there?

SUPERVISING ENGINEER PORBAHA: That's correct. The actual that was there was -- we approved last time there's a document here -- I refer to that here on the -- on the proposed decision and order Exhibit 2, slide number 41, we showed the as-built drawing, which was the original design levee for that one, had the slope of 4 or 4.5 at that location. But we don't ask to go to that originally designed one. We're just asking to the minimum acceptable.

SECRETARY HODGKINS: But those as-built drawings, what's the date on them?

SUPERVISING ENGINEER PORBAHA: 195 -- just a

minute.

SECRETARY HODGKINS: That's close enough.

(Laughter.)

SECRETARY HODGKINS: Okay. I mean, it's conceivable. And it's more than conceivable, I'll say it's a fact, because I'm somewhat familiar with this levee, that erosion and other things have significantly reduced that slope in numerous places along the levee.

So I understand your position, and I don't quarrel with your right to take that position. I just think in the interests of getting the levee restored, it's better to have the restoration of the slope done by the local maintaining agency and not -- 3 Board members said clearly they weren't certain that the respondent was responsible for the alteration of the levee slope.

BOARD MEMBER SUAREZ: Mr. President.

PRESIDENT CARTER: Ms. Suarez.

BOARD MEMBER SUAREZ: I have another question. And perhaps if, Mr. Tabor, if you could approach the microphone.

Mr. Tabor, do you -- I understand your concern regarding any type of precedence this might set.

DWR ASSISTANT CHIEF COUNSEL TABOR: Yes, ma'am.

BOARD MEMBER SUAREZ: Is there anything that we can add to the record or the order that might clearly

establish that future respondents in these processes should not expect for somebody else to pay and clean up for their mistakes?

DWR ASSISTANT CHIEF COUNSEL TABOR: That's an excellent question. I appreciate you asking that.

I think it could be helpful, because I think the Board is struggling with what the evidence shows as to what was there before Mr. Sieglitz starting doing things to that embankment. We don't know. You know, we have to speculate. We have the as-built drawings. We have the Psomas drawing, and we have the Board standards.

So I think if the Board's decision clearly reflected the uncertainty about what the status of the levee was, that would be helpful, because I think that goes to why you picked a remedy, in this case, and not in another one.

But I do want to remind you that in many cases, existing encroachments that may be out in the flood system are often acquired by a new owner.

And I would hope this Board can take the position that you don't care who the permittee or the instigator of the work was, it's the person who now owns the property who has to take responsibility for threats that the status of the property poses to the flood control system. But clearly, you have a concern about the ultimate

responsibility for what this slope may have been before it. And it's unfortunate we don't have better evidence, which probably reflects the status of traditional funding for flood control, which was little and negligent -- or little or negligible, excuse me. I don't want to imply negligence on the part of the Legislature for not providing adequate funding.

(Laughter.)

PRESIDENT CARTER: Thank you.

LEGAL COUNSEL SMITH: Mr. President.

BOARD MEMBER SUAREZ: Thank you Mr. Tabor. And Ms. Smith, if you have any suggestions regarding how we can include some language regarding the decision being based on the uncertain nature of the record.

LEGAL COUNSEL SMITH: I think you can add that language. And perhaps, I don't know, maybe Mr. Tabor or someone can come up with the precise language, but you could certainly include language, and I think it would best in paragraph 4 on page 9, which discusses the heading is, "Mr. Sieglitz should not be responsible for restoring the levee to design grade..." et cetera, that's where you would add that -- it could just be a sentence really.

BOARD MEMBER SUAREZ: Well -- go ahead.

PRESIDENT CARTER: I think it's really the responsibility of Board staff to help us modify this

proposed order. And I appreciate your bringing this up, Ms. Suarez. It's a very, very good point and shows a lot of foresight moving forward with this process, given that this is such a challenging process. So I -- I think we definitely -- I would suggest to the motioner and the seconder that they strongly consider adding some language here and asking Board staff to draft something that would be sufficient to cover that base.

LEGAL COUNSEL SMITH: I could take a try at it, Mr. President.

PRESIDENT CARTER: Okay.

LEGAL COUNSEL SMITH: My suggestion would be something to the effect of the evidence was inconclusive as to the slope of the levee at the time the Conex containers were placed.

SECRETARY HODGKINS: I would accept that. Can you tell me also where we would put that in the order?

LEGAL COUNSEL SMITH: That would go into paragraph 4 at page 9.

SECRETARY HODGKINS: Okay. I would accept that as a modification and addition to my original motion.

BOARD MEMBER BROWN: The second also accepts that, Mr. Chairman.

PRESIDENT CARTER: Okay.

VICE-PRESIDENT RIE: I have a potential

modification to your motion regarding the driveway. But before we get to that, I'd like to ask Ms. Nagy a question about the driveway.

MS. NAGY: Hi. Meegan Nagy, U.S. Army Corps of Engineers, Sacramento District.

VICE-PRESIDENT RIE: Hi. The respondent didn't apply for a permit. They previously applied for some temporary ramps and some riprap to be installed on their property. And it sort of morphed into a second driveway. The respondent is now interested in properly applying for a permit for this driveway.

Assuming that the driveway can be built to Corps standards and Board standards, is this something that the Corps would be receptive to?

MS. NAGY: The Corps would definitely be receptive to reviewing a permit application for new a driveway. However, that said, given the pictures of the existing driveway, what is in place right now would need to be removed and proper engineering fill -- it would need to be totally redone with proper engineering fill.

So what is existing there, we agree with Board staff should be removed per the order, but would be more than willing to review a new application that's built properly.

VICE-PRESIDENT RIE: Could some of that fill be

used if it were recompacted? Would they have to completely remove it and then bring it back?

MS. NAGY: It appeared -- again, this is just from the pictures, but it appeared to be a very poor gradation, very large rocks. It would be very difficult to make the gradation different without screening it to the proper materials. So I think it would almost be more expensive to try to take the material on site, regrade it, and use it than to just bring in new material.

VICE-PRESIDENT RIE: But the Corps would be receptive to reviewing the permit for a driveway, assuming it could meet Corps standards and Board standards?

MS. NAGY: Absolutely.

VICE-PRESIDENT RIE: Thank you.

MS. NAGY: You're welcome.

VICE-PRESIDENT RIE: And I'd also like the respondent to address the driveway. And based on the Corps' comments, do you have any additional items you would like the Board to consider with respect to the driveway, because currently the order, I believe it's item number 6, is requesting that you remove that material within 120 days?

MR. SIEGLITZ: I'd like to leave it. The material and the type of compaction and the way it's been put in is exactly as has been -- was put in under the

prior permit that I issued. And that was approved by the Corps of Engineers.

I don't know what else to say. If we have to remove it, I don't know if we would apply for a permit to put another one in, because I don't think I want to go through the problems and expense and everything else of doing that again. I don't know what else to tell you regarding that.

VICE-PRESIDENT RIE: The Corps is concerned about the large granular material that's been --

MR. SIEGLITZ: There's broken concrete. The broken concrete could be as large as maybe a foot in diameter. There is no bituminous material in the fill. Any rebar that was in there has been clipped and cut out. The brick was all clean brick and clear brick, the residue brick that was used. The stone material is embedded well within the dirt. Most of the stone material is cobble type stone material, not granite -- broken granite, but it all meets what was required on that earlier permit.

I'm not quite sure. We did not -- the way that the earlier fill and earlier driveways were permitted was that they were allowed to be compacted as driving over them. We will probably -- if we are allowed to keep it, we will probably wait 2 to 4 years before we concrete the driveway just to allow settlement, and before we put on

the top 4 inches of AB, and then we'll probably just do concrete over the top, but we'll wait for it to naturally compact, rather than getting compacting equipment in there.

VICE-PRESIDENT RIE: Well, the concern is whatever is not compacted, and there's loose materials if there were to be a flood that reached that point, that material could wash down stream.

MR. SIEGLITZ: I think that concern is absolutely nil. We've been -- now, this driveway hasn't been here, but we've had similar material on there for many years. In fact, the Conex boxes have been there through 3 floods. And the materials are around it never floated, or moved, or relocated themselves, because most of the binder equipment -- binder material in this driveway is concrete, broken concrete, then it's -- it just doesn't go anywhere.

VICE-PRESIDENT RIE: Okay. Thank you

PRESIDENT CARTER: Thank you.

BOARD MEMBER BROWN: And the suitability of that material is existing would be addressed, I presume, Jay, in the application for a permit?

VICE-PRESIDENT RIE: Mr. Punia, would it be possible for you to have Mr. Marino go out there and take a look and work with the respondent to see if any of the material is properly compacted, and if any of the material

meets our standards that we can leave in place and work with him on removing the unsuitable material?

EXECUTIVE OFFICER PUNIA: We will be glad to do so, but the staff previously documented that that material is not suitable. Maybe staff can elaborate a little more as part of the Board's information.

SUPERVISING ENGINEER PORBAHA: Ali Porbaha, Board staff.

The material method and engineering, which was used to build that one is inappropriate. You cannot compact that material. You cannot build an engineered fill from those materials. In addition to the material, we are unaware of any compaction down to that soil. In addition to that, well engineered road -- the fill should be keyed in into the existing levee. And it has not been done for this. If you level off compaction that they do, they should make a key into existing, such that this doesn't push toward the levee. There is no proof that such a thing has been done.

So both in terms of material size, in terms of the compaction level, in terms of the construction technique, this roadway is unacceptable.

PRESIDENT CARTER: I believe we heard all this on October 29.

SUPERVISING ENGINEER PORBAHA: Right.

PRESIDENT CARTER: So I don't think there's a reason to revisit that. That's all in the evidence and the testimony provided in the hearing.

SUPERVISING ENGINEER PORBAHA: May I make another for the record. The respondent mentioned in Application number 11636 that regarding the -- there was a special condition to that permit, Item number 19, so I just read from that, which says that the fill placed within 30 feet of the top of the bank for access ramps to the river bank shall be removed upon completion of the bank protection work. This was part of the old permit that the respondent referred to that in his statement. I just want to say that for the record.

PRESIDENT CARTER: Thank you.

MR. SIEGLITZ: May I clarify quickly?

PRESIDENT CARTER: No. Thank you.

MR. SIEGLITZ: Okay.

PRESIDENT CARTER: Any other questions?

Okay. So we have a motion before us. It is to approve the proposed order with the addition of the cleanup items from the Enforcement staff's requested items, Items number 1, 3, 7, and the second line of Item number 9, and adding the language from that same list, Item number 3, to Section 5, paragraph 5 of the Enforcement Order.

And also to add to number 4 on page 9 of the Enforcement Order, and I'm going to make a stab at this sentence, but may be you -- Ms. Smith, why don't you read what you proposed.

LEGAL COUNSEL SMITH: To add at the end of the paragraph, "The evidence was inconclusive as to the slope of the levee at the time the Conex boxes were placed".

PRESIDENT CARTER: Okay. So that's the motion before us. Any questions?

VICE-PRESIDENT RIE: Mr. Carter, would it be appropriate to add a number 7 that recommends that the respondent apply for a new driveway that's properly engineered?

PRESIDENT CARTER: We can do that. I think that would certainly be a parting comment to this. And I don't know that we want to recommend that they do that. That's really a choice that the respondent can make, and he has already indicated that he may or may not choose to do that, but that certainly is an option.

So anything else?

Does Board's Enforcement staff have any additional comments with respect to the Board's proposed Enforcement Order? Something in addition that we haven't heard?

SUPERVISING ENGINEER PORBAHA: No, thank you.

PRESIDENT CARTER: Okay. Does Board staff have anything that they would like to comment?

STAFF ENGINEER LEMON: Nothing more to add.

PRESIDENT CARTER: Does the respondent have anything in addition?

MR. SIEGLITZ: It probably doesn't make any difference, but I really wasn't -- because I just got the information, I really wasn't following as closely as you folks were on the additions. And I think I can probably just talk to your staff, as that gets developed to find out what those conditions were. And I don't think I have any objection to them.

Regarding the leaving a phone number, because I have a car or a boat on the property is I think if you do that, then that's going to require everybody along the river or any place to say, okay, call up and give us a phone number. But I don't mind giving you a phone number. It's (916)920-1441.

Thank you.

PRESIDENT CARTER: Okay, thank you.

Okay. Any other questions, comments?

VICE-PRESIDENT RIE: I have a comment. I appreciate your cooperation in disconnecting the power supply and removing the concrete and the container boxes. That's really helpful and we really appreciate that.

PRESIDENT CARTER: I echo that. Thank you very much for initiating that process.

Okay, if there aren't any other questions, then we have a motion before us, and a second. Mr. Punia, would you please call the roll.

EXECUTIVE OFFICER PUNIA: Board Member Emma Suarez?

BOARD MEMBER SUAREZ: Aye.

EXECUTIVE OFFICER PUNIA: Board Member Butch Hodgkins?

SECRETARY HODGKINS: Aye.

EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

VICE-PRESIDENT RIE: Aye.

EXECUTIVE OFFICER PUNIA: Board Member John Brown?

BOARD MEMBER BROWN: Aye.

EXECUTIVE OFFICER PUNIA: Board President Ben Carter?

PRESIDENT CARTER: Aye.

Motion carries unanimously.

Thank you very much, ladies and gentlemen.

We'll move on to Item 10, Requested Action. This is to consider submission to the Office of Administrative Law for public noticing of the Title 23 Tier 1B Revisions of the Board's regulations which address the new

California laws authorizing delegating authority to the Executive Officer for permit approvals and enforcement actions.

Mr. Taras, are you representing Board staff?

(Thereupon an overhead presentation was Presented as follows.)

SUPERVISING ENGINEER TARAS: Yes, President Carter.

PRESIDENT CARTER: Okay. Good morning. Welcome.

SUPERVISING ENGINEER TARAS: Good morning, members of the Board. Curt Taras, Chief of the Encroachment and Enforcement Branch.

Today I'm hear to present to you item -- it was changed in the agenda, but I think it's 10A, requested action to authorize submission of Title 23 Tier 1B revisions to the Board's regulations, which address new laws that authorize the Board to delegate authority to the Executive Officer to issue permit approvals and take enforcement actions. This information will go to the Office of Administrative Law for public noticing and comment as part of the process to formalize regulations into law.

I'll give you some background on this package. In 2009, Assembly Bill 1165 amended the Water Code for flood protection, making changes that allowed the Board to

delegate authorities to the Executive Officer to issue permits, conduct Enforcement Actions among other issues.

As a result, the Board staff has been working over the past year to write these revisions to the regulations. And they are identified as Tier 1B to separate them from other revisions that we've been doing for our technical regs or our original Tier 1, that was mainly to address some name changes of the Board from the Reclamation Board to the Central Valley Flood Protection Board.

These are presented to you in edited form having gone through staff review, legal review, with the assistance of Ms. Deborah Smith, and Ward Tabor and Robin Brewer. And additionally, we've presented them to our Executive Committee for the regulation revisions, including Board Member Suarez and Board Member Hodgkins.

Once these are given the approval by the Board, we'll prepare what's called an Initial Statement of Reasons, which is additional documentation to justify the changes, as well as, I think, an economic impact statement that the State requires to show what the economic impact of proposed regulations are.

In September at the Board meeting, I presented to you the regulations for ex parte communications and some general clean up, which changed some terms of the formerly

used General Manager term to become Executive Officer term, among others. Those were authorized by the Board in September, so those have been agreed that they're ready to go.

The three that I am bringing to you today include regulations that authorize delegated authority to the Executive Officer to issue permits, that's ready; new regulations regarding enforcement actions, which is ready; and new regulation or deletion of the regulation regarding reconsideration.

First, the delegated authority. Previously, the General Manager had delegated authority to issue permit approvals. That was changed I believe in 2006. What that change did though was remove all authority to issue permits from the Executive Officer.

In 2009, some of that authority was restored in law, and these regulations are restoring that, but being more specific as to what types of permits are authorized or the Executive Officer has the ability to authorize. The delegated authority is limited to permits that are considered to not significantly impact elements of the State Plan of Flood Control. And we've attached a list in the regulation that categorizes those type of encroachments, types of permits.

These permits were -- these types were selected

because they're discussed in the standards, the technical standards. So each of these has a technical standard for it, and it's -- therefore, the Executive Officer and the staff can look at a permit and say, yes, it meets standard. It's authorizable, and should be issued a permit.

For that, the Executive Officer is, in these new regulations, tasked with posting the permits that are being considered for approval on a website for 30 days prior to their approval, that would give the public comment period to voice an objection or support to permits that are up for consideration.

So this is kind of streamlining the Consent Calendar. Currently, our Consent Calendar takes a lot of person hours to prepare. This is both going to streamline that Consent Calendar by making this process more automated and issuing delegating that authority to the Executive Officer.

The Executive Officer is also required to make periodic reports to the Board on encroachment permit applications that are being approved by the Executive Officer's authority.

Another addition is -- and this is in red. It should be in blue, but the Board is also delegating to the Executive Officer authority to take action on

encroachments that are in violation of the Water Code or regulations and the authority to issue cease and desist orders. Those authorities are further defined in the next section of regulations. But before I continue, I'm going to pause here and see if there's comment on the delegated authority reg.

PRESIDENT CARTER: Mr. Suarez.

BOARD MEMBER SUAREZ: Thank you, Mr. President.

I just wanted to expand a little bit about the delegated authority. And just as a reminder to the Board, it's going to be a year ago, exactly in December -- I think the first week in December -- that the task group, Mr. Hodgkins, myself and other Board members participated. And we had a public -- not a public meeting, but a meeting with interested parties, which, of course, was open to the public to discuss how the best way to implement AB 1165 through regulations.

And at that meeting, we heard from the participants a very strong message that we should, within the limits of the statute 1165 -- authorize under 1165, we should delegate as much as possible to the Executive Officer in order to streamline our processes.

We also heard, and we can address this a little more under the enforcement section, that the participants wanted our enforcement process to be aggressive, but at

the same time fair and the proper balancing.

But going back to the delegation section, there are some items here that I want to highlight concerning Mr. Hodgkins might have some additions, that are kind of policy in nature.

And they deal with delegation of or a provision that -- or requirement that any type of project that deals with restoration comes before the Board. There doesn't seem to be a distinction between processes or Corps review that's 208 in nature versus 408. And again, I would be very interested to hear from members of the public, either today or through this rule-making process whether there should be a distinction there.

And one of the things that was suggested last year in our December meeting was that it would be helpful to put together some type of a numeric or some flow floor, meaning -- I'll leave the technical people to address this -- that if this amount of impact on this amount of flow, then it's okay for the General Manager to ago ahead and approve.

I'm probably not saying that correctly, but as I say, I'll let the technical people. That numeric suggestion was not included. Certainly, if the members of the public have a suggestion of how we could capture something like that, I would hope and encourage that that

would be the case. So anyway, I just of kind wanted to highlight those things when it comes to the delegation portion of the package.

PRESIDENT CARTER: Thank you.

Any other comments?

VICE-PRESIDENT RIE: Yes, I have a question.

So you said that any decisions by the Executive Officer would be posted on the website and the public would be allowed to comment or raise objections for a period of 30 days.

Is that limited to encroachment permits or does that apply to other matters, such as quit claims or grant deeds or other agreements, which may impact private interests that may not be aware of the delegated authority.

SUPERVISING ENGINEER TARAS: The draft that I have in front of you says for all encroachment permit applications delegated to the Executive Officer, so that would not include other delegated authorities that -- like such as signing property documents, making a vote on a ballot. Those are not necessarily required to be posted.

VICE-PRESIDENT RIE: Did you guys consider --

BOARD MEMBER SUAREZ: It's not part of the package, Ms. Rie. It's just related to AB 1165 and enforcement. Now, it could be a good idea for when we do

Tier 2 to include a change like that for other delegated. But again, this is focused on 1165 and new limited delegated authority that the Board can -- is not required, but can give to the Executive Officer.

VICE-PRESIDENT RIE: Okay. So does the delegated authority remain the same, other than with respect to enforcement orders or -- and encroachment permits, everything else is the same?

SUPERVISING ENGINEER TARAS: Yes. The delegations -- these were added delegations. The deleted ones -- the way delegations were made previously I think was through a resolution. So the resolution had identified all the matters or business matters that the Executive Officer could conduct on behalf of the Board.

The regulations go beyond that and take the matters of issuing a permit and publish that now in a public regulation. But there's other business matters that are not required by law to be in a regulation, and that, like Ms. Suarez said, on non-permit matters, the Board can, through its resolution that's in effect, change that resolution or enhance it as it sees fit.

VICE-PRESIDENT RIE: Okay. So AB 1165 only dealt with the delegations with respect to encroachment permits, is that what you're saying?

SUPERVISING ENGINEER TARAS: Yes. And my advice

would be to those other matters to leave it in the resolution, because you can modify the resolution much easier through a Board vote. So, for instance, if the Board felt that more authorities needed to be given to the Executive Officer, they could have that. If they felt less, that's still at your disposal. If you put it into the regs, it's semi-permanent. It's a two-year process to make changes.

BOARD MEMBER SUAREZ: And, Mr. President, I'd suggest that again that's a conversation for another time.

EXECUTIVE OFFICER PUNIA: That's correct.

PRESIDENT CARTER: Okay. Any other questions, comments?

Go ahead, Mr. Taras, proceed.

SUPERVISING ENGINEER TARAS: Okay, so that concludes the suggested -- or the recommended revisions to the regulations regarding delegated authorities.

We're going to move into the revisions for Enforcement Actions, previously known as Enforcement Proceedings. The title has been changed to Enforcement Actions to greater cover the full span of what AB 1165 and the Water Code allows the Board to do, in terms of enforcement.

And that would include issuing a notice, sending -- having inspections done, more than just the

hearing process. So what was done in this section, which is the section that had the most change to it, we created a whole new language -- all new language paragraphs to replace the prior language. Not that the prior language was problematic, it's just that we needed to start from a fresh clean slate.

So to begin with, the language has the purpose and authority where we draw from Water Code the authority of the Board to complete its mission of enforcing regulations and laws under the Water Code.

Some of the enforcement actions that are available to the Board include administrative and civil actions, such as the following: A Notice of Violation, a Cease and Desist Order, a Restoration Order, and a Permit Revocation.

The first two, 1 and 2, can be delegated to the Executive Officer. Three and four have to be done in a Board vote at a hearing. So there's kind of a tiered approached here. And the regulations will further define that as we go forward.

BOARD MEMBER BROWN: Mr. Taras.

SUPERVISING ENGINEER TARAS: Yes.

BOARD MEMBER BROWN: On that, what about cleanup and abatement?

SUPERVISING ENGINEER TARAS: There's language

later in here related -- that would be considered, I would call it a Restoration Order. So if you had a destruction of habitat or a spill, then the order to restore would have to come through a Board vote or a civil action in civil court.

And the 5th option is the commencement of a civil lawsuit, which could include civil penalties. And that would also be after a Board vote to pursue a civil lawsuit.

Paragraph 21 discusses maintenance activities. This is a new paragraph. And we wanted to address what constitutes a maintenance activity, so that local maintaining agencies know what their range of authority is to remove abandoned property, remove vegetation. So we defined what needed to be done prior to the removal of abandoned property. And that required a notice, either by mail, phone, or placing a notice on the property for a minimum of 5 days prior to removal. And the notice should also state which date the removal will be conducted, if no objections is made. There's always an opportunity for the owner of the abandoned property to identify themselves and make claim to it.

So in Section 22, we address emergency impairment response authority. And the reason we call it, not just an emergency response, but an emergency impairment

response, because the Board may encounter a problem in July that might not be an emergency in July, but become bun in January.

So the Executive Officer is delegated authority to authorize the removal of permitted or unpermitted encroachments that present an imminent threat to the public health and safety without prior notice or order. The attempts shall be made to give the landowner notice prior to that abatement.

For violations that are violations of code, but not an imminent threat to the public, should be handled through a Notice of Violation as the first step. And that is in paragraph 23.

A notice a violation is required by Water Code to be provided to the landowner referred to also as the respondent, that would say the following -- that is doing the following:

It is either -- if there is any progress in an activity that causes an encroachment on the flood control system; if they're owning or maintaining a violation that's inconsistent with the flood control system.

And the Notice of Violation has set requirements that are set by the law that it has to include. One, would be a description of the work that is subject to enforcement. So you say okay, the retaining wall that was

constructed on your property is in violation of our Water Code or our regulations; what the corrective action is necessary to avoid an unreasonable impact on public safety; the deadline to complete the corrective action; a staff contact name, address, and phone number; and a statement alerting that the respondent should immediately cease and desist the activity, otherwise they may be subjected to fines and penalties.

We've asked that file copies be provided to the local maintaining agency and the levee inspector. And we define what an unreasonable impact on public safety means.

We also define what a lawful existing encroachment means. And those are encroachments that have a permit issued by this Board.

We always try to seek resolution. So this last F sentence discusses the respondent may request a meeting or inspection to determine compliance with the Notice of Violation. And if the Executive Officer determines that no further action is necessary, the file is closed. So the purpose of the Notice of Violation is to seek remedy early by simply notifying someone who may not be aware that what is on their property is in Violation of California law, and hopefully they comply, remove the offending material, and the file can be closed administratively.

The next step is a Cease and Desist Order. So the Notice of Violation has gone out. Prior to the Notice of Violation -- the Notice of Violation has to go out first. If no response is done or the situation is worsening, a Cease and Desist Order may be issued by the Executive Officer. And it essentially provides similar information to the Notice of Violation or it will have an attached copy of it.

If restoration is required, like you asked Mr. Brown, the Board may issue a Cease and Desist Order only after a public hearing is held. So if the Executive Officer of the staff determines a Restoration Order is necessary, then the item should be scheduled for a Board hearing.

The procedure for Cease and Desist Orders is to match the same evidentiary hearing procedures currently in the regulations with the following changes:

The applicant shall be referred to as the respondent, and the application shall be referred to as the Enforcement Action. This is, I believe, the best method to maintain continuity and procedure, so that you have a common procedure for hearing items, whether it's an Enforcement Action or a permit.

We extended the notice of hearing time line to 30 days. That was at the recommendation of our committee.

It formally was, I believe, 10 days that the respondent was to be given advanced notice. Staff concurs with this recommendation of extending the time to 30 days.

Written conclusions. Part -- go ahead, sir.

BOARD MEMBER BROWN: When we issue a Cease and Desist Order, depending upon the respondent, he can either go ahead and address the order or make the appeal without it having to go to a hearing, can he not or she?

SUPERVISING ENGINEER TARAS: The Cease and Desist Order becomes a legal order on its issuance. Then if it's not followed, then the opportunity for a hearing becomes in effect. Maybe, you can help me out with this, Debbie?

LEGAL COUNSEL SMITH: Sure I can.

The AB 1165 sections that were added by the Legislature in the Water Code does give the Executive Officer a great deal of authority, but not the -- it is -- the Executive Officer's authority is limited somewhat. So the Executive Officer can only issue conditions to prevent an unreasonable impact to public safety, which we've defined in these regulations, and also it cannot order restoration. That would have to come to the Board for a hearing.

Also, there is provision in the regulations for an applicant -- or, I'm sorry, a respondent to appeal a Cease and Desist Order issued by the General Manager, so

that it could come to the Board.

BOARD MEMBER BROWN: Yeah, that was the question, is that clear?

PRESIDENT CARTER: Where is that?

LEGAL COUNSEL SMITH: It's -- I'd have to find the exact section where it says that. But it basically -- any exercise of delegation by the General Manager or Executive Officer is appealable under our regulations already. And we make mention of that somewhere in here. It's probably in Section 24. Yes, 24(e).

BOARD MEMBER BROWN: Which page?

LEGAL COUNSEL SMITH: Page 6. The last sentence of 24(e), "The respondent may contest the accuracy or validity of a Cease and Desist Order or the Executive Officer's decision regarding compliance with the Cease and Desist Order issued by the Executive Officer by submitting a written protest within 30 calendar days in accordance with Section 110."

BOARD MEMBER BROWN: All right. My point was that somewhere in here it should be made clear to the respondent that he does have the appeal process to the Board, if there's disagreement with staff order.

SUPERVISING ENGINEER TARAS: Yes, Mr. Brown. We agree. However, we also interpret the law to say that the Executive Officer's order is in effect upon issuance so

that you don't have a situation where you have a problem, and a Cease and Desist Order is given, and the respondent elects to continue work until the hearing. There's usually a 30 to 60 lag between when we can get a hearing in here. There might be something on the ground in the field that needs to be addressed immediately. So the Cease and Desist Order goes in effect. The repercussions are up to the decision, but the purpose of the law was to have -- you need immediate safety authority as a safety regulatory body. You need to give the people on the ground the authority to stop something that's bad from happening --

BOARD MEMBER BROWN: I agree with that.

SUPERVISING ENGINEER TARAS: -- and allow it to come to the Board for final working out the details.

BOARD MEMBER BROWN: That wasn't the point. I agree with it. The point is, is that the respondent -- it should be made clear to them they have --

SUPERVISING ENGINEER TARAS: All our notices have that clearly stated in those notices, that the right to a hearing can be -- this language it goes into our draft notices. As you've seen on Enforcement Action notices we've sent to respondents it says clearly in there, and it's in the regs here, that they have the right to request a hearing.

BOARD MEMBER BROWN: Okay, where is it?

LEGAL COUNSEL SMITH: That's in (e) the section I just read.

PRESIDENT CARTER: I guess I'm kind -- I'm not a lawyer and have not had the benefit of all the discussions that the Committee has had, but I kind of agree with Mr. Brown. I don't see where there's -- and I agree with the intent that if there is a threat to public safety, a Cease and Desist Order ought to stop work until the problem can be resolved.

But the problem gets resolved then -- if there's a disagreement, gets resolved at the Board level probably through a hearing process, unless staff and the respondent can come to some agreement. So I'm wondering where that -- I haven't read that here, and maybe I'm not reading it right.

VICE-PRESIDENT RIE: I don't see it either.

SECRETARY HODGKINS: Yeah, I heard you say something, I think, that I don't read in here. And what I thought I heard you say is that the Cease and Desist Order for correcting an immediate threat to public safety, the respondent while he may contest it, he still has to do what's told by -- what he's ordered to do by the C&D, and I don't see that.

LEGAL COUNSEL SMITH: I agree. I think language

would need to be added to make that clear, if that's the intent of the Board.

SECRETARY HODGKINS: And so I guess I'm saying in response to Ben and John, that as written these give the Executive Officer the right to issue a Cease and Desist Order for correcting a threat to public safety, and they also, in paragraph (e), give the respondent the right to appeal it to the Board and don't impose any conditions that I can see on the respondent, other than coming to the Board hearing and making his case in front of the Board. And so that may be a hole. I don't know.

LEGAL COUNSEL SMITH: I think that's easily fixable. I think we would just need to add language that says that if an appeal is made or a protest is made under this section that the Cease and Desist Order remains in effect during that appeal process.

PRESIDENT CARTER: So just so I can be clear, I mean, is it the intent of the Board with these regulations to essentially if there is a -- the purpose of the Cease and Desist Order is to stop work and outline the corrective action that needs to be taken by the project proponent to correct that.

If the proponent -- the project proponent disagrees with the proposed corrective action and the Cease and Desist Order, they can appeal that, but the work

stops -- until work stops and corrective action does not take place until the Board hears the matter, is that correct? Or is it work stops and corrective action happens before the Board?

BOARD MEMBER SUAREZ: Mr. President, if can provide some -- I think we're limited by the statute on that issue. The statute says the Cease and Desist Order shall be effective upon its issuance. So I think that answers question number one. It's effective upon issuance.

There's also a requirement that before the Cease and Desist Order is issued that the person be notified by phone. There has to be contact between our staff with the person or the public entity before you can move forward with a Cease and Desist Order. So those two items I wanted to bring up are right in the statute.

The third issue that I think was the original issue Mr. Brown raised, which was the notice, does the person receiving the Cease And Desist Order understand that they can come to this Board and request relief. And I don't believe that this is a requirement that we've included in the regulations. It certainly would be easy to add and underlined that notice must be given to the respondent, that they have a right to appeal this decision. And make a notice requirement part of -- is it

Subsection (e) or Section (e), Debbie -- Ms. Smith, I'm sorry, that might have some language that makes a notice requirement?

But in terms of when does a Cease and Desist Order become effective, according to the statute is upon issuance.

BOARD MEMBER BROWN: I have a follow-up question to that for you, Emma, is that I would be under the impression that while the respondent may make an appeal to have the Board review it or hear it, it's up to the Board whether to accept it or not or go with staff's recommendation? That's a question not a statement.

BOARD MEMBER SUAREZ: Whether they have a right to --

BOARD MEMBER BROWN: Well, where the Board does not have to hear every request that comes before it.

BOARD MEMBER SUAREZ: My understanding is that we would. Once they make an appeal for a public -- for our process, we would have to open ourselves to that. But I would allow -- I could use some help from Ms. Smith or Mr. Tabor, if he's still here, on that.

LEGAL COUNSEL SMITH: I'll try to answer the question as directly as I can. I think that the -- there doesn't have to -- the Board doesn't have to allow an appeal. That's something that we added, because it's

already a part of our regulations process. Any Executive Officer decision is appealable to this Board currently under our regs, so we just followed that process.

But I think under the Water Code, it doesn't necessarily have to come to the Board, unless it involves restoration, revokes a permit, or involves conditions that go beyond what's necessary to prevent an unreasonable impact to public safety.

So I don't think the Board has to allow an appeal. I think there's some discretion there.

BOARD MEMBER BROWN: I know with the Water Board, it wasn't -- the respondent could make an appeal to have the Board hear it, but it was up to the Board whether or not they thought it was worthy of reconsideration.

BOARD MEMBER SUAREZ: And it sounds like that's a -- we have the discretion on that, so we can do it one way or another. The only then relief, the Respondent has to go straight to court at that point.

BOARD MEMBER BROWN: Yes.

VICE-PRESIDENT RIE: You know, how would the Board be able to determine whether we think it's worthy of our consideration, unless we have a hearing to talk about it, because we certainly can't talk about it with each other.

PRESIDENT CARTER: Well, that's kind of my

1 question is okay, so if the Board has discretion, who
2 makes the decision? And if it is the entire Board, then
3 you are exactly right, we really have to -- in order to
4 make an informed decision, we've got to have a hearing.
5 VICE-PRESIDENT RIE: Exactly.
6 PRESIDENT CARTER: Is there a situation where the
7 Chairman could do that or the Executive Officer could do
8 that, I mean, it seems clear that there's no reasonable
9 justification for considering an appeal.
10 VICE-PRESIDENT RIE: I think we want to be fair.
11 So, you know, right now, 24(e) says that the respondent
12 may contest the accuracy of the Cease and Desist Order. I
13 think we want to add another sentence in there someplace,
14 wherever it's appropriate, that says the respondent may
15 appeal the Cease and Desist Order directly to the Board
16 via public hearing. So somewhere that should be inserted.
17 BOARD MEMBER SUAREZ: Did you want to notice it?
18 VICE-PRESIDENT RIE: Yeah. And we definitely
19 need to have some notice language in there as well.
20 PRESIDENT CARTER: And if we are faced with a
21 decision where there is no reasonable justification for
22 the appeal, do we still have to go through the public
23 hearing?
24 VICE-PRESIDENT RIE: Well, I don't think we can
25 make that decision without scheduling it before the Board

for a hearing and allowing the respondent to attend that discussion.

PRESIDENT CARTER: So that's a yes?

VICE-PRESIDENT RIE: Yes.

I'm not the attorney here, but I mean that's just logically what we would need to do.

PRESIDENT CARTER: Okay.

SECRETARY HODGKINS: But in effect, I mean, could we consider whether or not we are going to allow a hearing on a Cease and Desist Order as a separate item on a regular agenda?

So it wouldn't be a hearing on the permit, but the Board would, in effect, listen to the General Manager and staff and the respondent and decide is there a basis for moving forward into a hearing. Can we do that? Are we precluded from doing that?

PRESIDENT CARTER: No.

SECRETARY HODGKINS: So --

PRESIDENT CARTER: The question is whether or not that's any better than just having a public hearing.

SECRETARY HODGKINS: I think it is.

LEGAL COUNSEL SMITH: I think also we added the ability to appeal -- I want to correct what I said earlier a little bit. We added the appeal also to make sure that we're following due process, so that the person has an

opportunity for a full evidentiary hearing on these things. I don't know that that is required, but it certainly would be definitely legally defensible. The less process you give, the less legally defensible it is.

So allowing a -- I would even say the way this is drafted is it's limited, because if they don't request an appeal -- a hearing within 30 days, then they waive their right to an appeal. They don't get that full hearing.

So they --

BOARD MEMBER SUAREZ: But they can go straight to court.

LEGAL COUNSEL SMITH: Right. They could go straight to court.

BOARD MEMBER SUAREZ: I mean, they still have that venue.

LEGAL COUNSEL SMITH: So for that reason, I would recommend leaving the language in but we can definitely explore other options as well.

BOARD MEMBER SUAREZ: I would -- just to kind of follow on Mr. Hodgkins, and somebody can correct me if I'm wrong, but the cease and desist situations in themselves carry a timeliness issue to them. So inasmuch as we're thinking about having a hearing to know whether we're going to have a petition, now we're adding weeks, months to what really are limited situations where the General

Manager needs to act and tell people stop doing what you're doing because you're really going to screw things up.

SECRETARY HODGKINS: Yes.

BOARD MEMBER SUAREZ: So I just wanted to remind you that that's the nature of -- because otherwise we have Enforcement Actions, right, and we can take our merry old time to do all the things we need to do through the enforcement process. Cease and desists are for those particular situations that we need to act. And so --

LEGAL COUNSEL SMITH: If I can provide a little additional perspective too. Our Water Code sections were based on the Coastal Commission enforcement. They're very similar, but they're not identical. And the difference is the Coastal Commission Cease and Desist Order that's issued by their Executive Officer is limited in duration. They can only issue a Cease and Desist Order for 90 days. And then if you want it to go any longer than that, it has to come to the full commission for a hearing.

So it is -- I agree with Ms. Suarez that if you look at -- if you infer what the Legislature was trying to do in mirroring what the Coastal Commission does is really the Executive Officer Cease and Desist Order really the intent is, I think, to address the immediate situation, what's going to prevent an impact to public safety.

And anything else that can be deferred, yes, we should come -- we should allow an opportunity for a full Board hearing, so the Board can hear it. I think that's probably the intent.

VICE-PRESIDENT RIE: Let me give you guys an example of where this language could really be problematic for us.

Let's say CalTrans is out there installing a bridge on one of our levees, and they forgot to get a permit. We go out and we issue a Cease and Desist Order. And they have a bridge contractor on line, and we say stop work. And the liquidated damages are a million dollars a day. If it turns out that our Cease and Desist Order was unwarranted, then we could be liable for paying those liquidated damages.

So I think we want to put a time limit on these and we want to make it crystal clear that they can appeal the Cease and Desist Order, and I think we have an obligation to hear these, if there are economic damages within a certain amount of time.

LEGAL COUNSEL SMITH: Those are good points.

SUPERVISING ENGINEER TARAS: But -- this is Curt Taras. In a case like that, that would be intentional construction without a permit. The minimum fine for that is $1,000 per day. Maximum fine is $15,000 per day. So

that's what CalTrans would be subject to pay to the Board for constructing without a permit.

VICE-PRESIDENT RIE: Well, if it turns out that we were unjustified in issuing that Cease and Desist Order, we can collect our $1,000 per day, but then in turn, we can pay out $1 million a day to the contractor who has incurred liquidated damages.

SECRETARY HODGKINS: Although, he only incurs them if CalTrans assesses them. I mean, I --

PRESIDENT CARTER: Let's go ahead and move on, I think.

SUPERVISING ENGINEER TARAS: I'll move on to paragraph 25. This goes into more of the hearing procedure that the discussion was moving towards. And so we're kind of at the same point in my presentation and the discussion.

So if the Executive Officer believes the results of the enforcement investigation still warrant, the Executive Officer may schedule a Cease and Desist Order hearing. So those cases where a hearing is necessary, the Executive Officer would issue -- schedule a hearing.

It's similar to the old regs. The old regs had the hearing officer as a main component of the enforcement proceedings. And the hearing officer said -- it could be either the General Manager, the Chief Engineer, to serve

as the Executive Officer. So the same decision maker is making the decision as in the old regs. They'd actually be the entire hearing body under the old regs. This actually gives the Board more of a role as the hearing body, these regulations -- revisions.

We talked about written conclusions --

BOARD MEMBER BROWN: What was that about the Executive Officer being the hearing officer?

SUPERVISING ENGINEER TARAS: The old regulations had a hearing officer process. And I think the Board got confused about hearing officer and full Board hearing, about what kind of votes could be made.

Well, the old regs were written that with the identity of a hearing officer. And it was listed in the regs that the hearing officer can be the Executive Officer, the Chief Engineer, a Board member, a committee of Board members. I think the intent was to process a lot of enforcements using, lets say, the Chief Engineer, to be the hearing officer, issue the decision, and clear out a lot of the enforcement actions using, you know, a one person decision making.

These regs they give more authority on issuing a cease and desist, but they give the Board more authority on holding hearings. And that's the second segment we're in now is the hearing authority.

BOARD MEMBER BROWN: Well, the Board will be holding the hearings.

SUPERVISING ENGINEER TARAS: It allows usage of a hearing officer as well, but there's a lot of change here that discusses using the Board's, well let's say, influence or authority. That's the option that staff can come to the Board, say, you know, we've got a challenging situation. It's involving CalTrans. We need to have this heard by our Board. We're not comfortable making the decision ourselves. This is going to be involving another public agency. It demands a board vote.

And so with good management, you're going to get that -- those items.

BOARD MEMBER BROWN: That's a different issue.

SUPERVISING ENGINEER TARAS: Okay.

BOARD MEMBER BROWN: The issue I heard you talking about was the staff serving as hearing officers on hearings that are appealed. If staff goes ahead and makes a decision on a cleanup and abatement or whatever, and it's to be appealed, it's not going to be appealed to the staff. It would be appealed to the Board.

SUPERVISING ENGINEER TARAS: That's correct. You're right. That's the way the old regs were written was that --

BOARD MEMBER BROWN: Well, I'm talking about

these regs now. Are we different than that now?

SUPERVISING ENGINEER TARAS: No. The regs are different, yes. But the -- you're not giving the Executive Officer the authority to make orders of restoration or to revoke permits.

LEGAL COUNSEL SMITH: I think to answer Mr. Brown's question, there will not be an appeal to the Executive Officer or Chief Engineer. It would have to come --

SUPERVISING ENGINEER TARAS: That's correct. To the Board.

BOARD MEMBER BROWN: Straight to the Board.

LEGAL COUNSEL SMITH: An appeal would have to go to the Board or if the Board designates a hearing officer, it could go to a hearing officer.

BOARD MEMBER BROWN: Are we clear on that?

VICE-PRESIDENT RIE: What section is this that we're discussing?

PRESIDENT CARTER: Twenty-five, paragraph 5. 25(b)(5).

BOARD MEMBER BROWN: Because there's no need of staff making a decision and then appealing that decision to the Executive Officer or to a staff member.

SUPERVISING ENGINEER TARAS: I didn't say that the Executive Officer would serve as the appeals body, but

they could be the initial hearing officer in the initial hearing prior to an appeal hearing; is that correct, Debbie, is that the way we wrote these?

BOARD MEMBER BROWN: I wouldn't use the term "hearing officer". They could be a reconsideration from a senior staff level to the Executive Director, and that's all right, but that's not a hearing officer or a hearing. It's a staff decision. And that staff decision then is what can be appealed to this Board period?

SUPERVISING ENGINEER TARAS: Correct.

LEGAL COUNSEL SMITH: Right. I think what's important to point out for the public's benefit is that there while there isn't a mechanism for a hearing before the Executive Officer before a Cease and Desist Order is issued, there is an opportunity to have a meeting, have an inspection. So there is an opportunity to present their side.

BOARD MEMBER BROWN: And that's all right, but don't confuse that or use the same terminology as an appeal for a hearing and that process. That applies to the Board.

VICE-PRESIDENT RIE: Where does it define who the hearing officer can be? It's not clear.

LEGAL COUNSEL SMITH: That isn't stated -- that isn't stated in these regulations, but I can tell you

legally who a hearing officer could be, if you want to add more clarity to this.

VICE-PRESIDENT RIE: I think it needs to --

LEGAL COUNSEL SMITH: It's complicated.

VICE-PRESIDENT RIE: Well, I think it needs to be defined, because we struggled with that in all the previous hearings, who can be a hearing officer, what is the hearing officer, what is the role of the hearing officer? It was very confusing. So, you know, I think it would be prudent to add some clarity here.

BOARD MEMBER BROWN: I'm of the opinion right now that the hearing officer would be limited to a Board member as directed by the Chairman of this Board.

SUPERVISING ENGINEER TARAS: And maybe that's why it's undefined. We wanted to have the flexibility for the Board to decide that. And administrative law judge is also another option. So we can't really state like a list of people with -- it would limit your authority. So I believe Debbie and I left that undetermined, because it would then come to the Board President and the body to make that decision of who the hearing officer will be.

BOARD MEMBER BROWN: I don't know that we would want an outside administrative law judge, unless something was really peculiar to the situation.

VICE-PRESIDENT RIE: Mr. Brown, should we go

ahead and define it in Section 5, that the hearing officer should be limited to a Board Member.

BOARD MEMBER BROWN: As directed by the Chairman of this Board. I agree.

VICE-PRESIDENT RIE: Ms. Suarez.

BOARD MEMBER SUAREZ: That's your --

VICE-PRESIDENT RIE: Are you okay with that?

BOARD MEMBER SUAREZ: Yeah, that's okay.

VICE-PRESIDENT RIE: Mr. Hodgkins.

SECRETARY HODGKINS: I'm sorry. I was thinking about something else.

(Laughter.)

SECRETARY HODGKINS: I don't have a response.

BOARD MEMBER BROWN: That's the problem with those computers.

(Laughter.)

BOARD MEMBER SUAREZ: Just to clarify. Again, this is the beginning of the public discussion regarding these proposed regulations. We'll have months ahead to fine tune, especially after we hear from the public. So there's no finality today. If you want to add and see how the public reacts to this additional language, that would be fine.

BOARD MEMBER BROWN: Okay, this is more than fine tuning. This kind of basic, as far as I'm concerned.

BOARD MEMBER SUAREZ: Well, that's -- I mean fine tuning what we presented you.

BOARD MEMBER BROWN: And I would strongly recommend that we write into the regs right now, if they're not already in here somewhere, that the hearing officer for appeals will be a member of this Board as directed by the Chairman of the Board, or the whole Board or members of the Board.

SUPERVISING ENGINEER TARAS: Okay. The other requirement --

BOARD MEMBER BROWN: Wait, hold on. Are we in agreement on that or --

BOARD MEMBER SUAREZ: Yes.

BOARD MEMBER BROWN: Okay.

SUPERVISING ENGINEER TARAS: Paragraph number 4, we discussed written conclusions. And it was suggested by the Committee to -- and our legal counsel, to have an opportunity for both parties, the enforcement staff and the respondent to trade reports prior to the hearing. And that might eliminate some -- you know, it will give some heads up to both parties of what -- both what the prosecution's evidence was going to be, and what the defense evidence is going to be.

So this talks about the respondent shall be provided a copy of the order, at least 20 days prior to

the hearing, and the respondent may submit a written statement of defense, at least 15 days prior to the hearing.

PRESIDENT CARTER: Where --

SUPERVISING ENGINEER TARAS: The time line goes, you know, 30 days --

PRESIDENT CARTER: That's paragraph 4 you're talking about.

SUPERVISING ENGINEER TARAS: That's paragraph 4, yes. So these are new adds.

Cross-examination shall not be allowed unless deemed appropriate by the President. Following the hearing, the Board may adopt the findings of the staff report or proposed order, makes changes as it sees fit, direct a Board member or Board staff or Executive Officer to make changes, and then provide the respondent a copy of the proposed decision at least 10 days prior to the consideration by the Board for the proposed decision.

VICE-PRESIDENT RIE: Mr. Taras.

SUPERVISING ENGINEER TARAS: Yes.

VICE-PRESIDENT RIE: When you refer to the respondent providing a copy of the -- or to be provided with a copy of the proposed order at least 20 days before the hearing, is that the decision order prepared by the neutral staff or would that be a proposed order prepared

by the enforcement staff?

SUPERVISING ENGINEER TARAS: No, the 20 days is prior to the hearing even happening. So that's where like -- that's the staff report, the prehearing staff report.

VICE-PRESIDENT RIE: The neutral staff?

SUPERVISING ENGINEER TARAS: No, the Enforcement staff. It's like if you were taken to court, you'd get your filing from the plaintiff that says, you know what they feel, and then as a defendant you'd have, you know, a time to respond.

VICE-PRESIDENT RIE: But I thought that the --

SUPERVISING ENGINEER TARAS: And then the decision would come into the respondent's hands 10 days prior to the Board meeting where it's voted on.

VICE-PRESIDENT RIE: But I thought the decision order is prepared by neutral staff and not by the enforcement staff.

LEGAL COUNSEL SMITH: I can jump in here.

SUPERVISING ENGINEER TARAS: That's the way we're doing, but go ahead, Debbie.

LEGAL COUNSEL SMITH: I can jump in here to clarify. These are written to allow some flexibility. It's written in a way so that enforcement staff could either prepare a staff report and/or written findings in

advance of the hearing. This kind of mirrors what the Coastal Commission does, so that the Board could make a decision on the actual day of the hearing and adopt those proposed findings.

But it also allows the Board staff -- it doesn't require them to do that. They could also draft a staff report, which is what we have done in the past.

So the process that Ms. Rie is speaking of, that's a separate -- that's after the hearing. If the Board wants to draft different proposed findings or not adopt the staff report, there's a procedure for that too. These regulations are -- we made a very -- I drafted most of them, so I can speak to them. We tried to make them as close to the process the Board has already been following and provide some flexibility.

So it basically allows an option for enforcement staff. They can either draft a staff report or they can draft a proposed order and findings. The Board doesn't have to adopt that.

VICE-PRESIDENT RIE: Okay.

SUPERVISING ENGINEER TARAS: Okay. The Board decision can include the following:

And this is from the old regs. The only thing added in here is the order to do restoration -- a restoration order. And it's got a bold underline up here,

right here.

A permit revocation hearing. So Paragraph 26 discusses revoking a permit. And the valid permit issued by the Board may only be revoked after the permittee is given 15 days prior notice, and an opportunity for a hearing.

And then the final paragraph is the nuisance and civil penalty provisions. This is a summary of what's in the California Water Code.

BOARD MEMBER BROWN: Before you leave the prior statement, is that if this Board or a prior board has issued a permit, and then we go ahead and change the rules or we relocate that permit, you were going to check on the finance -- the physical -- the financial responsibility of doing that.

Does the State have any responsibility in that? Debbie, you or somebody was going to check on that.

BOARD MEMBER SUAREZ: Well, I can say in certain circumstances, the answer is yes. And those are circumstances where there's been a change in the State Plan of Flood Control, and because of that, the permit that was previously okay is no longer okay. And that's in the law, I believe. It's in the Water Code.

BOARD MEMBER BROWN: And then we or the State would be responsible for the restoration measures?

BOARD MEMBER SUAREZ: Yes. You either grandfather in the permit or if you -- there's got to be some restoration, then the State is -- the party -- the permittee is not responsible. Somebody else would be responsible.

BOARD MEMBER BROWN: Would that also apply if the prior Board had gone ahead and issued a permit for an encroachment and the encroachment was obviously one that they should not have been permitted?

BOARD MEMBER SUAREZ: No, it doesn't apply in situations that we have in Bear Creek, no. Unless, it can be demonstrated there's been a change in the State Plan of Flood Control, and because of that, the permit is no longer valid.

BOARD MEMBER BROWN: Well, it's no longer valid, but the question is who's responsible for the restoration work?

BOARD MEMBER SUAREZ: That's what I mean. If it's a change in the State Plan of Flood Control -- I think that's the term they use. Jay, is it in the statue or in regulation? I can't remember. I believe -- I think it's statute, but I can't remember, and then the permittee is not responsible for the cost. The State --

BOARD MEMBER BROWN: The permittee is not. The State is.

BOARD MEMBER SUAREZ: Correct.

BOARD MEMBER BROWN: Okay.

PRESIDENT CARTER: Please go ahead.

SUPERVISING ENGINEER TARAS: Okay. The final paragraph of Enforcement Paragraph 27 lists some of the fines that would be applicable. So intentionally or negligently violating a Cease and Desist Order has no minimum fine, but a maximum fine of $6,000 per day.

That would be -- let's, for instance, if the Executive officer issued a Cease and Desist, the entity went on continuing the activity, the Board heard it, you know, 30 days after the Cease and Desist was issued, and learned that the activity had been continuing for 30 days, even though they were given written notice, you could request the superior court to issue the fine.

All these fines have to be issued in superior court. The Board does not have, at this time, administrative fines authority.

The deletion of the old language is beyond that. So all that language is deleted. Some of it is incorporated in the new regs, but it would be like a piece here or piece there. So it's just for clarity purpose, it's an entire strike and add.

BOARD MEMBER BROWN: Who takes it to superior court, we do?

BOARD MEMBER SUAREZ: We do.

SUPERVISING ENGINEER TARAS: The Board would vote to continue to take a legal action.

Then the final change is in the reconsideration paragraph. With legal advice, this is deleted, because the proper body for appealing your decision is the courts.

VICE-PRESIDENT RIE: You said with legal advice, who gave us that advice?

SUPERVISING ENGINEER TARAS: Well, in consultation with the attorney team. It was my proposal, and I was told that it's correct that, you know, to appeal a Board decision, the next body -- like if you go to a superior court and you're appealing a superior court's decision, yes, you can always go to the superior court and say listen change the decision. They're not under any obligation to change the decision. So you then could go and file an appeal.

VICE-PRESIDENT RIE: Well, I'm just curious what attorney would want to take that out?

SUPERVISING ENGINEER TARAS: The team that I consulted with in preparing these regulations all were -- you know, did not show objection to removing that. It was my proposal.

LEGAL COUNSEL SMITH: I can speak to my opinion. I know that Mr. Tabor had a different opinion. It's not a

legal requirement that there be a reconsideration provision. Mr. Tabor stated some very good reasons to keep it in. That is trying to keep matters out of court, give parties additional opportunities to try and avoid going to court.

I'm a litigator on the other hand and I have no problem going to court. So to me, it perhaps adds an unnecessary step to allow another bite at the apple.

This is a policy call for the Board entirely.

SUPERVISING ENGINEER TARAS: Staff's position is for an enforcement, it's gone that far, we need action. We can't go yet another 30 days, another 60 days. There's going to be situations like that, that it's at your discretion, of course, as Board members, to extend time lines.

However, if you put it in the regs, it's going to be held in there as like another bite at the apple, another way to say well, I'm not going to do anything for another 30 days, because I want to be reconsidered. And you need to have expediency in public safety regulations, as we've learned in, you know, many of the disasters that have happened recently.

VICE-PRESIDENT RIE: Well, litigation is very expensive.

SUPERVISING ENGINEER TARAS: So is our disasters.

VICE-PRESIDENT RIE: You know we -- there was a recent lawsuit involving a State of California board. I don't even think we got past the first 30 days of discovery and, you know, it was $45,000. I would think that this Board would want to take every opportunity to resolve these matters in-house before we force an expensive, you know, lawsuit. That's just my opinion. I just think that's the wrong direction to go in.

SUPERVISING ENGINEER TARAS: Well, my opinion, this reconsideration clause limits your authority. It really weakens your authority as a Board. And as a public safety regulatory body, you're essentially, in these regulations, giving -- because I've faced this where I've had respondents say, well, we're going to reconsider. We're going to come -- you know, I have my right to, you know, go further and delay and not take any action, until I've exhausted the entire reg list. And we want it to stop after that hearing.

If you want to rehear something, that's always at the Board's discretion. But to make it mandatory, is -- I think it weakens your authority to take action in emergency situations. And disasters are very expensive, as we've learned recently with the oil spill, with the San Bruno blast. The regulatory body responsibility is to --

VICE-PRESIDENT RIE: Thank you.

SUPERVISING ENGINEER TARAS: -- take action quickly.

VICE-PRESIDENT RIE: Thank you for that.

PRESIDENT CARTER: Okay. Any other comments from the Board?

BOARD MEMBER SUAREZ: If I just -- I wanted to clarify the issue of reconsideration. And I'm glad Ms. Smith presented Mr. Tabor's position on the matter, because there was -- this was one area we had conflicting advice or recommendations from our two top talented attorneys.

I think I can speak for the task group regarding this policy matter, whether we personally agreed or disagreed whether or not this was a right move, we thought it would be worth kind of pushing up to the next discussion level and actually hear from the public through the public comment process what their thoughts were regarding the removal of this final administrative review process that we currently have.

We can -- so that -- to me, I just present that option to the Board, whether if we end up adopting the recommendation -- the staff recommendation, when we finalize the regs or not, one consideration to have is to have the public react to the removal of that section, and then we can benefit from the those comments before our

final decision, but I leave it to the Board.

PRESIDENT CARTER: Okay. Speaking of the public, I'd like to give Mr. Shapiro an opportunity to comment on what we've discussed for the benefit of the Board and before we break for lunch.

So if staff doesn't have anything else.

SUPERVISING ENGINEER TARAS: Staff is complete, sir.

PRESIDENT CARTER: Okay, Mr. Shapiro, you've been very patient. Good morning.

MR. SHAPIRO: Good morning. Thank you, President Carter, members of the Board. Scott Shapiro, General Counsel for California Central Valley Flood Control Association. And I appreciate you getting my comments in before lunch. I have a 1:30 meeting at the Corps that I'm hopeful to still attend.

I want to say generally that I'm really pleased with this draft of the proposed regulations, and the time that's gone into it, the effort and the thought.

Representing the LMAs, if you will, this is a significant move for the Board to consider streamlining your authority in terms of delegation and to create clear procedures, which will allow streamlining of enforcement actions. These are two areas in which we are your partners and we're pleased that this is moving along.

I have, on behalf of the association, no objection at all to this continuing to move along. In fact, my preference would be that we not have this come back month after month before it's sent on to Office of Administrative Law.

Having said that, I heard a few comments from the Board today of changes that Board members are looking to make, in particular there was Mr. Brown's comment about clarifying who hearing officers could be. I suspect that change could be made and incorporated into what is sent to OAL.

I also had a few comments that I hope the Board will consider. And because some may be on the nature of minutia, it may be that a Board approval with delegation to the Committee to make final consideration of these changes and then to get it out to OAL in the next few weeks would be something to consider.

So with that, let me just go through the specific comments I had. I'm going to first talk about Section 5, Delegations. And in particular, the list of enumerated items for which delegation may not occur, that's the Sub (a) list.

In particular, I wanted to speak about number 2 and number 3. Number 2, this is items that could not be delegated where permits or other approvals of encroachment

for which the Board has not received written comments from the Corps pursuant to 208.10.

And my concern about that item is, is that there are matters, as this Board fully understands, that the Corps doesn't have jurisdiction over. And while current practice of the Corps is to write a letter saying we don't have jurisdiction under 208.10, in the future, the Corps may not send those letters. And so, if you don't have a written comment from the Corps, then you'd be precluded from delegating that.

And I think the way to clarify that is to simply add at the end, where the Corps has jurisdiction. So to make the point, if you don't get a 208.10 letter and the Corps has jurisdiction, then delegation should not occur. But if the Corps doesn't have jurisdiction, and you don't get a letter, it's not an infirmity. So that would be the first comment.

The second Sub (3), "Permits or other approvals of encroachment requiring Corps 408 approval". My concern regarding this is not the policy that you seem to be setting, which is if 408 is required, let's have the Board review it. Rather my concern is, is the recent Corps guidance, which clarifies that all approvals, even 208.10 approvals, are pursuant to the 408 authority. And there was a memo about 2 months ago that said that. I had a

chance to confer with Ms. Nagy, who's in the audience, and she agrees with that interpretation of the Corps' recent guidance.

So as phrased, you wouldn't be able to delegate anything, because even 208.10 items now are considered 408 items. I think the solution, and actually I can thank Ms. Nagy for her pointing this out to me, is that perhaps we should say permits or other approvals of encroachment requiring approval by the Corps headquarters or division, because the Corps has delegated to the District the approval authority under 408 to do 208.10 approvals. But it requires Division and Headquarters approval for the big ones.

So basically saying if the District can do it, then we're okay with our engineer doing it, with our Executive Officer. But if it requires policy guidance from Division or headquarters, that's when we want it to go to the Board. So that would be my suggestion on that one.

I did have a question, which I don't know that I need an answer to now, regarding Sub (8) and Sub (9). I notice that for some of them, you use the formula, "permits or other approvals of encroachment", and then sometimes you use the formula, "matters or applications". And I wasn't completely clear why the different formula.

It seems that some cases they overlap and some cases they might be different. And it struck me that perhaps it should be more consistent throughout. If there's a reason for the inconsistency, I just didn't grasp with my read, and I apologize for the comment.

Jumping down to Sub (C), also within this Section 20 -- excuse me Section 5. I notice that the Committee is proposing having delegated items, which the Executive Officer decides, posted to the website for 30 days, gives the public a chance to comment, gives the Board awareness. I think that's great.

I was confused by the next sentence, which says, "During the 30 days, the Executive Officer shall provide the public a reasonable opportunity to comment". And so it wasn't clear to me what the meant. I thought of the 30 days as the opportunity to comment. If you're saying that you would post it, and then give another 30 days, it just wasn't clear to me what the sequence was. And so perhaps some clarification in the revisions on that.

Jumping down to Sub (f), also within this Section 5. It says, "The Executive Officer may authorize or direct works in response to emergencies or situations". It struck me that you might want to add "or approve permits or other matters", because there are emergency permits that come before the Board. And since we've said

"authorize or direct work", and in other case we've used the term "permit", it might be good to clarify that permits could be issued in an emergency case as well.

Jumping ahead now to Section 21, Maintenance Activities. Minor point in Sub (a) at the end, where it speaks of notification by the Executive Officer. I was just going to suggest that you add, "as described in Subsection (b)", since that's where the notification provisions are required.

And then a truly minor point, in Sub (d), we have this list of discarded --

LEGAL COUNSEL SMITH: Scott, I'm sorry. Can you slow down just one second. I'm trying to get caught up here.

MR. SHAPIRO: Yes. My apologies.

BOARD MEMBER BROWN: We're on 21, Paragraph A.

MR. SHAPIRO: Yeah, page 2 is what it says on my page.

MS. BROWN: Page 2, Section 21, paragraph A, you wanted something added at the end of that.

MR. SHAPIRO: Yeah, it ends with, "With maintenance or inspections after notification by the Executive Officer". And I was simply proposing that you add, "as described in Subsection (b)".

I originally made the note, "What's the

notification", and then I got to (b), and said, "Oh, that's notification".

And then two paragraphs later, in Sub (d), there is a series of words relating to what abandon means. And it says, "Discarded, cast aside, dumped, neglected, vacant or unoccupied". And my 12th grade English teacher would require me to change "vacant" to "vacated", and then add "or left unoccupied", so they all had parallel verb construction.

Mrs. Dreyfuss would be proud that I remembered that.

(Laughter.)

MR. SHAPIRO: Section 22. I thought in Sub (a) it was great that the Executive Officer is delegated authority to authorize removal or modification in an emergency circumstance. And I simply wondered whether your Executive Officer has delegated authority to spend money in those circumstances? Because it's great to say, oh, the Executive Officer can say, "remove that or we're going to remove that". But if you don't have budget authority to spend $10,000, $50,000, it may be meaningless.

So I don't know if that's beyond 1165, but you might think about whether you have matching financial delegation to match the authority in emergency

circumstances.

BOARD MEMBER BROWN: Jay, do you have any comments on that? Do you have a budget set up aside that you could --

EXECUTIVE OFFICER PUNIA: I don't have set-aside for emergency purpose, but I have my regular budget delegation, in which Len and I have the authority to spend up to 50,000 without going to General Services.

BOARD MEMBER BROWN: Could you have a budget item that could say something like "anticipated but undefined emergencies"?

EXECUTIVE OFFICER PUNIA: We have to go back to our budget change proposal to get that type of allocation. At this time, they are a defined budget, but I have it for specific purposes.

BOARD MEMBER BROWN: I understand that, but the question was, could you add that in and would it be approved, in your opinion?

EXECUTIVE OFFICER PUNIA: We can definitely submit the budget change proposal. But at this time, what I can do is -- the direction from the Department of Finance is, if I can show them that I'm cutting my budget from this and adding here, they will allow me to do so, but they won't augment my budget. But we can definitely get authority that this is for this purpose, and I am

releasing the money from another purpose.

PRESIDENT CARTER: Do you have a contingency fund?

EXECUTIVE OFFICER PUNIA: Yes, there is a fund for, the term we call it, for operation, maintenance, and other small amount. And that's for buying computers and other equipment type. Those type of funding is there. So from that funding, I can use for this purpose, if needed.

BOARD MEMBER BROWN: Yeah, but that's not sufficient for what he's talking about.

PRESIDENT CARTER: So you make a very good point, Mr. Shapiro. It's something that perhaps we need to address.

MR. SHAPIRO: Thank you. I know that there is a provision in the Water Code that affects DWR's ability to spend funds in emergency circumstances in the Delta. And I believe that the statute for the last 15 years or so has capped that amount $50,000.

The Flood Control Association is considering proposing legislation to up that to $250,000, recognizing that you can't do anything for $50,000 anymore. So to the extent that, for the next budget, if it's too late for this one, you think about a larger number, you might think about the $250,000 number.

EXECUTIVE OFFICER PUNIA: Yeah, but I want to

clarify on this. The way the system is set up, I will be just giving the authorization. The work will be done either by a local reclamation district or Department of Water Resources. They will be seeking that we are allowing them to do that work. We will not be doing the physical work on the ground.

BOARD MEMBER BROWN: I understand that, but they should understand then that those funds would be set aside for decisions that would be made by you and this Board.

EXECUTIVE OFFICER PUNIA: Those type of funds are already -- each local reclamation district has some emergency authorization. And the Department of Water Resources Flood Center has some authorization funding allocated for those purposes.

BOARD MEMBER BROWN: But they're not allocated for your authorization, are they?

EXECUTIVE OFFICER PUNIA: No, they are not. They are at their discretion. But if there's an emergency situation, then we will be giving the authorization that, yes, the work can be done, and they will be doing the physical work using that allocation.

PRESIDENT CARTER: Hopefully we both have the same emergencies.

BOARD MEMBER SUAREZ: Well, I will take Mr. Shapiro and his, I think, offer to perhaps help us draft

some legislative language that might help us deal with the situation or some budget language that might help us with this.

MR. SHAPIRO: Flood Control Association is always willing to help all of our partners to make sure we have what we need to proceed.

(Laughter.)

BOARD MEMBER SUAREZ: Well, thank you.

BOARD MEMBER BROWN: That's a good idea.

MR. SHAPIRO: I'll pass around the hat at the next meeting. We'll see if we can raise $250,000.

SECRETARY HODGKINS: You didn't hear that from this Board though.

MR. SHAPIRO: Jumping down to Section 24 and getting near the end now, the cease and desist orders issued by the Executive Officer.

In Subsection (c), you clarify the authorities that the Executive Officer doesn't have in issuing a Cease and Desist Order. And I recognize you're drawing the distinction between the full panoply of authority the Board has and the more limited range of opportunities that the Executive Officer has.

My concern with the way it was phrased is, is that by simply saying what you can't do, you leave open a whole range of things that you're really not intending to

grant to the Executive Officer. And I'll give you the extreme ridiculous example, which is under this language, the Executive Officer could tell RD 1000 that its general manager needs to dance on the levee, because it's not excluded from the list.

And so what I think you might want to do is instead refer to the good list that you've created in Section 25(b)(8), which is the list of authorities the Board has, and say the Executive Officer has all the powers that the Board has in that list, except subitems 3, 4 and 5. And that way, you have a consistent listing of what the authorities are and you've specifically enumerated the ones that the Executive Officer doesn't have. So that would be my suggested way on how to handle that.

SECRETARY HODGKINS: Wait.

MR. SHAPIRO: Yes.

SECRETARY HODGKINS: Dancing on the levee. "Imposes conditions other than those necessary to avoid an unreasonable impact on public safety".

In effect, that says the only thing he can do is issue a permit that imposes conditions to avoid an unreasonable impact on public safety.

MR. SHAPIRO: Yeah, but I'm looking at the list of things that you've said the Board may do. The Board

may remove -- may say the work has to be removed. And I think you've indicated you're okay with the Executive Officer doing that.

And you've said the Board may require alteration of the work, and you're okay with your Executive Officer doing that.

The Board may issue a Restoration Order. And the statute says the Executive Officer can't do that. Implementation of environmental mitigation, and you've said you don't want your Executive Officer doing that. So it strikes me that the list that's for the Board is the key list. And then what you want to do is say that's the list, but he doesn't have certain authorities.

BOARD MEMBER BROWN: Do we even need the C Section here?

MR. SHAPIRO: Of items that the Executive Office is not authorized to do?

BOARD MEMBER BROWN: Yeah.

MR. SHAPIRO: Well, I would agree with you, you don't need the restoration item, because the statute precludes the restoration item. It's good to mimic it, but it's certainly not required. I will confess that I don't -- I haven't looked at the issue of environmental restoration work. I'm guessing that that's a Committee addition, that the statute didn't specifically get into

that.

And so if you are seeking to limit the Executive Officer's ability to impose environmental restoration work, you would need to specifically list that.

BOARD MEMBER BROWN: Well, I think I would rather just list the things that he is authorized to do and not get into all of the issues that he's not authorized to do, because you're going to leave some out for sure, like you say. I don't know. I'd look at it and see if you even need it, and rethink that.

PRESIDENT CARTER: Anything else, Mr. Shapiro?

MR. SHAPIRO: Yeah, just, I think, three more or maybe --

LEGAL COUNSEL SMITH: If I can make a comment on this last one before we pass over it. This language was added in there to make clear what the difference between the Water Code sections are, the difference between what the Executive Officer has the authority to do versus what the Board has the authority to do. There may be a way to reword it to address Mr. Shapiro's concerns, but there were definite legal reasons for putting this in here. So I'd want to think about that before we make a change.

BOARD MEMBER BROWN: That's fine.

MR. SHAPIRO: Moving to Subsection (e), this is page 6 of the draft I'm holding. It starts, "The

respondent may request an inspection to determine compliance with a Cease and Desist Order". I was just going to suggest that it say, "The respondent may request an inspection to determine if actions taken by the respondent are in compliance with the Cease and Desist Order".

Moving now to Section 25, subparagraph (4) on page 7. There is a line in the middle that the Executive Officer prepares this proposed order. This is the order Ms. Rie asked about, saying we'll who's preparing the order. And this is the proposed order from the prosecution staff, if you will, that's saying here is what we think the Board should do. And it says, "It will include the order and written summary, based on substantial evidence".

And I was going to suggest that you delete the phrase "based on substantial evidence" for 2 reasons. One is, there's been no hearing, so -- it's based on the Executive Officer's understanding, not as a result of some administrative hearing that's resulted in the creation of evidence.

And second, I always worry when you put in a standard like that, that that's going to give a respondent an opportunity to sue later saying that that portion of the process was improper, because it didn't meet the

substantial evidence requirement.

I think your point is, is you want to make sure it's a good summary that's complete. And I think there are ways of getting that point across without the phrase "substantial evidence".

And then in Sub (5) at the end, "The respondent shall be provided with a copy of the proposed order and proposed decision at least 10 calendar days prior to the Board's consideration of the proposed decision." I just thought it would be useful to refer back and make clear it's that same one, that same proposed order.

There's also a phrase in here about when the -- if there is a hearing officer and there's that proposed order and that it comes to the Board. I think it would be useful to think about what the Board's procedure would be in that case.

So, for example, if President Carter designates 3 Board members to go and to hold a hearing, and they produce a proposed order at that hearing and bring it to the Board, is testimony allowed before the Board in that case? Is argument allowed before the Board in that case? What will the Board be doing? And to think about and maybe put in the regulations what that procedure is.

BOARD MEMBER SUAREZ: Mr. Shapiro?

MR. SHAPIRO: Yes.

BOARD MEMBER SUAREZ: Do you have a preference --

MR. SHAPIRO: I would suggest --

BOARD MEMBER SUAREZ: -- in terms of process?

MR. SHAPIRO: I would suggest that the rule that President Carter set out for today for the Enforcement Action that occurred earlier is exactly right, which is you already had a hearing. This isn't evidence. This is about talking about what the order is and whether it makes sense or whether it doesn't. So argument would be appropriate, but I would believe testimony is not.

BOARD MEMBER SUAREZ: Thank you.

MR. SHAPIRO: Just as was done today.

In permit revocation, Section 20 --

LEGAL COUNSEL SMITH: May I comment on that real quick.

MR. SHAPIRO: Yeah.

LEGAL COUNSEL SMITH: I think you'll find that is covered in 13(f).

MR. SHAPIRO: Oh, good.

LEGAL COUNSEL SMITH: So look back at that and see if you still have concerns about that.

MR. SHAPIRO: I will go back and take a look at that. Thank you.

And then in 26, Permit Revocation, I thought it might be useful to provide a standard for what has to

occur for a permit to be revoked under that section. Presumably this might be a case where you're not just dealing with an Enforcement Action, but rather just the revocation of a permit generally.

Someone hasn't done something wrong, but the Board still says we want to revoke a permit. And it strikes me that there should be some sort of standard on why you would revoke it, what would have to occur to make you think it's worth revoking the permit.

VICE-PRESIDENT RIE: But isn't that already covered someplace else in the regs?

MR. SHAPIRO: Well, I think it's covered in regard to enforcement hearings, but I don't know that it's covered in regard to just, "Hey, we came across the permit, and we think it shouldn't have been issued. We think this is a mistake now. Standards have changed and we want to undue this."

And then my final 2 comments. In Section 27, Nuisance and Civil Penalty Provisions. I would just rephrase the intentional construction without permit. All construction is intentional. I think the point is, is it was "construction knowingly without a permit" would be the way I would phrase it.

And finally, on behalf of the Association, I would advocate strongly for the inclusion of the

reconsideration provisions. I fully understand the concern your staff has about creating yet another stage of appeal and the uncertainty that comes with that. But I think you can address that just as the statute says when the Executive Office issues a Cease and Desist Order, it's in effect, even during an appeal to the Board.

You can say that when the Board issues a decision, it's in effect even during reconsideration, so that you can start getting the action you need, but you can still create that opportunity for reconsideration.

And the reason I feel strongly about it, is we've seen repeatedly in the Enforcement Actions that the Board has started doing over the last year, that it's not until you get to a Board hearing that people take this seriously. It's not until they see a majority of Board members are willing to say, "No, take that out", that people start paying attention.

And it's when you get that order issued and then they come back and they say, "Okay, I'm willing to work with you". You don't want to have to necessarily go to court at that point. So that's why I think reconsideration is a valuable tool.

And I appreciate your taking, what turned out to be, many minutes of comments and staying so late into the lunch break.

Thank you.

PRESIDENT CARTER: Thank you. Very helpful.

All right. So ladies and gentlemen, what's the pleasure of the Board at this point? Do we want to send this back to the Committee to make the changes and at their discretion when they've competed those, submit those to the Office of Administrative Law, or do we want it to come back to the Board?

BOARD MEMBER BROWN: I'd say come back to the Board. Make these changes and come back to the Board. One more shot at it.

SECRETARY HODGKINS: Have we set a date for our next meeting.

SUPPORT STAFF WOERTINK: Yes. January 28th.

SECRETARY HODGKINS: January what?

SUPPORT STAFF WOERTINK: Twenty-eight.

SECRETARY HODGKINS: Twenty-eight. Okay. Two months is all.

PRESIDENT CARTER: What's the -- Ms. Suarez, Mr. Hodgkins being members of the Committee, what's your preference? Would you feel comfortable making these revisions and incorporating them and sending them off to the Office of Administrative Law or would you like to bring it back before the Board again?

BOARD MEMBER SUAREZ: We could take a -- we could

complete the process, as long as we got a number of things -- clear direction from the Board.

For example, do you want to retain the reconsideration section and just make the slight suggestion that Mr. Shapiro -- clarification Mr. Shapiro made or do you want to send it over with the complete deletion of your consideration? That's a big policy question that we can decide today or we can come back to the Board later, once we've gone through all the other changes.

I think, for the most part, everything else was pretty clear. We could probably capture -- it's probably pretty clean, and capture -- but Mr. Brown expresses a desire to have an opportunity to revisit and relook at the matter. So I want to accommodate that too. I mean, that's not a small matter.

LEGAL COUNSEL SMITH: If I may add one comment too. If we do add language, one example that comes to mind -- and I'm not going to remember all the comments that were made, but one example that comes to mind that might lead to some major changes that the Board may want to see, is if we add language clarifying when a permit can be revoked. That probably has some significant policy issues that could come up.

BOARD MEMBER SUAREZ: With that -- I guess

there's probably enough here today that we received information from Board members and the public that we probably should take some time to clean it up and get a clean copy before that Board.

PRESIDENT CARTER: Okay. So we'll agendize this again for January --

BOARD MEMBER SUAREZ: If that's acceptable?

PRESIDENT CARTER: -- and bring it back to the Board.

With respect to maybe just giving you some direction on the reconsideration, what's the Board's perspective on that for the Committee?

PRESIDENT CARTER: I kind of tend to agree with Ms. Rie in that we want to try and provide every opportunity to stay out of the court system. Mr. Taras said something with respect to having it in the regulations makes it mandatory. I would prefer that it's always at the discretion of the Board as to whether or not they reconsider an item. And that can be done as simply as part of the agenda-setting process that we go through every meeting.

So if we -- I guess my question is if we put in the regulations, is it mandatory that we reconsider every request, because I don't think that's reasonable?

BOARD MEMBER SUAREZ: No. We can put language

that says, "At the discretion of the Board, the Board can reconsider at the request of the respondent, the prior decision". Sure.

LEGAL COUNSEL SMITH: You may also want to delegate that to the Board President or a subcommittee of the Board, just the decision of whether it should be reconsidered. And that's up to you. But currently the way it would work, you would have to -- the Board would have to -- the full Board would have to decide whether they want to reconsider. And that adds even another step.

So first they have to decide what -- you have to decide whether to reconsider, and then you actually have to reconsider.

VICE-PRESIDENT RIE: I think it should be the decision of the full Board. You always want to have that option. And we could schedule a hearing just to discuss the question of do we want to have a hearing to reconsider the matter?

And that hearing could be as simple as, is there new evidence? Is there a compelling reason to schedule reconsideration? And if it's determined that there is new evidence or there is a compelling reason or there was unforeseen information out there, the Board may decide to reconsideration or the Board may choose not to reconsider.

I don't think reconsideration is mandatory, but

that option needs to be there. And it has to be a full Board decision. It's very dangerous to preclude that option and not make that available, because there's always new witnesses, new evidence, that you want to bring before the Board and have that out there, before you move to a court of law.

BOARD MEMBER BROWN: Mr. Chairman, I don't know. I think if we complete the hearing and we're satisfied with it, and we've based our decision upon the rules of evidence, that people have had an ample opportunity to present, I think that's our obligation being met. If they wish to appeal it before superior court, then that's their follow-up option.

So I don't know that -- you could probably go ahead and under certain circumstances if the staff brings something up to us, and you want to go ahead and open the hearing up again, I think you always have that opportunity regardless. But I don't know that I would go and state that as a ready option to parties. I'd be in favor of hearing it, and listening to the evidence, making our decision, and then moving on.

PRESIDENT CARTER: I guess I think the Board needs to have the flexibility to reconsider a decision at its discretion. So however that's enabled, whether it's part of the regs or not, I think the Board needs to retain

that ability. So I leave it to you guys to figure out what is the best way to do that.

BOARD MEMBER SUAREZ: Mr. President, we'll figure out a scheme where it doesn't -- we don't end up burdening ourselves, but we still have the tool in the toolkit if we want to use it.

PRESIDENT CARTER: That's great.

SECRETARY HODGKINS: I do have -- and we can pursue my comment in the subcommittee meeting.

PRESIDENT CARTER: Okay.

BOARD MEMBER SUAREZ: Does the Board have -- it sounds like a lot of the focus needs to be in the enforcement section, which makes sense.

Any major issues regarding the delegation? I think Mr. Shapiro's comments and Ms. Nagy's suggestions regarding the 208 and 408 are good ones. I gather that that's probably a good thing to incorporate.

Anything else under the delegation that any other Board members feel we should tread carefully?

VICE-PRESIDENT RIE: I don't have it in front of me, but back to that 208, 408 exclusion. I think there was 2 reasons not to have it delegated. One was related to 208.10, and that was Item number 2. And then one was related to 408. I think you can combine those and just say, "Permits or other approvals of encroachments for

which the Board has not received written comments from the Corps of Engineers where the Corps has jurisdiction", and just leave it at that. I don't think you need to, you know, have two separate lines and get so specific, because there may be other Corps authorities as well that are applicable.

So if we haven't received comments from the Corps, and the Corps has jurisdiction or we have an agreement with the Corps, then it should come before the Board.

PRESIDENT CARTER: Okay.

LEGAL COUNSEL SMITH: So that would leave, if it fell under one of these categories, and it was a 408 -- if it falls under one of the categories that is within the -- that we're delegating to the Executive Officer when it falls under 408, then the Executive Officer could approve that permit. The way this reads is if it's 408, it's got to come to the Board, even if it falls under --

VICE-PRESIDENT RIE: My suggestion was to delete that item and have one item that says, if we have not received a letter from the Corps and the Corps has jurisdiction or we have an agreement with the Corps, it would come before the Board for a hearing.

LEGAL COUNSEL SMITH: But if we do receive a letter and it's 408, you want to allow the Executive

Officer that -- the authority to approve that permit, assuming it meets the other criteria?

VICE-PRESIDENT RIE: Well, I'm assuming that if it's a 408 item and we do receive a letter, it will fall under one of the other categories, such as there's a change to the plan of flood control. You know, that we have lots of different reasons to bring it before the Board. And I think that there's enough in there that the Executive Officer would automatically schedule the large 408 type projects like Three Rivers or Natomas. I don't think we need to specifically state that.

SECRETARY HODGKINS: Ms. Rie may be correct. I do think though that apparently we have guidance that came out in the last 2 months where the Corps changed their rules. And I think whenever you -- I think you have to be careful about depending on the Corps to continue to operate the way they have been operating.

So I think the idea of making it clear that if it's a 408 modification to the system, then I think it should come to the Board. If it's a permit that the Corps thinks they can judge under their delegated 408, 208 delegation, then the Executive Officer should have the authority to approve it. But that's -- again, that's --

VICE-PRESIDENT RIE: Well, with the new guidance everything is under 408 now. And everything can be

considered a modification. If you put in a boat dock, that's a modification to the system. So relying on the specific numbers, whether it's 408 or 208 is a little bit misleading.

SECRETARY HODGKINS: Okay. I haven't seen the new guidance, so that's part of my mystery here.

VICE-PRESIDENT RIE: But we have enough in there that if there's changes to the plan of flood control, we're changing the conveyance, we're changing capacity, or we're changing water surface elevations, there are so many things in there that the Executive Officer, I think, has enough guidance to make the decision whether it needs to come to the Board or not.

PRESIDENT CARTER: Okay. So we enough guidance very good. So we will agendize this for January then with a -- looking forward to a redraft.

SUPERVISING ENGINEER TARAS: President Carter, Enforcement staff. We also have the option to take a vote on the delegated authority for permit issuance today, as a separate approval, like we did for the other two, the ex parte and the general clean up, that way that item seems to be -- the language in there seems to be nearly 99 percent acceptable, and then bring back enforcement in January. What's the preference of the Board?

PRESIDENT CARTER: Do we have a recommendation

from the Committee on that?

BOARD MEMBER SUAREZ: My sense was that there's enough on the 208, 408 issue that we need to get clarified, that we probably should just take a breather and make sure we -- since there's new guidance, which will be helpful in our, what we're trying to accomplish, to get a handle over that.

So I appreciate what you're saying, Mr. Taras.

SUPERVISING ENGINEER TARAS: Okay, we'll bring both back then.

PRESIDENT CARTER: Very good.

All right.

Thank you very much, ladies and gentlemen. I want to thank profusely and commend Ms. Suarez, Mr. Hodgkins, and all the members of the team from the staff.

VICE-PRESIDENT RIE: Yeah, great job.

SECRETARY HODGKINS: Yeah.

PRESIDENT CARTER: A lot of work went into this, I know. And it's -- I really appreciate it. It is tremendous help and a good effort. Thank you.

SUPERVISING ENGINEER TARAS: Thank you.

PRESIDENT CARTER: Okay. Ladies and gentlemen, let's go have some lunch. So we will break for an hour, that means we'll be back here at 2 o'clock.

(Thereupon a lunch break was taken.)

AFTERNOON SESSION

PRESIDENT CARTER: Good afternoon ladies and gentlemen. Welcome back to the Central Valley Flood Protection Board meeting. We are on Item 10B. This is to consider approval of a letter to the Delta Stewardship Council in response to its letter requesting Board input to the Delta plan priorities for State investments.

Mr. Marino, good afternoon.

(Thereupon an overhead presentation was Presented as follows.)

CHIEF ENGINEER MARINO: Good afternoon, President Carter and members of the Board. I have a short PowerPoint for you today.

I'll start off by introducing the Board action for today is to consider approval of the letter to the Delta Stewardship Council, which is in response to the letter they sent to us for providing input to the Delta plan for priorities for State investments.

Just a little recap of the history. Back in September, the Council sent a letter to the Executive Officer of the Central Valley Flood Protection Board asking for input to the Delta plan and future investments for the Delta.

Staff developed a draft letter responding to the Council's request and we reviewed the draft at the October

28th Board meeting. And in the package of documents that you just received a little while ago, it's the letter dated October 21st on Board letterhead.

The Board directed the staff to post the draft that you have there on the Board's website and solicit input from Delta stakeholders and the public.

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CHIEF ENGINEER MARINO: We also notified the offices of State Senator Lois Wolk and Assembly woman Mariko Yamada regarding this opportunity to provide input to the Council for formulating the new Delta plan.

--o0o--

CHIEF ENGINEER MARINO: As a result of the website posting, we got a lot of nice comments. Some of them are listed here. We also had some comments come in late yesterday from Noel Lerner. He's going to provide those to me in writing very shortly, but we have gotten a robust response.

I also wanted to point out that we did get some comments sent to me by Board Member Butch Hodgkins. And for housekeeping purposes, I have made copies of Board Member Hodgkins comments and put them up at the front entry table, so that interested stakeholders could pick up copies as they walked in and address the Board if they had comments on them.

And I also included a copy of Board member Hodgkins comments in distribution, and you should have those in font of you as well.

So to conclude, we also -- we produced a draft letter dated December 3rd and we posted that on the website with the Board packet, and that's what we're going to be talking about today. I incorporated all the comments that were received as a result of the website posting and telephone comments and whatnot in that draft dated December 3rd. And I'm presenting it now to you for your consideration. And if you want to talk about making some changes, we can do that.

So with that, I'll turn it over to the Committee, Board Members Rie and Suarez.

PRESIDENT CARTER: Okay. Ms. Suarez.

BOARD MEMBER SUAREZ: Thank you, Mr. President. Just to kind of recap and put kind of book marks to our discussion -- bookends to our discussion, the original letter that we had worked with staff in developing, which was the one you saw in October, was based on what we thought -- Ms. Rie and I thought was certainly the minimum that this letter should do, which was provide -- do an opportunity to be very explicit with the Stewardship Council, what the role of this board is, make sure they understood what our technical capabilities are, and fill

any type of gaps, in terms of knowledge that we have that they just necessarily wouldn't be aware of. And that was the spirit of the original letter.

Since then, based on the comments received from the public, and some of our Board members, the letter has morphed into a combination of some of that basic information to include also some broad policy type commitments, statements and broader suggestions. So that is, to me, the key distinction between what we originally saw and the reason why the first letter was drafted the way it was and what we're seeing now.

So certainly the Board can decide that we're ready to take some of these policy decisions and move them forward or we can, at the minimum, go back to just a simple straightforward this is who we are, this is our expertise and this is where we can help you fill gaps if you need be.

So with that, I'll pass it to Ms. Rie, if she wanted to add some more.

VICE-PRESIDENT RIE: Yes. Originally, the question was where would the Board place its priorities for funding in the Delta. And we had identified at the October meeting that Delta levee subventions was one of our primary goals in terms of putting a priority on spending. And originally, the Committee was tasked with

identifying the questions. And our strategy was to answer the questions on the priorities with respect to where our board has jurisdiction, not where DWR has jurisdiction or any other agency, but primarily where this Board had jurisdiction.

And another thing we wanted to accomplish with this letter was to educate the Delta Stewardship Council on the roles and responsibilities of this Board. The letter that was posted on the website and that incorporated comments from, you know, many different parties. And that was helpful, but we wanted to stick with what the Committee was originally charged with, and that was to answer the basic questions on funding and to educate the public on this Board's roles and responsibilities.

So when the letter came out, the Committee hadn't seen the letter at that point. So since the letter was posted, we have gone back and we have taken another look at that. And I have some suggested edits. And several of you have received a copy of that, the ones with computers, because a hard copy was not provided to you.

But before we get to the point where we're suggesting edits, we'd like to hear from the public and see if there's any additional comments.

PRESIDENT CARTER: Are there any members of the

public that wish to comment on the draft letter dated December 3rd to the Delta Stewardship Council? It was the one that was published -- posted on the website and part of the Board packet?

Okay, we have no public comment.

VICE-PRESIDENT RIE: Mr. Marino, you said that Mr. Lerner had some comments he wanted to add.

CHIEF ENGINEER MARINO: They're primarily editorial. And he dropped by late last night and showed me, and they're primarily just typo corrections and a few wording changes. And actually, I had already picked up some of them. So minor at best.

PRESIDENT CARTER: So no content changes.

CHIEF ENGINEER MARINO: Oh, there's Noel.

DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: My name is Noel Lerner with The DWR Flood Projects Office.

I will be providing additional comments to the Len. There were -- some of those comments were similar to Butch Hodgkins' comments about there being features on the flood control system that might also be impacted by the Delta planning and that it's important that these be recognized as being an important part of the system for its proper functioning. So I was going to be adding that or suggesting some comments along that vein.

VICE-PRESIDENT RIE: Well, we're going to be

finalizing the letter today, so you're welcome to go ahead and provide those comments now.

DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: I don't have them with me. Unfortunately, I was in a car accident earlier this morning, so I don't have that with me. And I couldn't get it to Len in time. But if, as I said, Mr. Hodgkins comments are added in, they're part of or in the same context as his.

VICE-PRESIDENT RIE: Well, we're going to be making some revisions today. And, you know, some of the specifics as to what should be included in the Delta plan weren't the purview of this letter. This letter was to identify the Board's priorities with regards to funding.

DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: So in that context, they may not be appropriate.

BOARD MEMBER SUAREZ: Well, I guess the question for the Board, I mean, those are the choices that we have, whether we maintain a limited focus, because we're not ready to make -- to take some policy positions, or we are. Certainly, that was not the task that was given to us, so -- to policy pronouncements in this letter.

VICE-PRESIDENT RIE: And, you know, we can certainly consider policy issues at this point. However, we would not be able to finalize the letter today. We would have to bring that back to the Board in January, but

that's certainly something we can consider at this point.

PRESIDENT CARTER: Well, I mean we have two drafts. We have an October draft and we have a December draft. To the extent that the Board is comfortable with one or the other or something close to that, I think we could finalize it today, one way or the other.

I think you both point out the real crux of the question is, do we want to take this opportunity to address some of the broader policy issues, emphasize the flood with respect to the Delta plan or do we want to stick to specifically the script that was given to us and the task that was asked of us by the Delta Stewardship Council in their letter to us, that's the question. And so what's the pleasure of the Board?

My perspective is that I think we should avail ourselves of opportunities to be sure that the Council understands our priorities, understands the reason the bypasses are there. And I guess from my perspective, and perhaps I'm biased, it's a flood control facility, number one. And, yes, there are opportunities for potentially habitat restoration, water conveyance, water supply issues, watershed management issues.

But I think it's important for this Board, given that our charter is public safety through flood protection, is to make sure that they understand that it

is a flood control bypass and needs to be sure that it has the capability to serve in that purpose. And any changes that are made need to either preserve or enhance its capability with regard to flood.

BOARD MEMBER BROWN: And you're talking about the Delta, total?

PRESIDENT CARTER: Well, in relation to the Delta plan, because we know that the Delta plan includes some significant ideas with respect to restoration, habitat restoration, and infrastructure changes within the Yolo Bypass and the north Delta. And those potentially have direct impacts to the operation and maintenance and capabilities of that facility. And that's of great importance to this Board, I would think.

BOARD MEMBER BROWN: I think you've stated it very well, that the flood control capability of that facility is number one certainly with us. And any changes or alterations to that has to take in consideration the protection of it the capacity that we have for flood control.

PRESIDENT CARTER: Well, that's just my perspective. And how we want to communicate that to the Council, I don't have any strong preference --

VICE-PRESIDENT RIE: Just so you know --

PRESIDENT CARTER: -- but I think it does need to

be communicated

VICE-PRESIDENT RIE: -- the Committee hasn't discussed incorporating those recommendations at this point. So, you know, to get the wording correct, we would probably have to go back and talk about how to present that.

PRESIDENT CARTER: That was not discussed in your meeting yesterday?

VICE-PRESIDENT RIE: No.

PRESIDENT CARTER: Okay. All right.

BOARD MEMBER BROWN: Is the Council more or less interested in protecting the habitat and the threatened species than they are in maintaining flood control?

PRESIDENT CARTER: Go ahead, ladies and gentlemen.

VICE-PRESIDENT RIE: I don't think we know, at this point, what the Delta Council's position is on that. I don't think we can assume, one way or another, what their position is.

BOARD MEMBER BROWN: Well, I think Westlands Water District and the San Luis Delta Mendota Water Agencies have. And I think they've either pulled out or they're thinking about pulling out, because the Council has made a position on certain issues that certainly affect water supply. And I just wonder if they've done

the same thing for flood control.

SECRETARY HODGKINS: Well, if I could. I submitted some fairly extensive comments that took the letter -- that would direct at taking the letter way beyond where the initial draft was. And my view simply was that if this is the first official communication we've received in connection with the Delta Council, I've read and reread the letter they sent us trying to understand what they were asking for, and it was a bit cryptic. Official State Policy -- Deborah, what is Official State Policy.

LEGAL COUNSEL SMITH: Well, Official State Policy would be anything that's in regulation.

BOARD MEMBER BROWN: Statute?

LEGAL COUNSEL SMITH: Or statute, correct. Official State Policy couldn't be something other than that, otherwise it would be an underground regulation.

SECRETARY HODGKINS: Okay.

LEGAL COUNSEL SMITH: But they may have meant something broader in that term.

SECRETARY HODGKINS: That's -- I wasn't sure what they were asking, but what I know is in my participation in various functions around here, I have been absolutely frustrated by the fact that I am constantly trying to get the Bay-Delta HCP process to acknowledge the importance of

partnering with flood control in figuring out how you're going to put a lot of habitat into the Yolo Bypass.

And every time I make those comments, they say yeah, we understand, and then the next time it's like they've never heard it before.

I thought that this was an opportunity to try and get in front of the process and make the new Council aware that we're very concerned about the flood system and the need to partner with the counsel in those portions of their plan that might affect the capacity of the Yolo Bypass particularly, which is the background of the Sacramento River Flood Control System, and those were the comments I put in here.

Now, their letter -- if you have a better understanding of what they really asked for, and in some way the comments that focus on flood protection and public safety are not what they're asking for, I'm open to understanding what that is.

BOARD MEMBER BROWN: What about just addressing it a little bit differently. Instead of trying to interpret what they're asking for or what we think they might be, just tell them what -- in our letter what we think is number one and protecting a California resource, and that's a flood control system, flood drainage system that we have in place, and we want to maintain it or

improve it. And do what you want to other than that, as far as we're concerned.

VICE-PRESIDENT RIE: Well, I have a question for you, Mr. Hodgkins. It seems that you have an assumption that the Delta Stewardship Council has taken a position on the Bay-Delta Conversation Plan. My understanding is the plant is being prepared by DWR staff, and the Delta Stewardship Council has not taken a position on it yet. Am I wrong?

SECRETARY HODGKINS: You know, I personally think the plan is going to go up in smoke, but --

PRESIDENT CARTER: Can you get a little closer to the mic, please.

SECRETARY HODGKINS: Excuse me. It looks like the Bay-Delta Conservation Plan is up in smoke.

BOARD MEMBER SUAREZ: According to the newspapers.

SECRETARY HODGKINS: According to the newspaper articles that I have seen, but I think that if the Board shares concerns about making sure there is a close partnership between flood control and the Delta restoration duties of the Commission, that rather than kind of ignore them, like we did with BDCP, we ought to try and engage them right up front in how important it is to work together. And that's what my comments were

directed towards doing.

BOARD MEMBER BROWN: The term "partnership" concerns me. And then that sounds like that could run into a compromise. And compromise is something that, from a flood control standpoint and protection of the State, I don't think we're interested in.

SECRETARY HODGKINS: I think our -- you and I might have a difference of opinion. I think it's possible to allow restoration in the flood control elements of a project, as long as that restoration work is done in a manner that it recognizes the legitimacy of the prior flood control benefits that that facility was providing. And I think you can do that. Other people -- you may disagree with that.

BOARD MEMBER BROWN: No, I think what you're saying is fine. I just don't think it -- like the word "legitimacy" is not the one that would be used, in my thinking. I would say "protected". And legitimacy, recognizing other needs, is one thing, but if it results in reducing flood control capability, then I think we have to take a serious look at it.

SECRETARY HODGKINS: I couldn't agree more. I think it can be done without reducing flood control capability. And my only interest was in trying to highlight earlier on the need with any restoration efforts

and the important flood control elements, that there needs to be good communication between the Board, DWR, with the Central Valley planning process and the Delta Stewardship. So if that's inappropriate in the judgment of the Board, I'm perfectly willing to accept that.

LEGAL COUNSEL SMITH: It might be helpful just to -- sort of a reminder of what the law states the Board's -- what the Delta Stewardship Council is required to do in terms of coordinating with the Board.

And that is that, "The Council must consult with the Central Valley Flood Protection Board in recommending priorities in the Delta plan for State investments in levee operation, maintenance, and improvements in the Delta".

And then there's also another provision that, "DWR must consult with the Central Valley Flood Protection Board and the Corps in preparing a proposal to coordinate flood and water supply operations of the State Water Project and Central Valley project for potential incorporation into the Delta plan.

That doesn't mean the Board can't do anything in addition to that, but just as a framework.

PRESIDENT CARTER: Okay.

BOARD MEMBER BROWN: I hope we cleared that up, Mr. Chairman.

(Laughter.)

PRESIDENT CARTER: Of course. Just kind of reading through the December draft letter, comparing it to the October letter, if there are specific suggestions, in terms of portions of the December letter that we can pare out, that are excessive, I'd be happy to entertain those.

I think the October letter was a great start. I think there are lots of good additions that have been made in the December version.

So I guess I'd like to hear more specifics, in terms of where we have heartburn with respect to the December letter.

VICE-PRESIDENT RIE: Well, what I've done is --

PRESIDENT CARTER: And I don't have your electronic copy, because I'm paper today.

VICE-PRESIDENT RIE: I have a given an electronic copy to Mr. Marino. I don't know if you have the ability to plug in the flash drive into a printer and print out some copies for the Board members.

PRESIDENT CARTER: Or put it up on the screen.

VICE-PRESIDENT RIE: Or put it up on the screen.

CHIEF ENGINEER MARINO: I don't have that capability right now. It's still on the server and I haven't been able to access it yet.

VICE-PRESIDENT RIE: Well, can you plug it into

the laptop right here?

CHIEF ENGINEER MARINO: You have it on my drive there, I could probably do that.

VICE-PRESIDENT RIE: Yes.

PRESIDENT CARTER: So go ahead, Ms. Rie, while he's pulling that up.

VICE-PRESIDENT RIE: Okay. So the legislation gives the Board very specific authorities. And the letter was primarily focused on getting the Board's priorities for funding. And all these other issues are important, but considering we don't know what the Delta Stewardship Council's position is on any particular system or project, what I tried to do is make the comments broad in nature and very generally cover the points. As soon as Mr. Marino gets that up on the screen, then we can go through it.

CHIEF ENGINEER MARINO: I'm not finding it here on the drive.

VICE-PRESIDENT RIE: The name of the file is Grindstaff Draft Response Letter.

CHIEF ENGINEER MARINO: Grindstaff Draft.

BOARD MEMBER BROWN: I have half a sentence that would satisfy me, Mr. Chairman that I'd like to add.

BOARD MEMBER SUAREZ: To which version, John?

BOARD MEMBER BROWN: To the 21st, October.

PRESIDENT CARTER: How about if we work off the December 3rd, Mr. Brown, and it might be the same.

VICE-PRESIDENT RIE: It's right at the top. Right at the top there.

CHIEF ENGINEER MARINO: Okay, there.

BOARD MEMBER BROWN: Yeah, it looks like it's the same in that paragraph that I'm interested in. It is the same.

CHIEF ENGINEER MARINO: Okay.

PRESIDENT CARTER: Okay, hold that thought for just a moment. Okay, Ms. Rie.

VICE-PRESIDENT RIE: Okay. So if you look at the last paragraph on the first page, these are pretty minor revisions, just in formatting --

PRESIDENT CARTER: Go up a page please, Mr. Marino. There. And enlarge it please.

VICE-PRESIDENT RIE: The paragraph from the original December 3rd letter started off with, "DWR has several programs which may be used. And we crossed that off and started the paragraph with, "The Board oversees the Delta levee subvention program, which provides funding for Delta levees, that funding approved by the Board for fiscal year 2010-2011 is 18 million", but somebody probably needs to double check that number. I don't remember if it was 15 or 18.

EXECUTIVE OFFICER PUNIA: We can do that, so that's -- yeah.

VICE-PRESIDENT RIE: Okay. And then, "The funding approved for 2009-2010 was 20 million". Again, staff would need to check that. "And further more, the subventions program is a high priority for the Board." And then we take the DWR part of it and that's towards the end of the paragraph. "DWR is responsible for the Delta special flood projects program, special projects", so those are pretty minor changes.

And then --

PRESIDENT CARTER: Which also are important to the Board, although not within our jurisdiction, but they dovetail with the subventions and are actually the lion's share of the funding that goes towards Delta levee work.

VICE-PRESIDENT RIE: Yeah, so we did include that. There was some more information. "The Board has already approved the procedures and criteria". That was deleted. Not really relevant, but we are providing copies of the procedures and criteria as an attachment to this letter. And then, "You should be aware of DWR's ongoing process to produce a Central Valley Flood Protection Plan".

PRESIDENT CARTER: Where are you now? I don't see that here on the screen.

VICE-PRESIDENT RIE: At the top of page 2.

PRESIDENT CARTER: Okay, got it.

VICE-PRESIDENT RIE: Right there. So the Central Valley Plan is covered I believe on page 3. So this was replace language, so it was deleted.

Then as you get towards the middle of page 2, there was a sentence, "Any plan developed for the Delta must be a comprehensive plan that provides for a secure, sustainable, reliable water supply, not just for southern California, but for 4 million Californians who reside in and around the Delta". That sentence was deleted, because that is something that is out of our control, that that's not in our jurisdiction.

PRESIDENT CARTER: So let's see it's -- okay, that paragraph, okay.

VICE-PRESIDENT RIE: It's just a portion of a sentence that was deleted regarding providing water for "southern California and the 4 million Californians who reside in and around the Delta".

BOARD MEMBER BROWN: That's not our issue.

PRESIDENT CARTER: That's good.

VICE-PRESIDENT RIE: So that was deleted. But the first part of the sentence remains. So it now reads, "Any plan developed for the Delta must be a comprehensive plan that includes increased support for flood control and

maintenance of levees in the Delta, while providing for the restoration of the Delta's ecosystem, supportive species native to the Delta, and water quality".

BOARD MEMBER BROWN: And that's not our issue either.

VICE-PRESIDENT RIE: Right. That was --

BOARD MEMBER BROWN: The first part is, but that's not, the latter part isn't.

VICE-PRESIDENT RIE: We can delete that entire sentence, if that's the Board's pleasure.

PRESIDENT CARTER: I think it goes to acknowledging the fact that we -- you know, we understand and -- that there are roles for multiple objectives or there's room for multiple objectives.

VICE-PRESIDENT RIE: So are you okay with the modified language?

PRESIDENT CARTER: Yeah, I think so.

VICE-PRESIDENT RIE: Mr. Brown, would you like to see that changed?

BOARD MEMBER BROWN: You know, I think we're including some things here. You hit it pretty close on the water supply issue. That's not our issue. And some of that goes without saying too, of course. And I would like to see our letter be more succinct towards what our issues are, which is flood control.

PRESIDENT CARTER: Okay.

VICE-PRESIDENT RIE: Mr. Hodgkins.

SECRETARY HODGKINS: I'm lost, which is not unusual. The letter you modified is the December one.

VICE-PRESIDENT RIE: It's this one.

BOARD MEMBER BROWN: But, Mr. Chairman, I don't have any objections to what else we may add along those lines. I just want to see something -- a sentence here that I have added to protect our interests --

PRESIDENT CARTER: Okay.

BOARD MEMBER BROWN: -- when you're ready.

PRESIDENT CARTER: We'll be there in a moment. Let's just go through these.

VICE-PRESIDENT RIE: Okay. So we can do some more work on that paragraph, if that's the Board's pleasure.

Okay, so we're still on page 2. And it's the second to the last paragraph. I added a sentence --

BOARD MEMBER BROWN: I don't know where you are. Page of where?

PRESIDENT CARTER: This is two of the December 3rd letter.

VICE-PRESIDENT RIE: Page 2 of the December 3rd letter second --

PRESIDENT CARTER: It's actually up there.

BOARD MEMBER BROWN: I can't read that.

VICE-PRESIDENT RIE: Can you blow that up.

PRESIDENT CARTER: Can you blow that up some more, please?

CHIEF ENGINEER MARINO: Sure. Is this the paragraph you want right here?

VICE-PRESIDENT RIE: Yeah.

PRESIDENT CARTER: That's it.

VICE-PRESIDENT RIE: Mr. Brown, can you see that?

PRESIDENT CARTER: That's actually the third complete paragraph on page 2 edited of the December 3rd letter.

BOARD MEMBER BROWN: Yeah, I can read it now. Thank you though.

VICE-PRESIDENT RIE: Okay so. This paragraph starts off with, "The Board also has a commitment to the stewardship of Central Valley river systems". Right after that sentence, I added a sentence that says, "Our Board regulates designated floodways throughout California. Our primary authority is to maintain the flood conveyance of the rivers. However, our stewardship also includes supporting critical habitat and populations of many federal and State listed threatened and endangered fish, wildlife, and plant species that are also important to the economic and social well-being of the citizens of

California".

BOARD MEMBER BROWN: Not necessary to include that.

VICE-PRESIDENT RIE: Okay. So we can modify that paragraph, if that's the Board's pleasure.

BOARD MEMBER SUAREZ: Throughout California, it's just --

PRESIDENT CARTER: Well, it's just the Central Valley and it's more conveyance of -- it's the flood system rather than just rivers. You know, there's rivers, bypasses, floodways. So maybe you say "of the flood system".

VICE-PRESIDENT RIE: Okay. I'm agreeable to modifying that language, and, you know, deleting the part of this that isn't necessarily in our purview, but we'll come back to that.

Okay. Last paragraph on page 2 starts off with, "The State, through the Board, shares in the cost of construction, assumes responsibility for ensuring the operation and maintenance of the facilities and holds the federal government harmless from liability". I added a sentence. "The Board has entered into agreements with the Army Corps of Engineers to operate and maintain the federal flood control system."

We're now at the top of page 3. And the last

sentence of that paragraph, "The Board delegates operation and maintenance to DWR", and then there's "or local flood control". I crossed out "or". It's now, "DWR local flood control districts and levee maintaining agencies through Local Cooperation Agreements".

I think you probably all are okay with that.

PRESIDENT CARTER: Um-hmm.

VICE-PRESIDENT RIE: The next paragraph, "The Board has responsibility for oversight. Just a minor change to that paragraph. "The Board's jurisdiction includes Delta islands and levees...", but I added, "...but its primary responsibility is flood protection and public safety". I think you guys are all good with that.

The next paragraph before -- it reads, "Before responding to your specific requests, it's important to note for your consideration...", and then there's two bullet items. There's a number one, it says, "In improving new urban areas, cities and counties are not required to develop and implement projects". I changed that to, "There are goals to provide 200-year flood protection for urban areas".

And then bullet Item number 2 addresses the Central Valley Flood Protection Plan. I changed the last sentence to, "The plan will be updated every 5 years. DWR is preparing the first plan for the Board's consideration,

and the Board will schedule hearings for approval in 2012". I didn't want to get specific with the June date.

And then the next paragraph starts off with, "Specifically, these provisions mean that the existing flood control system..." -- it used the say, "is going to be modified." I changed that to, "may be improved in the near future". The plan isn't finalized. I didn't want to presume an outcome for the plan, so change that from "is going to" to "may".

And then the last sentence, "Since the plan should be reviewed and approved by the Commission or counsel, the Board and the Director of DWR..., I wasn't sure which plan we were referring to. And I wasn't sure that we have any approval authority if we are referring to a Delta plan, so I just deleted that sentence.

And that's pretty much it for page 3. And then on page 4, there were several documents that we have listed that we are going to supply to the Delta Stewardship Council. I added in Title 23, because that may be helpful.

And then the final section of the letter on page 4, it's at the bottom, is, "The Board supports investment in the following areas to reduce flood risk in the Delta".

So number one, Reducing the fragility of levees", and then in parentheses Delta subventions program, I

listed that before special projects, because we're talking about the Board's jurisdiction again.

Number 2, improving levee maintenance.

Number 3, improving through-Delta conveyance.

Number 4, hydraulic modeling.

Five, floodplain mapping.

Six, feasibility studies for flood control projects. And we had a specific project listed here, but I was thinking that we can either list feasibility studies, in general, as a priority for funding, or we can list each individual feasibility study that the Board has approved in the Delta region.

So we can go either way on that, but I didn't want to call out just one specific project, because there were other projects that our Board has approved.

And then at the top of page 5, there's a reference to, "Furthermore, the Bay Delta Habitat Conversation Plan proposes to establish habitat in the lower bypass and alter bypass operation". Considering that the Bay Delta Habitat Conservation Plan is still being prepared, it's still under review, I don't think we can make that conclusion, that the result of the plan will be to alter bypass operation, because the plan isn't approved yet.

So that's about it.

Ms. Suarez, did you want to add anything?

BOARD MEMBER SUAREZ: No, I'm fine. Thank you.

PRESIDENT CARTER: Mr. Brown, you wanted to add something on the first page, I believe.

BOARD MEMBER BROWN: I'm okay with about everything that Teri did with one addition of my own and a paragraph that I think needs to be reworked.

Let's go to the first addition would be on the second paragraph.

PRESIDENT CARTER: First page, second paragraph?

BOARD MEMBER BROWN: Page 1, second paragraph. -- yeah, on page 1, where it talks about California and protecting, restoring, and enhancing the Delta system. Are you with me?

PRESIDENT CARTER: Um-hmm.

BOARD MEMBER BROWN: At the end of that sentence, I cross out the, "and enhancing the Delta system". Just cross out "and", put a comma there. And then at the end of the ecosystem write "...and maintaining or improving current flood control drainage conveyance facilities through the Delta".

So that whole sentence would like read like this, "The Board supports the important process initiated by the Legislature and the Governor to achieve co-equal goals of providing a more reliable water supply for California and

protecting, restoring, enhancing the Delta system, and maintaining or improving current flood control drainage conveyance facilities through the Delta".

I guess you can leave that "and" in there, that one that I crossed out.

VICE-PRESIDENT RIE: Could you repeat that one more time.

BOARD MEMBER BROWN: I'll go through it again. "The Board supports..." -- starting at the paragraph at the top.

"The Board supports the important process initiated by the legislature and the Governor to achieve co-equal goals of providing more reliable water supply for California, and protecting, restoring, and enhancing the Delta ecosystem...", then add this, "...and maintaining or improving current flood control drainage conveyance facilities through the Delta".

CHIEF ENGINEER MARINO: Did you say, "Drainage and conveyance facilities through the Delta"?

BOARD MEMBER BROWN: "Drainage conveyance facilities through the Delta".

The second suggestion is on page 2, the 1, 2, 3, 4, 5th paragraph down that starts, "The Board has the responsibility for oversight...". Do you have that paragraph?

PRESIDENT CARTER: Yep.

BOARD MEMBER BROWN: I'd move that paragraph up, and let it follow the paragraph 1, 2, 3 paragraphs above that. It would follow the paragraph --

CHIEF ENGINEER MARINO: Okay, I haven't found you yet. It starts out, "The Board has the responsibility for oversight..."?

BOARD MEMBER BROWN: Yes.

CHIEF ENGINEER MARINO: Okay, I've got it. And you want to move that to where?

BOARD MEMBER BROWN: I'd move that up towards the top of the page, up underneath the paragraph that starts out, "Our Board, in cooperation with other federal and State agencies..." After that paragraph, I'd move this one up to that point. That's basic information for them to understand up front.

CHIEF ENGINEER MARINO: You want it right here?

BOARD MEMBER BROWN: Yes.

Then the last suggested change, the paragraph that starts out on page 2, "The Board also has a commitment through the stewardship Central Valley river system...", do you have that paragraph?

CHIEF ENGINEER MARINO: Right here.

BOARD MEMBER BROWN: That's the paragraph that has too much stuff in there that doesn't -- really it's

not our primary concern. Talking about, "The Delta is an important part of the ecosystem that supports these species in maintaining and restoring critical habitats". That does not need to be said by us. That's not our job. And that should be crossed out, that whole -- from that point on.

PRESIDENT CARTER: Where is that? Wait, wait, wait, wait.

CHIEF ENGINEER MARINO: All the way at the end?

BOARD MEMBER BROWN: Yeah. Yes. All right, it's the paragraph that starts out with the Board also has a commitment, it's the third paragraph on page 2.

VICE-PRESIDENT RIE: Okay. So that paragraph starts off with, "The Board has a commitment to the stewardship of the Central Valley river systems". And then I added, "Our Board regulates designated floodways throughout California". And I know Mr. Carter --

BOARD MEMBER BROWN: That's fine.

VICE-PRESIDENT CARTER: -- also had some suggestions changes.

BOARD MEMBER BROWN: All right. That's fine. I'm just saying take out in the writings that I have that says, "The Delta is an important part of the ecosystem that supports these species in maintaining and restoring critical habitat should be parallel commitment of the

Board..." and so forth.

VICE-PRESIDENT RIE: Okay.

BOARD MEMBER BROWN: We don't need to say that. They'll say it.

CHIEF ENGINEER MARINO: Anything else?

BOARD MEMBER BROWN: No, sir.

VICE-PRESIDENT RIE: Well, while we're still on that paragraph, I know Mr. Carter had some suggestions.

PRESIDENT CARTER: We're not there, Len. Up more. There you go. So it's, "The Board regulates designated floodways in the Central Valley".

BOARD MEMBER BROWN: That's all right.

PRESIDENT CARTER: And, "Our primary authority is to maintain the flood conveyance of the flood control system".

BOARD MEMBER BROWN: That's good. That's fine.

VICE-PRESIDENT RIE: Could you say that one more time, please.

PRESIDENT CARTER: "The Board regulates designated floodways throughout the Central Valley".

VICE-PRESIDENT RIE: Okay.

PRESIDENT CARTER: "Our primary authority is to maintain the flood conveyance of the flood control system. However, our stewardship includes supporting critical habitat and populations and --

VICE-PRESIDENT RIE: Any other comments or changes?

SECRETARY HODGKINS: Could you scale down to at the end of the list of things.

PRESIDENT CARTER: Where, do you want to go, Mr. Hodgkins

SECRETARY HODGKINS: Very near the end --

PRESIDENT CARTER: Tell Len, because he's got the --

SECRETARY HODGKINS: Down, Len, down. Near the end. Stop. Stop. Up. Stop.

Three, improving through-Delta conveyance. Is that flood conveyance or water conveyance?

BOARD MEMBER BROWN: Our issue is flood.

SECRETARY HODGKINS: That's what I think too, but I want to make sure -- I think that's what we should say. Improving through-Delta flood conveyance.

VICE-PRESIDENT RIE: Ms. Smith, there was some reference to water conveyance in the Water Code that we needed to be consulted on it, if you wouldn't mind reading that one more time, that would be great.

LEGAL COUNSEL SMITH: "The Water Code requires DWR to consult with the Central Valley Flood Protection Board and the Corps and prepare a proposal to coordinate flood and water supply operations of the State Water

Project and the Federal Central Valley Project and submit that proposal to the Council for consideration and incorporation into the Delta plan".

PRESIDENT CARTER: I think our focus still is flood.

VICE-PRESIDENT RIE: Yeah, I agree.

PRESIDENT CARTER: Okay. If there aren't any other suggested changes, would it be possible for us to printout a clean version of this and revisit this after our next item?

CHIEF ENGINEER MARINO: Yes.

PRESIDENT CARTER: Okay.

BOARD MEMBER SUAREZ: Mr. Marino, on that flood conveyance, you need to --

PRESIDENT CARTER: "Improving through-Delta flood conveyance".

LEGAL COUNSEL SMITH: And I also noticed earlier there was a change from California to Central Valley, I don't think was made, so that should be done.

CHIEF ENGINEER MARINO: Okay, where is that, Ms. Smith.

VICE-PRESIDENT RIE: I have all the changes on my computer.

PRESIDENT CARTER: So if we can get a hard copy of what Teri has on her computer cleaned up and bring it

back to the Board.

CHIEF ENGINEER MARINO: Okay. I'll take care of that.

VICE-PRESIDENT RIE: And there's just one more item that, you know, I wanted to add, because this came up earlier in the day. "Our Board supports EIP projects and the continued funding of EIP projects for levee improvements is a priority of this Board". So I've added number 7.

PRESIDENT CARTER: Where are you?

VICE-PRESIDENT RIE: If you could scroll down a little bit. Mr. Marino.

Mr. Marino?

CHIEF ENGINEER MARINO: Yes.

VICE-PRESIDENT RIE: Can you scroll down?

CHIEF ENGINEER MARINO: Okay.

PRESIDENT CARTER: Just a little bit to number 7 -- or number 6.

CHIEF ENGINEER MARINO: I just wanted to make the save there. Okay.

VICE-PRESIDENT RIE: Okay. So right after "Feasibility studies for flood control projects", we're adding EIP projects, Early Implementation Projects. It would be a number 7.

CHIEF ENGINEER MARINO: Okay.

BOARD MEMBER SUAREZ: You mean Proposition, is it 1B, Early Implementation Projects?

VICE-PRESIDENT RIE: Early Implementation Projects.

BOARD MEMBER SUAREZ: You might have to put Proposition 1B there, so they know what they're talking about.

PRESIDENT CARTER: Okay.

BOARD MEMBER SUAREZ: Are those Proposition 1B, the early implementation; is that correct?

CHIEF ENGINEER MARINO: Early Implementation Program Projects.

BOARD MEMBER SUAREZ: Right, authorized under Proposition 1B, you need.

DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: 1E.

BOARD MEMBER SUAREZ: 1E, whichever Prop it was. One of them.

VICE-PRESIDENT RIE: Are some of those funded by Proposition 84 as well?

CHIEF ENGINEER MARINO: A very small percentage of them. We could say -- if you want to be perfect about each, you should say 1E and 84.

BOARD MEMBER SUAREZ: Because we have to assume that these folks don't have that expertise. That's what we bring to the table.

CHIEF ENGINEER MARINO: Okay.

PRESIDENT CARTER: Okay, so if we could get a soft copy of your version, Teri, to staff. They can make a copy and bring it back to the Board, okay. And we'll revisit this.

VICE-PRESIDENT RIE: Mr. Marino, can I borrow your hard drive again?

CHIEF ENGINEER MARINO: Okay.

PRESIDENT CARTER: Okay. Thank, everyone, for their patience and we'll move on.

CHIEF ENGINEER MARINO: If there's no further changes, I'll go ahead and save this and get you a print.

PRESIDENT CARTER: You're going to give Ms. Rie your hard drive so that she can put her copy on your hard drive and you're going to use that copy for the hard copy that you bring back.

CHIEF ENGINEER MARINO: Okay.

PRESIDENT CARTER: All right. Let's move on to Item 10C. This is Levee District 1, Sutter County, Star Bend EIP Project to consider a view of the draft long-term vegetation management plan for inclusion in the previously approved OMRR&R Agreement executed between the Central Valley Flood Protection Board and LD 1.

(Thereupon an overhead presentation was Presented as follows.)

PRESIDENT CARTER: Ms. Stephenson.

MS. STEPHENSON: Yes.

PRESIDENT CARTER: Good afternoon. Welcome.

MS. STEPHENSON: Good afternoon, President Carter, distinguished members of the Board.

I'm here to speak about Levee District 1, Lower Feather River setback levee at Star Bend working on behalf of the Board. And it's a follow-up item from the September 23rd Board meeting.

Just for some quick project background for a refresher. The project is located on the right bank of the Feather River at Star Bend near river mile 18.

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MS. STEPHENSON: And the construction was completed in November of 2009. The construction consisted of 3,400 feet of setback levee, relocation of irrigation facilities, environmental mitigation enhancements, including 20.65 acres VELB mitigation on floodplain enlarged by 49.5 acres, and a soil-cement bentonite cutoff wall to address the under and through-seepage.

Where are today is that the OMRR&R Agreement needs to be signed to ensure the protection in the upcoming current flood season.

--o0o--

MS. STEPHENSON: Just a background refresher on what happened at the September 23rd Board meeting. The issue of the LD 1 OMRR&R ended with a resolution by Vice-President Rie that stated, "Within 60 days, LD 1 will submit a long-term management plan to this Board and Mr. Tabor will add that into the agreement. And that agreement will go to President Carter and he can review it and we'll delegate the authority to him to determine if that's the appropriate language".

So as a result of the September 23rd Board meeting, the language -- the specific language that was added to the agreement states that, "The local maintaining agency shall submit to the Board for its approval a long-term management plan for the vegetation planting area within the floodway within 60 days of the execution of the agreement".

So what's happened since then is that the LD 1 board of directors has approved and executed the updated OMRR&R with the language that was added per the September 23rd Board meeting. And it was approved on November 8th of this year.

LD 1 prepared and submitted the draft vegetation, maintenance, and monitoring plan. And it was received within the required time frame on November 18th. The Board packet, with the staff recommendation, was due on

November 19th for today's hearing. And so as a result of that, the Board staff has not had enough time to do a thorough review and look at all the technical aspects of that plan.

--o0o--

MS. STEPHENSON: So our plan moving forward from here, is that we recommend today the execution of the OMRR&R Agreement per last Board meeting's motion, and we recommend that moving forward with the plan, the vegetation maintenance and monitoring plan, that we will recommend approval at the January 28th, 2011 Board meeting to allow for a full technical review and a competent recommendation to the Board of this plan.

We plan on coordinating with the Board staff, with DWR, with the Army Corps, legal staff and the Lower Feather River Corridor Management Plan, and LD 1 to assure that the final product is acceptable to all agencies. And we already have the meeting scheduled for December 8th and 15th, which is next Wednesday and the following Wednesday.

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MS. STEPHENSON: So the action for today would be to counter sign the OMRR&R Agreement that was previously approved and was signed by the LD 1 and DWR legal counsel, to ensure the protection during this current flood season. And then also to direct the staff and LD 1 to conduct the

collaborative review of the draft vegetation maintenance and monitoring plan that can be finalized and approved by the Board at the January 28th meeting.

--o0o--

MS. STEPHENSON: Any questions?

PRESIDENT CARTER: Any questions for Ms. Stephenson?

BOARD MEMBER SUAREZ: I have a question.

SECRETARY HODGKINS: If we execute the OMRR&R Agreement, but the plan is not approved, is LD 1 willing to commit to working through until we get an approvable vegetation plan?

MS. STEPHENSON: I'll let Jeff Twitchell speak to that specifically

MR. TWITCHELL: Jeff Twitchell, project manager for Star Bend Project for Levee District 1.

Yes, we are adamantly committed to getting this plan approved. It's a component of the O&M manual, which is a condition of approval from the Corps and DWR and the Board as well.

SECRETARY HODGKINS: All right.

MR. TWITCHELL: And so we're actively engaged in the collaborative process, particularly with Lower Feather River Corridor Management Plan, which also includes all the member agencies that Jennifer pointed out.

PRESIDENT CARTER: Any other questions?

Ms. Suarez.

BOARD MEMBER SUAREZ: Mr. President, this is for Mr. Tabor or whoever was the legal counsel.

What are -- let's assume 60 days from now we still don't have a plan, 90 days from now we still don't have a plan. What are the remedies the Board can try to get? What are our remedies at that point?

DWR ASSISTANT CHIEF COUNSEL TABOR: Well, as I understand, even though the agreement isn't signed, the agreement that's proposed to you today, requires that they submit a plan for your approval within 60 days. And they've already done that, so they've already met that requirement of the agreement.

Obviously, the stipulation in the OMRR&R Agreement requires your approval eventually of that plan. So I think Mr. Twitchell is accurate that, you know, we work on it till we get an acceptable plan that's acceptable to the Board and it's acceptable to LD 1.

BOARD MEMBER SUAREZ: Thank you.

PRESIDENT CARTER: Any other questions?

I have one. Since I'm supposed to figure out if this language is acceptable, where is the language in the OMRR&R, I'm trying to find it.

MS. STEPHENSON: It is on page 5 towards the

bottom, Item number 4.

PRESIDENT CARTER: Oh, okay.

Good. Any other questions?

We will entertain a motion to -- let's see, the action the Board took last -- in September was to ask Mr. Tabor to incorporate the language, which he has done, ask the levee maintaining district to submit the long-term management plan. And the Board delegated the authority to me to determine whether or not the language is correct and then I can sign it.

So I don't know if there's any action required by the Board. Is there, at this point? I don't believe there is.

Is everyone comfort with what's happened?

BOARD MEMBER SUAREZ: Yes

PRESIDENT CARTER: Has it met your expectations?

SECRETARY HODGKINS: I think the actual plan is a little tricky, and I think the staff review and the coordination with the corridor management planning folks will help get it straightened out.

It's a little questionable of who owns the freeboard after we approve this plan that was created by the setback project. And I know that's out there, and an issue that's going to be addressed. So that's the right approach. Go to it guys.

PRESIDENT CARTER: Okay.

DWR ASSISTANT CHIEF COUNSEL TABOR: And I agree with Mr. Carter that there's no need for any action from the Board, other than for the President to act on his delegated authority from the Board and sign the agreement.

PRESIDENT CARTER: Okay. Very good. And just so everybody knows, I think that the language that Mr. Ward has applied in the document is appropriate, so I'll go ahead and execute that agreement.

All right. Anything else. We'll move on.

Thank you very much.

MS. STEPHENSON: Thank you

PRESIDENT CARTER: Moving on to Item -- I'm assuming we don't have a hard copy yet of the --

VICE-PRESIDENT RIE: No.

PRESIDENT CARTER: So we're going to move onto Information Briefings, Item 12A, San Joaquin River Restoration Program Status Update, U.S. Bureau of Reclamation's plan. We have Mr. Phillips here.

(Thereupon an overhead presentation was Presented as follows.)

PRESIDENT CARTER: Good afternoon. Welcome, Mr. Phillips.

MR. PHILLIPS: Thank you, Mr. President and members of the Board. I'm not actually going to use the

presentation. So I'll -- my colleague here, Alicia Forsythe, gets the presentation going, I'll make a few comments. And then Ali will go through a real quick technical presentation that I think addresses some of the items that both you, Mr. President, and Mr. Hodgkins talked about at our meeting, and some follow-up information.

So just to provide a little context, this is -- this discussion today is with regard to the San Joaquin River Restoration Program, and the implementation of that program. A little context as to what we're dealing with here. We're in the San Joaquin River system. And as you know, California law requires flows below dams to provide flows sufficient to sustain fishery.

And in this particular instance, it was ruled by federal court that it also apply to Friant Dam, that that law -- that California law applied to Friant Dam, and that the Bureau of Reclamation must put flows into the San Joaquin River sufficient to sustain a Salmon fishery. That was in the 2005 time frame.

In 2006, the United States entered into a settlement agreement with the plaintiffs on what that would mean, in terms of flows, and also what that would mean in terms of very specific channel improvements that would be needed to make the Salmon fishery restoration

program work, and to provide the channel conveyance capacity required.

The settling parties all believed at that time that the flow rates that were proposed in the settlement agreement, and the channel improvements proposed in the settlement agreement would result in no material adverse impacts to third parties.

That was discussed in more detail after the settlement was signed with such third parties. And there was some additional protections provided in federal law, that was in the legislation. Federal legislation passed in 2009, authorizing the Bureau of Reclamation to implement the program, and the Fish and Wildlife Service.

So since that time, we have begun a series of, what we call, experimental or interim flows. Those started at October 1st 2009, consistent with the settlement. The purpose for those is to start to learn what happens with this river system when flows are introduced.

If you're familiar the San Joaquin River, downstream of Friant Dam only a limited reach ever sees water, absent pretty high flood flows. And so it's recognized in the settlement that it would be a benefit between 2009 and 2014 to have a series of interim flows or experimental flows. And we started that in 2009. And

we've been working with the State Water Resources Control Board in order to be permitted through our water right to take -- to have credit, both for an environmental flow in the river and also to protect those flows from diversion so they can be recaptured to the extent possible and returned to our water users.

So along with that, in terms of our coordination with the State Board, we've been getting, up till now, one-year permits for our water right. And we did that last year, and we're operating under a one-year permit now.

And we received the permit we're operating under currently at the end of September 2010. And it had a number of conditions. And one of the conditions, Condition 15, required that the Bureau of Reclamation consult with Central Valley Flood Protection Board, Department of Water Resources and other flood agencies to ensure that the proposed project, which is the one year of experimental flows that we're operating now, to make sure that that project did not jeopardize or threaten the flood safety features of the Lower San Joaquin River Flood Project.

And that within 60 days, we were to report back to the State Board on that.

On October 26th, we met with the Flood Protection

Board, Executive Director, met with DWR, staff, flood management and their Fresno office, Corps of Engineers, and general manager Lower San Joaquin Levee District. And subsequent to that meeting, we met with President Carter and also Mr. Hodgkins and the Executive Director to discuss some follow-up items.

And subsequent to both those meetings, we submitted a letter on November 18th to the flood agencies, summarizing what we thought we heard from those meetings, and our intended follow-up actions. And then on November 26th, we submitted a letter to the State Water Resources Control board summarizing our consultation and our conclusion that the project will not jeopardize the flood safety features in the Lower San Joaquin project. And if -- and our commitments to ensure that that would be the case.

Just to summarize a couple of the commitments that I had talked about in the meetings. It is -- absolutely, it is not Reclamation's intent to compromise flood safety features by implementing the interim flows, the experimental flows. And we are prepared to take action immediately at Friant Dam or other down-stream locations to void impacts to the Lower San Joaquin flood protect.

And if there are any known flood safety features

that could be jeopardized by our project, we would ask the we're notified as soon as possible of those, and we can take such action.

That's what we put in writing, and it's certainly what we would intend to do and have done up till now, especially with respect to the interim flows. We feel like we have a lot of flexibility to manage those in a way that does not cause damage to the extent we can, and to the extent we are informed ahead of time of such damage that may occur.

So with that, I think you can certainly ask me questions now. But I think it would make sense to have Ali go through her presentation here about the San Joaquin River Restoration Program, specifically kind of focused on interim flows that we've released to date, and to go over a little bit of the flow hydrographs and what they look like, and especially related to the areas of concern for the flood system.

PRESIDENT CARTER: Let's do that.

Thank you.

Good afternoon.

MS. FORSYTHE: Good afternoon, President and members of the Board. I am Ali Forsythe. I'm a project manager within the restoration program. I'm going to provide an update today on, as Jason mentioned, on the

interim flows program, also on our Reach 4B project, which I think will help address some of the concerns that we've heard from the Board and the other flood agencies, and also just talk about some of the key upcoming activities that we have.

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MS. FORSYTHE: First, I'm going to run through just a quick overview of the settlement.

It is -- the San Joaquin River Restoration Program is a comprehensive effort to restore flows and fish to the San Joaquin River system, while avoiding adverse water supply impacts.

The settlement -- or, excuse me, the restoration program is derived and is implementing the settlement that Jason mentioned. It was signed in 2006.

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MS. FORSYTHE: Public Law 111-11 provides the Secretary -- or authorizes and directs the Secretary to implement the settlement. The Settlement is based on 2 goals, a restoration goal, which is essentially to maintain fish in good condition below Friant Dam, and a water management goal, which is to reduce or avoid adverse water supply impacts to our water users.

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MS. FORSYTHE: So the restoration area here.

We're looking at 150 miles of river, which essentially the area that we focus on primarily runs from Friant Dam, near Millerton Lake, just outside of Fresno, all the way down to where the San Joaquin comes into -- back into the Merced River -- excuse me, where the Merced River and the San Joaquin come back together. Let me just point to that right here.

There's a variety of water supply facilities in this 150 miles of river. There's also the Lower San Joaquin River Flood Control Project. And the project is both levees adjacent to the river, but also the Chowchilla, the Eastside, and the Mariposa Bypass. And the project does have O&M activities for channels within the main stem of the river itself.

There's sand and gravel mining upstream, primarily near Fresno. And most of the area is bordered by agricultural land, with some major urban areas, primarily Fresno, but some smaller cities downstream.

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MS. FORSYTHE: So levees in the restoration area, the primary -- there's 2 levee systems. The primary one is the Lower San Joaquin Flood Control Project. It was authorized in the 40s by the federal government. It was constructed by the State. And it's operated and maintained by the Lower San Joaquin River Levee District.

It conveys flood flows through the area, and it's 193 miles of levees and associated structures, bifurcation structures and similar.

There also are a lot of private levees down there that are maintained by the adjacent landowners.

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MS. FORSYTHE: So the settlement includes 4 major activities. The first is to increase flows out of Friant Dam. The second is to make channel and structural improvements to convey those flows and also to provide fish habitat in the San Joaquin River. The third is to reintroduce spring and fall run Chinook Salmon to the San Joaquin. And the fourth is to reduce or avoid water supply impacts.

I'm going to focus on those first 2 today.

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MS. FORSYTHE: Interim flows. As Jason mentioned, the settlement requires us to start releasing interim flows as a test project. The purpose is to collect data concerning flows, temperatures, fish needs, seepage, recirculation, recapture. Essentially, reclamation had dried out large portions of the San Joaquin River system. Interim flows are intended to help us study what happens when you start putting water back into that system.

For water year 2010 and 2011, our maximum flows out of Friant Dam in the fall were about 700 cfs. We have no flows in the winter, so December and January we don't release extra flows out of Friant Dam. There's no interim flow releases during that time.

For spring and summer flows, maximum releases are about 1,550 cubic feet per second out of Friant, plus or minus a little.

The amount that we release out of Friant is based on downstream channel capacity, potential seepage impacts, the water year type, so how much inflow comes into Millerton Reservoir. And also, we release those flows consistent with permits and agreements that we have in place for that.

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MS. FORSYTHE: So in water year 2010, these are just 2 example photos of what we call Reach 2B in the San Joaquin River system. This is upstream of the flood bypass.

We could see in July essentially a dry river system in our initial flows in November, when we just started rewetting the system. As Jason mention, we began the interim flow releases on October 1st of 2009. We did have a peak release of just under 1,600 cfs out of Friant Dam in the spring. We released just over 260,000 acre

feet and recaptured about 46,000 acre feet, primarily at Mendota Dam.

So a good majority of the flows do not go all the way through the system. We recapture them earlier in the system.

We did reconnect the Upper San Joaquin River with the Delta last year, which is a pretty historic event, and has not happened in quite a few decades, absent flood flow conditions.

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MS. FORSYTHE: For water year 2011 interim flows, we anticipate a very similar project to what we did in similar flow releases to what we did last year. We did complete an Environmental Assessment and Finding of No Significant Impact. And we released that -- those final documents in September of this year.

Jason mentioned the State Board did issue us a Water Right Order also in September. The Water Right Order modifies Reclamation's water right at Friant Dam. It gives us additional points of diversion, places of use and purposes of use.

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MS. FORSYTHE: So Jason mentioned Condition 15 of the State Board order. It required consultation with the flood agencies to ensure that the flows do not compromise

flood safety features. We did have a meeting in October and one again in November, and we do feel that future regular coordination is important.

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MS. FORSYTHE: So I want to summarize a few of the key concerns and action items that we heard in both October and November meetings.

So the first one -- and these are not listed in order of priority by any means, but the first one was essentially the increased operation and maintenance costs. As we start running water down the San Joaquin River system, obviously we're going to have vegetation growth in there, and sediment transport and mobilization. So that could result in increased O&M costs for the local levee districts.

Reclamation did provide a financial assistance agreement for the levee district for last year. We've had, and I'm sure the Board is aware of this, but we've had some discussions back and forth on that financial assistance agreement. And we just recently received revised language from the levee district in late November. So we're in the process of reviewing that language.

The second key concern expressed was the need to continue regular operation and maintenance activities. And as Jason mentioned, we are -- Reclamation will modify

flows to avoid impacts to the flood safety features and to allow for operation and maintenance activities to occur.

What we request to do that, and to make sure that we're all coordinated, is a written description of the activities and the time when the river needs to be dry and aware it needs to be dry. That's the piece of information that we can go back and share with our settling parties and coordinate all of these activities and time our studies with these activities.

We also, I think, through those meetings, identified the need for a longer term kind of more specificity into the operations and maintenance activities by the local levee district, so that we can adjust both interim flows and future restoration flows to help work through these challenges that we have together.

So number 3, was the use of the bypass easements for interim flows. I know this has been a sticky topic four the Board for quite some time, but we did -- reclamation will continue to run interim flows into the bypass system, as there is essentially no where else for that water to go.

Once it hits the Sand Slough Control Structure and the Reach 4B headgates, there is no capacity in that Old River Channel, which I'll talk about in the next slide.

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MS. FORSYTHE: And so there is, essentially, nowhere but the bypass system for the water to go.

We did ask that the Flood Protection Board staff potentially work with the Board to get the position of the Board on using those bypass easements in writing. We don't have a written position.

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MS. FORSYTHE: And I think that would be informative.

For number 4, in terms of key concerns, there was a concern expressed about the long-term use of the bypass system, and potential conflicts with threatened and endangered species. Essentially, more water, more habitat, more species. You know, how is this all going to work together in the long run.

So reclamation is coordinating with DWR as part of one of the requirements in the settlement, to look at the long-term habitat needs in that lower section of the river. We call it our Reach 4B and Eastside Bypass project. And I'll talk in a couple more slides in more detail about that specific project.

I mean, we'd also like to coordinate with the levee district and the Flood Protection Board as we go through this 4B project. I think it will be very

informative to get input from both sides, because this project has the potential to make some modifications to the flood control system.

And we do think that all the agencies need to work together to resolve the limited channel capacity issues that exist today in Reach 4B.

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MS. FORSYTHE: So I'll talk a little bit about the Reach 4B project. The Reach 4B is this lower portion. I don't have a good way to point here, but this is the lower portion. This is the Reach 4B -- what we call the Reach 4B Channel. It's the original river channel. This upper section here is the Eastside Bypass and then the Mariposa Bypass.

The settlement requires that we improve channel capacity to route interim restoration flows through Reach 4B and the bypass system. Essentially, we need to provide capacity in Reach 4B for at least 475 cubic feet per second, potentially up to 4,500 cubic feet per second. So there's a big difference there between those two.

We also need to incorporate fish passage and fish habitat in Reach 4B and/or the bypass system. So somewhere in that system, we need to provide for fish habitat. There are certain structures in the bypass system that will need to be modified for fish passage.

The settlement requires that we do that.

We all of this, a key component of the 4B project is to make sure that we maintain the existing conveyance capacity and operational flexibility of the flood control system. We recognize that inherently there are differences between maintaining capacity for flood control and having habitat for species. And a lot of times those things conflict with each other. So as we move forward with this project, we are recognizing that there are some differences there and that we need to work that out and figure that out.

Next slide.

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MS. FORSYTHE: So for the Reach 4B project we did actually -- DWR is our State partner for the compliance with the California Environmental Quality Act. We're the federal lead agency for compliance with the National Environmental Policy Act.

We issued a revised Notice of Intent and Notice of Preparation, and comments are due on November 20th for that. We are holding a public meeting on the revised NOI, NOP in Los Banos on Monday.

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MS. FORSYTHE: So as we went through these meetings, we heard a lot of concerns, and I think we

definitely understand these, in terms of being able to gets into the bypass system to do O&M activities, to take down the vegetation, to do sediment and sand removal. Those activities are difficult to do obviously when there's water in the river.

So we put together some graphics to share with folks today. All the colors down here on the bottom are essentially the restoration program's hydrograph -- flow hydrograph for the reach -- what we call, the Reach 4B area.

The different colors just represent different water year types. So this blue block is essentially our -- in our wettest water year, our hydrograph would resemble something of that sort. There is flexibility in the hydrograph to reschedule flows, but it's generally in this look.

So the Reach 4B settlement requires, as part of the Reach 4B project, that we improve the conveyance capacity of Reach 4B to at least 475 cubic feet per second. When we have that project complete, assuming that's all we do, we will essentially only have flows in the bypass system for approximately three and a half months or so in the spring time. So the bypass would be dry throughout the summer and fall and winter months to do O&M activities for the flood control project.

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MS. FORSYTHE: If we were to improve the Reach 4B area to 1,500 cfs capacity, we would take that number down to approximately 3 months in the spring. So essentially all of the restoration flows throughout the majority of the year, except for the short 3 months in the year, would be routed down the original river channel. We'd only need to use the bypass in a very limited time of the year.

As an option of the Reach 4B project, we're talking about potentially going up to 4,500 cubic feet per second capacity or larger. And I apologize, I don't have a graphic for this, but obviously if we went up to 4,500 cubic feet per second in Reach 4B, we wouldn't have to uses a bypass system at all to route flows.

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MS. FORSYTHE: So we wanted to talk about -- we feel it's very important to coordinate with the flood resource agencies. We've worked hard to coordinate with the Corps, with the Army Corps -- or excuse me, with the Department of Water Resources, I think we're working harder to bring the Flood Board into what we're doing on our daily activities, and also to bring the levee district into those daily activities as we move forward with the restoration program.

As part of the 4B project that we're in the NEPA

CEQA planning phase right know, we have invited the Flood Board staff into our weekly -- or biweekly agency meetings. There's also opportunity to attend public meetings. And Mr. Marino has been involved in those.

And then we're happy to come back and brief the Board. And there's also, as we get moving with the project in developing alternatives, we'll have quite a few documents for review and input by the Board.

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MS. FORSYTHE: Any questions?

BOARD MEMBER BROWN: I have a question.

PRESIDENT CARTER: Go ahead, Mr. Brown.

BOARD MEMBER BROWN: Thank you very much. It was a nice presentation.

MS. FORSYTHE: Thank you.

BOARD MEMBER BROWN: We have about 3 issues that I think you've addressed, but I'd like to make sure. One of the main ones that has bothered us here before is the easements that we have from the landowners. And, as you know, easements are very specific generally speaking, and that our easements are for flood control.

And our concern is that if we use those -- if you were to work under our easements, let's say, and you're using our flood control and drainage easements for fish restoration or habitat restoration, then that could put us

in a vulnerable position with the landowners, as far as using their easements that we don't have authorization to do so.

So we suggested to the State Water Resources Control Board that you folks go ahead and you meet with the landowners. Meeting with DWR is good and meeting with us is good and we can go ahead and sanction that, and DWR can also. But it seems to me like the ones that you really need to make peace with on that issue is with the landowners to protect yourselves and the State of California also. We sure don't want to get caught in the middle of a lawsuit using those easements as we do not have authorization to do so. So that's one.

And the other one you covered a little bit is the maintenance costs in the Lower San Joaquin Levee District. And I think you're working that out with our staff down there. We do anticipate additional maintenance. And not being able to get in there at specific times like we have -- generally have done. And we're thinking and hoping that the Bureau would step up and help take care of that.

The third issue is really not our concern, but is of our interest, and that's the Friant water users. I know that whole Friant system, all the way from Friant Dam down towards Exeter and Porterville, all the way down to

the Bakersfield area is short of water. And they're having to use ground water to make up the shortfall right now.

And they're mining the ground water basins in that area, just under the existing system as it was before this takes place. And I did a quick calculation. It appears that you're diverting about 300,000 acre feet a year -- 200,000 to 300,000 acre feet anyway a year out of the Friant system into the Eastside Bypass, and Coachella Bypass and San Joaquin. And I applaud your plan for the recirculation idea of putting it back into the California aqueduct or the Delta-Mendota Canal and sending it on down to the Mendota pool. And that keeps the water and circulation, as far as agricultural needs are concerned.

But the issue is, how do you take that conserved water and get it back over to the east side with the Friant water users where that water is really desperately needed? If you don't figure out a way to get it to the ease side, then what's going to happen is more groundwater mining on that side, and that's a bad thing for the State of California.

So I know there are some exchanges that can be made, like Madera Irrigation District, I think, has 60,000 acre foot of appropriations out of Friant and -- but that's about it.

Unless you can make some kind of deal with Kings River agencies, and some type of an exchange at the Mendota pool, it's going to be difficult to get water back over to Friant. And you may have a program to do that. And if you do, just a matter of interest, I'd like to know it, because I am concerned as to what happens to those groundwater basins in that area from a personal standpoint.

And the last question is, how do you get water past Gravelly Ford. That has always been a sink for recharge in that area. It's difficult.

But I guess the main ones, as far as our Board is concerned, is make peace with the landowners in that area to where we don't get caught up. And then make sure that the Lower San Joaquin Levee District is made whole with the increased maintenance costs. And other than that, go for the program. It's a good one.

MS. FORSYTHE: Did you want to address any of those, Jason?

MR. PHILLIPS: Did they want comment?

MS. FORSYTHE: Did you want us to address those questions?

BOARD MEMBER BROWN: You don't have to, unless you've got answers to those questions. They're pretty tough questions. I don't know if you know how the

exchange might work trying to get water from the Mendota pool back to the Friant water users. There is a way, maybe if you go out through down towards Bakersfield, but it's kind of tough.

But the main one is we think you need to make peace or get in agreement with the actual landowners along the Eastside bypass, Coachella Bypass to where we don't get sued for your using an easement that we don't have a -- maybe don't have a right to do.

PRESIDENT CARTER: Maybe just to comment on the -- on what you're doing with the local landowners.

MS. FORSYTHE: Yeah. We've had quite a few outreach meetings with the local landowners. And we have attended -- we attend regularly their local resource management coalition meetings, but we have pooled the landowners together through direct mailings and had quite a few different meetings with them.

We've had a few landowners in the bypass system that have had -- have expressed some concerns. One landowner in particular would take his -- he farms both sides of a particular location in the bypass system, and he would drive his tractors through a low water crossing that crossed the bypass.

And so he had expressed some concerns with us and we were -- we've been working with him to resolve those

issues, and I think we've built a good relationship with them.

There are a few landowners in the bypass system that essentially don't want anything to do with us, but there are a few that are very cooperative and that we've built very good relationships with, so it's --

BOARD MEMBER BROWN: Well, don't give up on it. I'm sure there's a solution to it somewhere, but I don't think that you can assume just because we have a flood drainage easement, that those easements are -- that we can use those or authorize or permit you to use those easements for habitat restoration, and particularly for threatened or endangered species. That may cause some heartburn with the landowners in that area.

MS. FORSYTHE: Yeah.

BOARD MEMBER SUAREZ: Mr. President?

PRESIDENT CARTER: Ms. Suarez.

BOARD MEMBER SUAREZ: I just want to -- I understand you're reaching out and talking to landowners, but does the word "easement" come up in those conversations, or are you just having general conversations about all kinds of issues, but you have yet to address the specific questions about easement, because I can't tell by your answer whether straight direct conversations regarding your ability to use our easements,

as far as those landowners are concerned, is appropriate.

MR. PHILLIPS: Yeah, we appreciate the question. And one of the challenges we have, certainly as staff, is that the federal attorneys interpret the easements that they do cover, the flows that are -- I wouldn't say they're habitat and threatened endangered species flows. They're flow requirements that are in the bypass, because of the flood project. And so our interpretation is that they are authorized under the easement, and we have no formal correspondence to the contrary.

We haven't had direct dialogue with the landowners on their interpretation of the easement. We focused our efforts on, you know, if there are impacts that the water is causing on their operations that we could work with them to mitigate.

And having said that, there is current litigation that was brought against the United States several months ago by a landowner in the Mariposa -- along the Mariposa Bypass. And I believe one of their issues in there is dealing with easements. And so we will be working either through the litigation process or through some settlement process to address that.

BOARD MEMBER SUAREZ: Mr. President, if I could ask Ms. Smith perhaps too, if she could keep tabs of that litigation. Certainly, if there's a court decision and an

opinion addressing the particular issue of the easements, it would good for this Board to know. Actually, it would be good for the Board to see some of the briefings on the matter if that's possible.

VICE-PRESIDENT RIE: I have a question. I'm not that familiar with this project. I haven't attended any meetings. But these easements that you're referring to, Ms. Suarez, who are the easements granted to? Are they granted to USBR or are they granted to us, the Board?

BOARD MEMBER BROWN: It is my interpretation that what we're concerned with is the flood easements that this Board has to use the Eastside and Coachella Bypass.

VICE-PRESIDENT RIE: So they're easements granted to the Board?

BOARD MEMBER BROWN: Those are lands that are owned by the farming community in that area. And I believe -- and this is where Ms. Smith can help us. I believe our easements, like most easements, are very specific what they're usable for. And my suspect is that these easements are strictly flood control.

So if you start using them for something other than flood flows, particularly to establish habitat that can cause concern to the agricultural community in that area, that if we grant those easements, then the State stands to be a party in a suit, and we don't want to do

that, if we can get around it.

Therefore, I think it's really important that you, as I say, that you make peace with the landowners, such that we don't, neither you or us or the Bureau of Reclamation for that matter, later on gets into some kind of trouble that we're doing something we're not permitted to do.

MR. PHILLIPS: Yeah, we certainly we'll do that.

SECRETARY HODGKINS: I might note that in our meeting Jason expressed a willingness if DWR were interested in acquiring the additional easements in considering getting those, but the implication was that they'd have to come out of the State's funding, but the State does have money through a bond issue for the projects, is that correct, Jason?

MR. PHILLIPS: The State does have funding to support the program. And the State is an active party to this -- to the settlement implementation, not the settlement itself. And when we entered into the settlement, when we signed it, the State also signed an MOU pledging support in the implementation of the program. And so to me, you know, the issue of the easements probably isn't about a large amount of money, it's about a process, and it's about working with the landowners, and making that transaction happen.

The current easement would be a strong factor in terms of trying to figure out what an additional easement would need to even be. And since that's an easement with the State, it seems like if the State would want to take an active role here to help, then one role could be to go in and amend the current easements.

SECRETARY HODGKINS: Could I ask a couple of other questions?

VICE-PRESIDENT RIE: Mr. Hodgkins, before you ask your question, I still need and answer to my question. Perhaps, Mr. Phillips, you can answer, are the easements granted to USBR, these easements that are in dispute or are they granted to the State Reclamation Board or the San Joaquin --

MR. PHILLIPS: The United States is not a signatory to the agreements.

VICE-PRESIDENT RIE: Okay, thank you.

BOARD MEMBER BROWN: Well, wait a minute. He said agreement and you said easement.

MR. PHILLIPS: That's right, the easements. The United States is not a signatory to the easements.

BOARD MEMBER BROWN: Okay. So the State has the easements.

MR. PHILLIPS: (Nods head.)

PRESIDENT CARTER: Okay, Mr. Hodgkins.

SECRETARY HODGKINS: Yeah. Just, you know, we sent a letter over to the State Board. And the letter came out of a meeting we had with Lower San Joaquin. And, Reggie, maybe you could come down for a second.

At the time, it was clear that there was an issue basically over, first of all, getting an agreement to reimburse Lower San Joaquin for their additional costs in connection with maintenance, if they had any during the interim flows. And the frustration Lower San Joaquin was having over it was the Bureau's inability, a legal bar in effect, to providing an indemnification agreement.

Now, this says that apparently the levee maintenance district has found a way to use the kind of wording that DWR was suggesting and move forward with this, but the Bureau hasn't approved it. Is that your understanding as well, Reggie.

MR. HILL: Yes, that's correct. At our last board of director's meeting, the board took the position to open renegotiations with the Bureau trying to address these issues. And so our latest response to them -- or with the agreement just went out last month. So they haven't had a chance, but we worked with DWR legal counsel to come up with --

PRESIDENT CARTER: Mr. Hill, could you just introduce yourself for the record, please.

MR. HILL: My apologies. I should have known better than that. Reggie Hill, manager of the Lower San Joaquin Levee District.

PRESIDENT CARTER: Thank you.

MR. HILL: Sorry, Ben.

SECRETARY HODGKINS: Okay. So a small step, but a step. Then I think in our meeting, I came, at least to a better understanding that the easements are an issue that there's a difference of opinion between the federal attorneys and the State attorneys as to what they provide. But I think the other part was the flows that were up here, where, in effect, what those flows would show is that in all years except extremely wet, because that's what the blue block was. What percentage roughly of our years are extremely wet?

MR. PHILLIPS: So the percentages here. I'll go off memory. Twenty percent of the years is considered the wet years. It's the wettest 20 percent. And 30 percent is normal wet. So the blue is 20 percent of the years. And I should point out that more than half of those would be flood flows anyway in the system that are much greater than what is required by the settlement.

So when we talk about impacts, the significance of that when we talk about the impacts to Friant and what they were willing to agree to, in terms of water supply

impacts, is that wet years are actually one of the least impacting years to them, because a significant amount of water will be going down the system, and because it's uncontrollable. So there are no additional requirements.

So most of these years in the dark blue are just normal flood releases. Thirty percent of the years would be this normal wet year. So between the two, 50 percent of the time you'd be with those pulse. And then it's 50 percent of the time would be dry, critical high or critical low. And in a critical low year, there are no flow requirements. That's only one percent of the --

SECRETARY HODGKINS: Okay. But in essence, if you see the dashed line there, that's what the flows typically are probably monthly averages historically. And you'll notice that the blue, the purple, the green, the turquoise blue or whatever color that is, those flows are very close to what the historical averages are. And they are occurring in the months of April and May, which probably isn't the time when you're in there trying to do a lot of maintenance anyway. Is that a fair statement, Reggie? I know you do it whenever you can, but --

MR. HILL: Yeah, there is no stipulated schedule as to when certain maintenance activities occur, but we do it on as-needed basis. And it's totally dependent, on what you're referring to Butch, is the fact that whenever

flows are not in the system.

SECRETARY HODGKINS: Okay. But that would show on average they are in the system in April and May. So we have the blue block and potentially the orange block that represent significant increases over what's been the typical average. This is different than, at least my vision, of what was going on when we went in, because in most of the year, during most of the year, the flows are not hugely different.

So it gets down to a more manageable block of flows that we're going to have to deal with where there are major concerns about the impacts on maintenance. And then in most of the years, they're concerns that are going to have to be addressed.

But it doesn't look quite as daunting as I thought it would be, just listening to the numbers that we're getting thrown around.

And then the last thing I'd like to ask about is when we met with you the understanding that I got from you was that it isn't likely that you're going to be looking, at least in the immediate future, to establishing any kind of habitat for fish in the bypass system.

Is that still the case? That's an option that's desirable to have in the long run, but not something necessarily that has to be dealt with right up front.

MR. PHILLIPS: That's correct. And we do not have an active program right now to establish any new vegetation in the bypass. And so being able to dry out and maintain and prevent vegetation growth does not conflict with any current programs that we have going on.

SECRETARY HODGKINS: Okay. Now, Reggie, clearly there's a need for all of us to work more closely. And I'm not referring to you, but certainly the Board and perhaps our Board staff, DWR, I think is in here pretty good.

Is there anything here that you would disagree with, in terms of the things we've talked about today? Is there an area where we need to focus more?

MR. HILL: Oh, yes. I did have some comments. I wrote up on a page that I wanted to make some comments as soon as Jason and Ali are through.

SECRETARY HODGKINS: Okay. Excuse me.

MR. HILL: That's okay.

PRESIDENT CARTER: Any other questions for Mr. Phillips or Ms. Forsythe?

BOARD MEMBER SUAREZ: Just a quick one, if I may, Mr. President.

This is directed at -- number one, I want to thank Mr. Phillips and certainly thank the Board members that have been involved in these discussions, President

Carter, Mr. Hodgkins, Mr. Brown. I looked back where we were, I don't know, a year ago, where there seemed to have been very little communications between us and the Department of -- the Bureau of Reclamation on this matter. And it seems that there's a lot of discussion going on, and that's very, very good.

Looking at the letter that Mr. Phillips signed -- under your name, but somebody else signed it, went to Ms. Evoy at the Water Resource Control Board.

MR. PHILLIPS: Yes.

BOARD MEMBER SUAREZ: You noted in your letter that you've -- I guess this is your formal response to consultation under the order?

MR. PHILLIPS: (Nods head.)

BOARD MEMBER SUAREZ: And then you noted that under, "Consultation meeting did not result in identification of specific compromises to the flood safety features of the San Joaquin River and the Eastside and Mariposa bypasses as a result of the project", meaning all 11 interim flows.

And I wanted to take this opportunity to kind of ask my fellow Board members that have been involved in these discussions, whether that is an accurate representation of what the consultation -- the results of the consultation, that there was no -- there was no

identification of specific compromises to the flood safety features of the system.

BOARD MEMBER BROWN: Say again?

BOARD MEMBER SUAREZ: Do you have the letter?

The first sentence of the third paragraph.

BOARD MEMBER BROWN: Consultation.

BOARD MEMBER SUAREZ: Yes.

BOARD MEMBER BROWN: "The consultation meeting did not result in identification of specific compromises to the flood safety features of the San Joaquin River and Eastside Bypass as a result of the project". I'm not sure what that means.

PRESIDENT CARTER: I think my take on it is, in the near term that's an accurate statement. It still remains to be seen what the potential affects might be in the long term, in part because we don't know exactly what the long-term plans are.

My discussion of the meeting that I had with Mr. Phillips and Ms. Forsythe with Butch and Jay was, I thought, encouraging, in that the Bureau indicated that they were very willing and able to modify flows coming out of Friant, should there be impacts.

And so the published flow regime that I had seen 6, 8 months ago, which seemed fairly rigid and a potential concern, did not appear to be set in stone, and the Bureau

was able to modify those, and still satisfy the terms of their settlement agreement.

So that indicated some flexibility and whatnot, which was very encouraging. I think the other message I got from the meeting that was new to me was that in the long term, they don't necessarily intend to have flows down the bypass all year long. And, in fact, they are going to be trying to keep the flows within the main old channel. Whether or not that's feasible remains to be seen, but that's the long-term plan.

So to answer your question -- that was a long way of answering your question. Yes, in the short term, I think it's an accurate statement. In the long term, we don't know yet.

BOARD MEMBER SUAREZ: Okay.

PRESIDENT CARTER: That was my take.

SECRETARY HODGKINS: And that's the same as mine. And, you know, as long as there's no agreement, there's some threat. But would I go running over to the State Board and say don't give him a permit, no. So that's kind of where we are, okay.

MR. PHILLIPS: We'll call that progress.

(Laughter.)

SECRETARY HODGKINS: Yeah. We're getting to know each other, hopefully all of us.

BOARD MEMBER SUAREZ: Thank you.

PRESIDENT CARTER: Okay. Anything else for Mr. Phillips or Ms. Forsythe?

Mr. Punia.

EXECUTIVE OFFICER PUNIA: I just want to let the Board know, Jason is leaving us. He got promoted to be Manager in the Klamath area, so we'll be working more and more with Alicia.

MR. PHILLIPS: The issues were starting to get too easy in the San Joaquin, so they moved me to Klamath Falls.

(Laughter.)

BOARD MEMBER SUAREZ: Have you been to Klamath Falls?

(Laughter.)

PRESIDENT CARTER: Okay. Thank you very much.

Mr. Hill, did you want to address the Board?

MR. HILL: Yes, I did. President Carter, and members of the Board, I appreciate the opportunity to discuss with you.

I know this is just an informational briefing.

Basically I just wanted to commend Jason and Ali for the open communication that has evolved. I know in the beginning there were some difficulties, but things have progressed to where people are starting to keep each

other more well-informed of issues. And we've tried to make sure that we've done our end of it.

(Thereupon an overhead presentation was presented as follows.)

MR. HILL: And so basically what I wanted to talk to you today about was basically the statement that you were alluding to about the compromising. The district feels that the project is being compromised. And basically my statements are basically qualitative at this point, based upon our experience with the project. But we are definitely going to work to substantiate those into quantitative data.

So basically what I'd like to just show you is the fact that there is a compromise to the flood project due to the restoration flows that are impacting the channel's capacity, because it encourage vegetation growth, which is accumulates sediment. And basically, these low flows greatly impact sediment deposition and causing constraints.

And then so when we deal with high flood flows, the water surface elevations increase because of this constraint with vegetation and sediment accumulation, and therefore it makes increased levee foundation and stability issues become that more prevalent.

So basically what I just wanted to show you,

if -- I know this is just informational and we're taking a heck of a long time here. I appreciate your time.

EXECUTIVE OFFICER PUNIA: Amber, could you help him.

(Thereupon an overhead presentation was Presented as follows.)

MR. HILL: Okay. Basically, what I wanted to allude to is the fact that there are -- low flows is the worst case scenario for sediment deposition, as far as sediment moving through the system and accumulating in the system itself.

So basically what I've shown you here is a picture that was taken at the bifurcation control structures before -- during the flows in February of 2010. And that said -- that sand pile -- that sand bar that you see there was not there prior to the flows last year.

And what I'd like to show you here is the fact that now you can see the sand bar has a tremendous amount of vegetation that has acquired along the edges, and those are trees. And those trees are right in the middle of the channel.

So basically what we're trying to do is the fact that we can't -- and also you can see also -- here, you can see where the low-flow part of the channel and through the picture here is sediment is starting to accrue in the

low-flow part of the channel. So what happens is the channel is filling up, so your water surface elevation is changing. And this is all due to low flows.

And like I said this is the bifurcation. And basically what you can see is here where the sand bars accumulate on the inside of the channel. And this is the deeper part. This part here is being filled in. And as it moves closer to the structures it becomes an operational issue and a maintenance issue trying to make sure the sediment doesn't deposit itself in the structures, and the structures become more difficult to operate.

BOARD MEMBER BROWN: Is that the Fresno River up there?

MR. HILL: No, this is the Chowchilla Bypass.

BOARD MEMBER BROWN: No, I mean the other one coming in.

MR. HILL: No, this over here. We're looking --

PRESIDENT CARTER: That's the San Joaquin River.

MR. HILL: This is the upstream end of the San Joaquin River.

PRESIDENT CARTER: We're looking north.

MR. HILL: We're looking north, yes.

BOARD MEMBER BROWN: Oh, okay.

MR. HILL: Yeah. This is the control structure

at the head of the Chowchilla. And this is the control structure that goes down to Reach 2B on the San Joaquin River.

--o0o--

MR. HILL: So basically what has happened in this photo here is during low flows -- this was taken just last month or November about 3 weeks ago. And basically what you're seeing the vegetation, these are Willow trees.

--o0o--

MR. HILL: And Cottonwoods. And these are accumulating by the tens of thousands on the river channel -- in the river channel itself.

--o0o--

MR. HILL: And what happens on these sand bars, these Willows are going to get bigger, if we can't go in and do the eradication.

--o0o--

MR. HILL: And so what happens is, it's just going to be -- like I said, there's tens of thousands, and these are growing rapidly.

--o0o--

MR. HILL: Basically, with a picture here of me, I'm standing holding one of those, and it's at my shoulder. And that was not there in February, so it grew five feet from February to November. So if you've got

tens of thousands of little trees out there, and they can grow rapidly, then we do have a definite problem and it's a compromise to the project.

--o0o--

MR. HILL: And so what happens is these trees, they're not just growing along the edge of the bank, they're growing right in the middle, which you can see right here on one of the reaches of the river. And that's going to just be an accumulation issue for sediment. And so far these low flows are compromising the project.

So therefore, we can't get in -- we don't have the permits necessary to go in and work in a wet environment. And with the restoration flows, that we're going to see this channel wet more often than we're going to see it dry.

So what happens is there's going to be about maybe a 2-month window where this channel is going to be dry, but that's only going to be dry from December 2nd to February 1.

And everything is going to be dormant, so you can't go in and do any type of herbicide application. It's just a waste of money.

So that's the point that I'm just trying to make.

And also, as you look upon this, these channels we're the local O&M District for the State, and so

therefore, we get inspected by DWR. And if we get a poor rating on our inspection due to these kind of issues, it affects our ability to get insurance to operate.

So those are the issues that we have to deal with and those are the issues that need to be dealt with.

So anyway, and like I said, we have O&M activities scheduled. Like I said, it's -- we know what we want to do, but there are some issues that occasionally come up and we need to address those.

And one that we're currently working on right now is we have on one of our control structures, we had a gate failure. So we're trying to fix that. And when you're trying to fix that within this 2-month window of when the channel is supposed to be dry between December and February.

So we're just trying to work that. We've already notified the Bureau of Reclamation of this problem, and also DWR. So we're just right now trying to figure out the scheduling on that to make sure that if we need to have an extended window on that, we'll be ready for that.

BOARD MEMBER BROWN: Well, even if you had the money, can you --

MR. HILL: Yeah. What happens --

BOARD MEMBER BROWN: -- do that maintenance in that period of time?

MR. HILL: Well, that's the problem with it, John. And the maintenance -- again, I don't want to take up much of your time. I know it's late in the afternoon. But the District was set up in accordance with the way Friant Dam was operated in the fifties.

Okay, now it's changed. So therefore, the way we operate has got to change. Normally, the District would go in and do herbicide application in a dry environment. When you're talking about flows, we usually never saw flood flows except every third or fourth year, so we had a channel that dried out and usually Mother Nature took care of the vegetation by just drying them up and the vegetation died in the bottom of the channel.

But now we have a different issue that we have to address. So those are the things that are increasing our ability to do O&M.

PRESIDENT CARTER: It's clear that we all need to continue to communicate. And these are issues that we're all going to need help dealing with, looking at potentially some other flow regimes that allow the maintenance to occur from a dry basis or some different ways of maintaining with different equipment.

MR. HILL: Right. Or basically, what we've also investigated is looking at a consultant contractor who has the expertise of working in a wet environment and going in

and getting the necessary permits and also filing the necessary reports in this kind of a situation.

We're still in the negotiating stages, but we do have kind of an estimate on that value.

PRESIDENT CARTER: Okay.

BOARD MEMBER BROWN: Nobody down there knows that better than you do, though.

MR. HILL: Well, we know how the system works, and we know what the problems are. And that's the problem we see with these low flows, is that they are creating a channel constriction point, and we're just going to have to try and deal with it the best we can. If we can't, then the project is definitely being compromised.

PRESIDENT CARTER: One more question.

BOARD MEMBER SUAREZ: Well, I'd like to follow up just quickly, Mr. Hill. I have a copy of a November 18th letter from Mr. Phillips to you with the same sentence saying that during your meetings you know there was no specific compromises to the flood safety features, which is language they've used as they reported back to the State Board.

I would just encourage you, if that's the case, put it in writing, make sure they have the information, make sure that the State Board has the information too.

MR. HILL: Yeah, we will be doing so.

BOARD MEMBER SUAREZ: And make sure that whatever is being represented to them is accurate.

MR. HILL: Yes.

PRESIDENT CARTER: Okay.

VICE-PRESIDENT RIE: President Carter.

PRESIDENT CARTER: Anything else Mr. Hill?

MR. HILL: Nothing. Other than the fact that you're well aware of how much sediment is in the system. This is the picture of the Chowchilla Bypass settling basis. And that is how deep this basin is, how much material is actually going down the San Joaquin River that gets diverted into the bypass. And as you can see, it's about 10 to 12 feet deep. And that's just where they've been excavating at this point. And that's not even just -- they've only taken maybe 60 or 70,000 yards of material out of this location, which can hold 300,000 yards.

PRESIDENT CARTER: Okay.

SECRETARY HODGKINS: Is that because of restoration flows?

MR. HILL: No. This is basically just because whenever you divert flows into the bypass system, you're going to have a sediment accumulation. And when the project was designed, they were all aware of that. That's why they put in the settling basin. The point here is the

fact that the San Joaquin River is always going to carry material.

SECRETARY HODGKINS: Yes.

MR. HILL: The point I was making out is that low flows, the material is going to settle into the river at some point, and it's going to impact and compromise its ability to carry water at a certain water surface elevation on a continuous basis. It's just going to continue to increase, if you don't address that issue, which would require moving sediment from the channel, which requires a dredging permit from the Corps and also 404.

SECRETARY HODGKINS: Okay.

PRESIDENT CARTER: Ladies and gentlemen, we need to move on.

MR. HILL: Sure. Thank for your time.

PRESIDENT CARTER: Thank you very much for coming up, Mr. Hill.

And again, we need to continue to have a productive dialogue amongst all the players.

BOARD MEMBER BROWN: What's your follow-up action on this, Mr. Chairman?

PRESIDENT CARTER: I think is to continue to have the dialogue, I think, at this point.

VICE-PRESIDENT RIE: President Carter, I have a

question for staff. The Bureau told us that they have a document out for review. And they're accepting comments until, I believe, December 20th?

MS. FORSYTHE: 20th.

VICE-PRESIDENT RIE: I'm wondering if staff has repaired comments, and if these issues are reflected in that comment letter?

BOARD MEMBER BROWN: Maybe Mr. Punia could summarize the concerns and address it in a letter, either to the Bureau or to the State Water Resources Control Board.

PRESIDENT CARTER: We can do that. I think we've kind of -- we've summarized the concerns in a couple correspondence.

BOARD MEMBER BROWN: Do we have that on the January agenda, the review of that draft letter?

PRESIDENT CARTER: Sure.

VICE-PRESIDENT RIE: What about the comments that are due December 20th?

STAFF ENVIRONMENTAL SCIENTIST HEROTA: James Herota, Board Staff Environmental Scientist. We are planning to draft comments and submit that.

VICE-PRESIDENT RIE: And are you coordinating your comments with the Committee to reflect some of these issues in your comment letter?

STAFF ENVIRONMENTAL SCIENTIST HEROTA: We'll be glad to share our comments with the Committee.

VICE-PRESIDENT RIE: Thank you.

PRESIDENT CARTER: Okay. Thank you.

BOARD MEMBER BROWN: For continuity, Mr. Chairman, that I would suggest you consider that letter come from you to the Director of the State Water Resources Control Board for consideration.

PRESIDENT CARTER: Okay.

BOARDS MEMBER BROWN: Tom Howard.

PRESIDENT CARTER: Okay. Very good.

All right, ladies and gentlemen. Let's move on to 12B, briefing update on the encroachment permit application submitted by Three Rivers Levee Improvement Authority for Elderberry mitigation at the Anderson Mitigation Site.

Mr. Brunner, Mr. Dacas. Good afternoon. I would appreciate your moving through it quickly because of the late hour.

MR. BRUNNER: Good afternoon. I'm Paul Brunner the Executive Director of Three Rivers Levee Improvement Authority. Thanks for having this informational briefing given to you.

It's a continuation of a theme with vegetation in the floodway, the last couple of topics that you had. But

for us we have an EIP Project that's -- we plan to go to construction this spring in the April-May time frame.

(Thereupon an overhead presentation was Presented as follows.)

MR. BRUNNER: And we have a project that is encumbered by elderberries that we need to transplant. And we have proposed to use the Anderson site. Our briefing today is on the Anderson site, usage of it. It's not for approval. It's for information.

We do plan to come back at the January meeting, hopefully it's on the Board agenda, so we can approve the use of the Anderson site.

Larry Dacus will be giving the informational briefing for you. It's important for us to get your feedback as to use of the site, because it's a cost issue and a timing issue. The dormant season to transplant elderberries is before February 15th. And therefore, really hearing and hopefully approving the use of the site in the January Board would give us time to do that, which would be a great savings for our project and also the State.

Larry will describe that in the briefing. So if there's no questions for me, I'll let Larry go ahead and start the briefing.

MR. DACUS: Good afternoon, member of the Board.

My name is Larry Dacus. I'm the Three Rivers design manager. And as Paul mentioned, I'll give you some information on the Anderson mitigation site that we hope to use for our Upper Yuba Levee Improvement Project.

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MR. DACUS: The Anderson mitigation site is located on the east side of the Feather River. It is about 5 miles -- or 6 miles south of Marysville, and about -- it's about 7 miles from the Upper Yuba Levee Improvement Project Site. And this is the Upper Yuba Levee Improvement Site and down here is the Anderson mitigation site.

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MR. DACUS: This site was established by the Corps of Engineers and DWR in 1995 and 1996. It provided elderberry mitigation for the Marysville Yuba City Phase 2 reconstruction project.

Although all of the initial site was planted, when it was all said and done, not all of the mitigation area was required for the mitigation for the Marysville Yuba City project.

And therefore, that creates an opportunity for other projects within the Sacramento River Flood Control System such as our Upper Yuba Levee Improvement Project to utilize this site for additional mitigation purposes.

The habitat type around the site is primarily riparian Woodland habitat. There's also some scrub shrub and some emergent marsh.

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MR. DACUS: And this is a map of the mitigation site that we see down there. This is the old Feather levee that Three Rivers just recently degraded when it constructed the Feather setback levee. This is in the area of the Feather setback levee.

This is mitigation area that was used for the Marysville Yuba City project, this area and this area. This area right here will actually be used for the current project that's under construction in the Marysville levee system for mitigation for that project.

And what Upper Yuba is the -- our project, the Upper Yuba Levee Improvement Project proposed to use -- do some plantings in this site and to utilize the existing plantings in this area and this area as mitigation for our Upper Yuba project.

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MR. DACUS: The status of the project is that our design is complete. The Corps is currently considering our Section 408 authorization, which we expect to get in January, followed very quickly in February or March will be the Section 104 credit approval.

And we hope to start construction in mid-April to early May, depending on weather conditions at that time.

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MR. DACUS: The Upper Yuba Levee will directly impact 34 elderberry shrubs. And the mitigation that is being proposed through our biological opinion is that these 34 shrubs could be transplanted to the Anderson mitigation site. And if this transplantation is done in the dormant period, which runs from November 1st through February the 15th, we would only have to plant an additional 22 elderberry seedlings with those 34 transplanted shrubs.

If we're unable to do this transplantation in the dormant season, we have to go into the non-dormant season, that number 22 gets increased to 1,318 additional plantings with those 34 elderberry shrubs.

By using the Anderson mitigation site, we are able to take advantage of the existing associated species and elderberry seedlings that already exist at the site as part of our mitigation for these 34 shrubs.

If use of the site creates no hydraulic impacts, we're essentially putting plants in an area that's already heavily wooded, you don't -- adding 34 and 22 -- no, 56 additional plants in this heavily wooded site doesn't change the hydraulic roughness of the area.

Long-term maintenance for the area, RD 784, which is the local maintaining agency for the levees on the east side of the Feather River, they are currently maintaining the Anderson mitigation site for the entities that are currently using that site for mitigation.

And we have talked with them and they are agreeable to taking on this additional very minimal amount of additional maintenance for our mitigation area, where we'd be allowed to plant there. There would be no change in any restrictions out there. This is an existing mitigation site. If restrictions exist through other maintenance activities, they are already in place.

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MR. DACUS: Benefits. Again, we get to utilize an established mitigation site. We get to take advantage of plantings that have already occurred and have not been counted toward mitigation as yet. We can save the taxpayers of the State approximately $500,000, if we -- on-site mitigation site -- excuse me, on-site mitigation costs would be approximately $200,000 right now.

If we have to go somewhere else off site for non-dormant, it will be approximately $680,000. If we -- excuse me, dormant is $680,000. Non-dormant is about a million six hundred thousand dollars.

BOARD MEMBER BROWN: $200,000 to move 34 plants?

MR. DACUS: Yes, sir. Get them -- well, 200,000 not just to move them, but to put theme into the area, plant the associated seedlings, and then monitor them for 3 years. That's what our current contract is.

BOARD MEMBER BROWN: But you're talking about 34 plants though, not seedlings.

MR. DACUS: Yes, sir. I'm talking about 34 plants.

PRESIDENT CARTER: Moving 34 and planting 22 more, so 56 plants.

MR. DACUS: Then 22 more associates, and then 3 years of intense maintenance and monitoring. And we may be able to get this number down a little bit. Like I say, that's the current cost. That cost includes some fencing, some other things that I don't think we're going to have to do, but we would have to put in an irrigation system.

BOARD MEMBER BROWN: Okay. Who's requiring you to go to a thousand plants if you can't plant the 34 plants between now and February.

MR. DACUS: That's the standard elderberry guidelines. If we --

BOARD MEMBER BROWN: By who?

MR. DACUS: U.S. Fish and Wildlife Service.

BOARD MEMBER BROWN: Fish and Wildlife, that's their requirements?

MR. DACUS: Yes, sir. They have a dormant season. If you don't transplant during the dormant season, your mitigation requirements are increased by 2.5 automatically.

BOARD MEMBER BROWN: 2.5?

MR. DACUS: Yes, sir.

BOARD MEMBER BROWN: Well, I don't understand.

MR. DACUS: Well, and it's not 2.5 to that 22. What it's 2.5 to the stems that are impacted. Elderberry mitigation is figured on the number and size of the stems of each one of those shrubs. So we're not talking about 34 shrubs, we're talking about 34 and some probably a hundred stems of various sizes that create a mitigation requirement.

VICE-PRESIDENT RIE: A question. It says you need the encroachment permit in January. And I'm just wondering why you waited so long to come before the Board? Why not come before the Board sooner?

MR. DACUS: Perhaps being naive, we thought this would be a simple process, and that not many people would object to us moving 34 shrubs into a mitigation area. We have been talking to staff about this for quite some time, several months in front of this. We made this proposal, and we didn't -- I guess it wasn't made clear to us till about September that is no we would need an encroachment

permit and we needed to very quickly get it into staff.

VICE-PRESIDENT RIE: I don't understand why you need an encroachment permit. But let's say you do, this seems pretty simple to me. I mean it seems pretty minor.

MR. DACUS: I would agree with you, but -- I that's one reason we wanted to come and explain the circumstances to the Board today, to maybe make this an easier decision, or at least get your feedback, to get a feeling from the Board how you might react to this request.

MR. BRUNNER: I'd like to make one quick comment is that we did start this process of trying to use this site way back in January of this year, in that time frame. In fact, we've gone and visited the site, I believe it was in March, with the Board staff and the Corps and Fish and Wildlife at that time, to visit the site, to use it, get cooperation, so we can move ahead on the Anderson site.

And then we've been operating for quite awhile with the belief that we could use the site without an encroachment permit. And then as we went forward, we asked to move forward on the project. And the conclusion from Central Valley board staff and legal, I believe, came back and said that we needed to get a permit, which we immediately then turned around and then submitted our permit application to get on the Board as quickly as

possible to have it come.

So apologize for the lateness for it. But with all good intentions, we tried to have the communication going as quickly as we could with everyone to get to where we are on it. The land you own as a mitigation site. It's used as a mitigation site. The City of Marysville is using the site today under the Corps project to do mitigation.

Because we're a local entity, we don't fall under that umbrella of not having to get a permit.

VICE-PRESIDENT RIE: Well, does the City of Marysville have to get a permit from our Board?

MR. BRUNNER: No, because it's a federal project. It's a Corps of Engineers project. And since it's the Corps of Engineers project, they do not need a permit. The original mitigation site itself was created, the Larry showed you on the slide from that project that -- over 10 years ago was actually created -- the State donated the land for the project and the mitigation site was created, but it was not permitted because Corps projects do not need a permit.

BOARD MEMBER BROWN: Mr. Chairman, is this the type of a permit that Jay can grant without going to the Board?

PRESIDENT CARTER: Not until the regulations are

finalized, no. And even this would not be one that he would be able to permit even after the regulations, because it's a restoration issue.

VICE-PRESIDENT RIE: Well, planting 34 elderberry plants in a preexisting mitigation site, I mean, seems really straightforward.

PRESIDENT CARTER: So we can move on then.

VICE-PRESIDENT RIE: I would say so.

PRESIDENT CARTER: You got Anything else, Mr. Dacus?

MR. DACUS: That's the end of my -- time is of the essence, as Mr. Rie pointed out, and that's pretty much our proposal. We hope for a favorable outcome in January.

BOARD MEMBER BROWN: Do you need a motion, Mr. Chairman.

MR. DACUS: That will leave us a few weeks to do it.

PRESIDENT CARTER: No. We can't take action. This is an informational item only. It will come back before the Board in January.

VICE-PRESIDENT RIE: I would say that staff could put this one on consent.

BOARD MEMBER BROWN: I concur.

PRESIDENT CARTER: Mr. Punia.

EXECUTIVE OFFICER PUNIA: I appreciate the Board's input on this. I think the Board -- the staff has the understanding that any time we are bringing more elderberry bushes that we appraise the Board on this subject, so that's the purpose of today's briefing.

PRESIDENT CARTER: We appreciate that.

Anything else, gentlemen?

MR. BRUNNER: Yeah. We don't have anymore comments or questions and appreciate the consideration. Kent or Noel may have a comment.

PRESIDENT CARTER: Okay. Mr. Lerner.

DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: I'd just like to add as was stated, this was -- this mitigation site was put in over 10 years ago. And it was overbuilt originally for elderberries, because of what was referred to, at the time, the patrol road, which was subsequently taken out of the project. And that is in the area of the Upper Yuba River. So this site was actually meant for mitigation and projects in this area. And 784 was the agency that was involved at the time, and that was prior to Three Rivers being formed. That's just provided for information.

VICE-PRESIDENT RIE: So you're okay with the project then?

DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER:

Yes, we support the use of it for this.

VICE-PRESIDENT RIE: Okay. And I hope you feel okay. I hope you're well.

DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: I am. Thank you.

VICE-PRESIDENT RIE: You didn't get hurt, did you?

DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: No. Someone -- another lady was hurt a little bit.

VICE-PRESIDENT RIE: Okay. Well, I'm sorry to hear that.

PRESIDENT CARTER: Okay. All right. Ladies and gentlemen, let's -- before we move onto Item C, let's revisit this letter.

Let's take a 5 minute break and then we'll continue.

(Thereupon a recess was taken.)

PRESIDENT CARTER: Okay. Ladies and gentlemen, let's go ahead and continue with our meeting. Just a couple items to do before wrapping up.

One is I'd like to revisit 10B, the Delta Stewardship Council letter. I think everybody has received a markup version of the letter that we went through during the meeting earlier today. What I would like to suggest. Hopefully, you've had a chance to look

at it briefly. I think it is close. I think it's an improvement over the October letter. I think rather than us trying to continue to wordsmith it at this late hour, I would suggest that we -- if you have some specific or general comments, give those to Ms. Suarez and Ms. Rie today, and send them back to finalize it, and then go ahead and send it out.

I think it is very close. My general comment is that we're repetitive in 3 cases, reiterating the Board's jurisdiction over the State Plan of Flood Control, the San Joaquin Rivers and their tributaries and designated floodways. In 3 different paragraphs we start that -- we launch those paragraphs with that statement. So if we can just kind of tighten that up.

And then somebody needs to go through it after -- with a clean copy and go through it with a fine-tooth comb just getting all the typos out of it, because I think there's still some there.

EXECUTIVE OFFICER PUNIA: We will.

PRESIDENT CARTER: But I think it's a big improvement, and I really do appreciate everyone's efforts to try and make it better, both the folks from the public who have commented on it, and the Board members who have worked so hard to try and turn this around quickly. So I know it's a challenge.

I appreciate it.

BOARD MEMBER BROWN: I'm happy with it, Mr. Chairman after some wordsmithing like you say, but I'm okay.

PRESIDENT CARTER: Okay. If it's okay with the rest of the Board members, we'll do that. And we will -- I'd like to have a motion to delegate the authority to Ms. Suarez and Ms. Rie collectively to determine that the letter is ready for publication and have them have the authority to pull the trigger send it out when it's ready.

BOARD MEMBER BROWN: I so move, Mr. Chairman, as you suggested.

PRESIDENT CARTER: Second

SECRETARY HODGKINS: Second.

PRESIDENT CARTER: Mr. Hodgkins seconded.

VICE-PRESIDENT RIE: Thank you.

PRESIDENT CARTER: Any questions or discussion?

VICE-PRESIDENT RIE: I'd just like to say that the comment period is closed. We will no longer be accepting any comments.

(Laughter.)

VICE-PRESIDENT RIE: Okay. Thank you.

PRESIDENT CARTER: All right. That applies to everyone except Board members.

VICE-PRESIDENT RIE: Well, actually, Ms. Smith,

she's not going to let that happen.

(Laughter.)

PRESIDENT CARTER: Very good. So we have a motion and a second.

Any other discussion?

All those in favor indicate by saying aye?

(Ayes.)

PRESIDENT CARTER: And opposed?

The motion carries unanimously.

Thank you again.

Okay. And we'll move on to item, I believe it's 12C. This is the 2010 catastrophic flooding in Pakistan. This is an informational briefing. There's an informative video. I believe it's 8 minutes long. Mr. Roos is here, and he's going to tell us why we're seeing this.

VICE-PRESIDENT RIE: President Carter, I actually have to go, so I was just wondering if I could give my Board member report briefly and then depart before we watch the video?

PRESIDENT CARTER: Yes, go ahead.

VICE-PRESIDENT RIE: So this is my Board member report. I just have 3 brief items.

Corps staff is going to be giving a presentation on the Corps vegetation policy. And that is for NAFSMA members, and that's December 8th. And that's 8 o'clock

Pacific time, 11 o'clock eastern time. And it is a call-in workshop. So if anyone needs the phone number for that, let me know.

And then on December 14th and 15th, the Board is sponsoring a working meeting to discuss vegetation, root architecture, the impacts from tree roots, et cetera. Our co-sponsors are SAFCA and DWR. And that is December 14th and 15th here in Sacramento. And I believe that's at the Galleria.

So if anyone needs information on that, you can let me know. And then finally, Congressman Garamendi has prepared a letter to the Assistant Secretary of the Army, Jo-Ellen Darcy. And he is getting co-signatures with other members of Congress. I know locally Doris Matsui has signed that letter. And that will be going out shortly.

And that's all I have.

Thank you

PRESIDENT CARTER: All right. Thank you.

Have a wonderful holiday.

VICE-PRESIDENT RIE: You too.

BOARD MEMBER SUAREZ: That's right.

PRESIDENT CARTER: Yes, we won't be seeing each other next week -- okay.

Mr. Roos, I won't introduce the topic again, but

please entertain us.

MR. ROOS: Okay. Thank you. There is an organizations called the International Commission on Irrigation and Drainage. It has about a hundred country members, each with a national committee. The headquarters is in India. They meet once a year. They have a number of committees. Their primarily target is irrigation, but they do have a working group on it's called Comprehensive Approaches to Flood Management, which I serve as the Official U.S. delegate.

And we met in Java in October. And during the course of our meeting, the folks from Pakistan presented this video about the summer flooding there, which was terrible.

There was also some very high floods in China, but we didn't get any report from the Chinese. They didn't bring one. But I know that the inflow to 3 gorges was well over 2 million cfs, which they regulated quite well.

Now, thinking of Pakistan, the Indus is the big river. In fact, almost the whole country is dominated by the Indus River. It has an annual runoff on the order of 130 million acre feet, with considerable side flow from the east out of India.

And it's an alluvial system, which means that,

you know, the land in the whole area has been deposited by silt, washed out from the river. So once the water escapes the river channel itself, it can go for miles. It's much like say the Kings River in the southern San Joaquin valley or maybe some of the fans down in southern California.

The country is about 3 times the size of California. Has a population of about 190 million. And as you'll see from the video, probably 20 million were made homeless by this flood.

So the peak rainfall that they reported to us there was about 11 feet in 7 days. And this was a monsoon system. You know, their main flooding time is the monsoon period. It starts in July and continues for a couple months in the summer. But this one was much stronger, much more concentrated than they'd ever seen. And they've got records that go back centuries.

So I think with that, you'll probably want to go on with the video.

Amber, was going to run the machine.

PRESIDENT CARTER: Mr. Roos, just so -- I want to make sure I heard you right. You said 11 feet of rainfall in 7 days

MR. ROOS: Yeah. I've even seen one figure that was 16 inches -- I mean, more than that, but that's the

figure they reported to us. It was actually, you know, 3,460 millimeters, but if you convert that to feet, it's about what you'd get.

PRESIDENT CARTER: That's a lot of rain.

EXECUTIVE OFFICER PUNIA: That's a lot of rain.

MR. ROOS: It wasn't all that wet. This was a very wet station, but that's an area that has an annual rainfall on the order of 960 millimeters, which is about 38 inches.

(Thereupon a video was played.)

MR. ROOS: They do have a flood forecasting program. And from what Dr. Peter Lee had said, it was reasonably effective. It wasn't bad forecasting, considering they don't have the tools that we have, one weather radar for that part of the country. And the travel time is considerable, going from the north end where the really heavy rainfall was north of Islamabad, it takes about 2 weeks to get down, you know, to the sea.

So there was some time available, but, you know, they just were not prepared for such a scale of disastrous -- they said it was about equivalent to the thousand year event. And to try to put it in context, I think it would be about 50 percent bigger than what we saw in 1986 or 1997 on the Sierra rivers.

PRESIDENT CARTER: Thank you very much.

Very sobering.

Any questions for Mr. Roos?

SECRETARY HODGKINS: Maury, is this, in any way, related to climate change, do you think, or is that just reaching?

MR. ROOS: It's hard to make a direct link. You know, it's easy to say, "Oh, it's climate change", because you had some rather unusual events, in that big flooding in southern Asia, also in China, and extreme hot spells in Russia, which seemed to have been tied into the weather patterns that concentrated this monsoon effect on there.

But another factor is the La Niña. Normally, the heavier monsoons come in the La Niña years, but it was really just setting in this summer. So I don't know of anybody who says no, it's linked to that either for sure. It's possible, but I hesitate to say that.

SECRETARY HODGKINS: Okay.

MR. ROOS: That is one of the general impacts though of a warmer world that we would expect bigger floods, also here in California.

BOARD MEMBER BROWN: What was your purpose over there, Maury? What did you go for?

MR. ROOS: Yes. As I say, I'm a member. I went for the international conference, as I've gone to several of them. And I do serve on the Committee -- or the

working group, as they call it, on flood management. And so it's partly, you know, just to be engaged in what's happening internationally. They meet everywhere somewhere in the world. Last year it was in India. Year before, it was actually in Pakistan.

BOARD MEMBER BROWN: Did they try to glean some of your expertise or recommendations?

MR. ROOS: Well, we're offered a chance to talk. The U.S.A. has got a lot of talent, and it's appreciated in this group, you know, but many of these people are also very good in their fields.

PRESIDENT CARTER: It makes us appreciate what we have and what we're working towards. Although, it also keeps us mindful of the possibilities that may come our way.

MR. ROOS: That's true. It's sobering. You know, this could happen here.

PRESIDENT CARTER: Mr. Punia.

EXECUTIVE OFFICER PUNIA: I just want to make a comment that in respect of Maury, it's good to -- Maury still continues to work with the Division as a retired annuitant, and it's good to have Maury around.

I just want to share a practical experience. 2006 we were making forecast of the San Joaquin River. And Maury went for a conference attending oversees. And

the forecaster, based upon the computer modeling, without checking with Maury, we were off almost a foot. Whereas, when Maury was there, we were close in inches to the river forecast.

So I think no computer can replace what Maury can just calculate in his brain and tell us where the river will be.

BOARD MEMBER BROWN: I'll reiterate that too. I remember 1986 and the American River and the work you guys did there, which was great.

PRESIDENT CARTER: Okay. Thank you very much.

Board comments and task leader reports. Ms. Rie has given hers. Mr. Brown, do you have anything you'd like to share?

BOARD MEMBER BROWN: Butch and I met with Al Montna to see his operations up there and what he's doing. And Butch wrote a memorandum, of course, to the file that none of the discussions evolved around any permitting that he's asking for or had asked for.

And then I made a talk to the Yolo Land Owners Association on the 4th on water issues.

And then Butch and I attended the Central Valley Flood Protection Planning Partners meeting here this last month.

And then you and I, Butch, went up and saw Lady

Bug and gave her -- you presented to her her thank you plaque and recognition. And that was nice.

That was all, Mr. Chairman.

PRESIDENT CARTER: Okay.

Ms. Suarez. You've been very busy.

BOARD MEMBER SUAREZ: Yes. Well, briefly I'm just going to follow-up on a couple of things.

I attended the Assembly hearing on the Delta Conservation Plan that took place the same day of the scoping -- CEQA/NEPA scoping meeting. Now, I can't remember exactly the date, but it was a couple weeks ago. And I think you have -- you've seen. I forwarded some of the news coverage from that hearing. Basically, there's, as the news has reported, some of the water contractor organizations that were probably going to pay the bulk of any of the work relating to funding the habitat conservation plan. And any type of projects flowing from that seem to be breaking away from the process. What will happen? Who knows.

But clearly it was very, very obvious in that during the hearing that some parties felt that there's never an end to what they have to put on the table. And clearly they have reached a level of frustration.

What it means for us, what it means for the Delta Stewardship Council process, we don't know. The HCP

really was meant as a way to creating a planning document that would eventually authorize certain activities under the Endangered Species Act. That's still going to have to happen eventually, when any type of project moves forward, there are other -- the Stewardship Council or the Conservancy. So we'll have to see how that plays out.

I wanted to share with you --

BOARD MEMBER BROWN: Before you get off of that, what do you think is going to happen now that the ag people seem to have backed out of that issue?

BOARD MEMBER SUAREZ: It's hard to say. According to the administration, and the Resources Agency is the lead on the conservation plan, that there's enough funding in place to finish the Habitat Conversation Plan in natural communities, conservation -- the State equivalent of that.

I don't know that for a fact, but they felt that at least they could get a planning document in place. Now, the document is interesting, but of very little use, if you can't get incidental take authority for a specific project. So unfortunately it's millions of dollars and 3 or 4 years of people's time and effort.

We don't know what will happen with the new administration. One thing that was reported by Secretary Snow during the hearing was that this administration would

be preparing a transition document regarding the conservation plan that's going to be presented to the administration this week -- at some point this week or next week and will be posted on the Conservation Planning website.

I've got an Email alert setup for -- with the web page. If they release it and they do an Email -- a blast Email, I'll be getting it and I'll make sure that I can forward at least what the administration is going to leave the new administration in terms of a document.

But I did manage to pick up this couple of pages that were distributed at the Assembly hearing, which is a really complete summary of the conservation planning process, including timelines, stakeholders and specific document and products they thought they would get out of it, including the coverage area.

I thank Amber very much for getting copies for the rest of the Board today for you, but that's FYI. And you should see the website address for the planning website address, if you want to pull up on that.

I don't have anything to add on the scoping meeting beyond what I said this morning, regarding the comments -- the possibility that the Central Valley Flood Protection Plan deadline might not be met. Although, Mr. Bardini seemed to indicate today that they're still

working very hard to make sure those deadlines are met.

And I just finally want to take this opportunity to thank Mr. Fua and his -- I mean, Mr. Punia and his team. Certainly, Mr. Fua, and Eric Butler who wasn't here, and Mr. Taras and Ms. Smith for their work on the Tier 1B regs. Especially Ms. Smith and Mr. Marino picked up the ball when Mr. Butler, due to family circumstances, had to step aside on the delegation, and Mr. Taras took leave.

So I wanted to let the rest of the Board know that they stepped in and really -- we would have not had the package we had today had they not done that, so I wanted to appreciate that.

And I also found my August 2010 proposed Tier 2 milestone that Mr. Fua had prepared. And it was so pleasant to see that we're kind of right on target when it comes to preparing the next round for the Board to consider. So it was very nice. And again, this might be a document that we might want to recirculate at some point for the rest of the Board, but this should be the schedule for -- or close to the schedule for the Tier 2 regulations.

So with that, I'm done.

PRESIDENT CARTER: I came across the same document last night, as I was looking through, and I go

"Wow, that was a pretty good guess".

Congratulations.

Mr. Hodgkins, did you have anything you wanted to share.

SECRETARY HODGKINS: No. I think most of the things I was involved with have been discussed.

PRESIDENT CARTER: Okay. Let's see next week is a busy week for the Board, Executive Committee. There's the San Joaquin River Restoration update progress report at the Resources Building. I am not going to attend. Mr. Hodgkins will attend.

There's some administrative meetings with the all-staff meeting, the monthly coordination meeting with Ms. Rie and Mr. Punia and myself. And Ms. Rie mentioned the NAFSMA conference call on the Corps vegetation policy. I plan on participating in that, at a minimum listening in.

We have a California Roundtable Steering Committee conference call for next Wednesday scheduled, followed by the roundtable -- the meeting of the entire roundtable on Friday the 10th. And then finally, the valley-wide forum, on the Thursday afternoon, which I will be making some opening remarks at here in Sacramento -- West Sac.

So that's all I had to report.

Future Agenda.

We have a draft future agenda, which is rather full. Added to that, we talked about the Tier 1 regs, trying to finalize those and getting them ready for the Office of Administrative Law, send out in January.

A letter to the State Water Resources Control Board on issues.

And what else came up today that -- we postponed a couple consent items from today, which I assume will show up next month.

Was there anything else?

EXECUTIVE OFFICER PUNIA: We have this -- Paul Brunner, the TRLIA item. We will put it under consent.

PRESIDENT CARTER: That's on the draft agenda under Hearings 8D, and we'll just move that to consent.

Anything else?

Did we forget something?

Ms. Suarez

BOARD MEMBER SUAREZ: Any possibility or need to have a discussion regarding transition issues to be captured for the new administration?

PRESIDENT CARTER: Okay, right. We will draft a letter or a report and share it with the Board and solicit comments.

BOARD MEMBER SUAREZ: I certainly would think

that they should know of all the good work we've done this past couple of years.

PRESIDENT CARTER: Okay.

Anything else?

Mr. Punia.

EXECUTIVE OFFICER PUNIA: The agenda is more than one day's meeting, so my plan is we will -- once the agenda is more in final shape, then we will assess the situation and we may recommend to go day and a half type meeting, depending upon what's on the agenda.

PRESIDENT CARTER: Do people have the Thursday the 27th afternoon available at this point?

BOARD MEMBER BROWN: Yes. We go in the afternoon and then the next morning?

EXECUTIVE OFFICER PUNIA: That's the plan.

PRESIDENT CARTER: If you have it available and can protect it for the time being --

BOARD MEMBER BROWN: Okay

PRESIDENT CARTER: -- that would be helpful.

BOARD MEMBER BROWN: That would be January 27th and 28th?

EXECUTIVE OFFICER PUNIA: That's correct. Yes, we will move the enforcement hearings to the 27th and the regular meeting on the 28th.

PRESIDENT CARTER: Okay. So a possible day and a

half.

Okay. And the date on the draft agenda should be January 28th, 2011.

Okay, well, if there's nothing else -- we removed the closed session, so we are adjourned.

Thank you very much, ladies and gentlemen.

(Thereupon the Central Valley Flood Protection Board meeting adjourned at 5:11 p.m.)

CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California Central Valley Flood Protection Board open session meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and thereafter transcribed under my direction, by computer-assisted transcription.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of December, 2010.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
License No. 10063