



Meeting Minutes

Meeting of the California Water Commission

Wednesday, July 21, 2021

Remote Meeting

Beginning at 9:30 a.m.

1. Call to Order

Vice-chair Swanson called the meeting to order at 9:30 a.m.

2. Roll Call

Executive Secretary Kimberly Muljat called the roll. Commissioners Cordalis, Curtin, Gallagher, Makler, Steiner, and Swanson were present, constituting a quorum.

3. Closed Session

The Commission did not hold a closed session.

4. Approval June 16, 2021, Meeting Minutes

Commissioner Steiner motioned to approve the June 16, 2021 meeting minutes. Commissioner Curtin seconded the motion. All Commission members present voted in favor.

5. Executive Officer's Report

Executive Officer Joseph Yun introduced new staff member Itzia Rivera, an environmental scientist who will work on the Water Storage Investment Program (WSIP). Staff will move into the new California Natural Resources Agency building at the end of the month. The September Commission meeting will be in person in Turlock; staff is working on logistics.

6. Commission Member Reports

Vice-chair Swanson was a panelist at the California Creamery Operators Association conference. Commissioner Cordalis announced her resignation from the Commission due to her move out of state.

7. Public Testimony

There was no public testimony.

8. Water Storage Investment Program: Eligibility Requirements

Program Manager Amy Young provided an overview of how project feasibility information for WSIP projects will be submitted, reviewed, and presented to the Commission. The Commission will make feasibility findings for seven projects for which maximum conditional eligibility determinations (MCEDs) were made in July 2018, as well as for any new projects that come in through the screening opportunity that the Commission opened after the Temperance Flat Reservoir Project withdrew from the program in 2020.

The eligibility deadline requirements applicants must meet by January 1, 2022 include completed feasibility studies and draft environmental documents available for public review, commitments for at least 75 percent of the non-public benefit cost shares of the project, and the Commission must find that the project is feasible. For those projects that were not awarded an MCED in 2018, the Commission must also make a finding as to whether the project will advance the long-term objectives of restoring ecological health and improving water management for beneficial uses of the Delta.

The eligibility determination process starts with staff receiving documents from applicants or new screening projects, analyzing the information and making a recommendation to the Commission. Staff's analysis and the rationale for the recommendation will include completeness of feasibility documentation, summary of any differences from the original application, and confirmation of required submittals. The Commission may then consider the staff recommendation before making their decision. The feasibility determinations are anticipated to take place at the October, November, and December Commission meetings.

Commissioner Swanson asked what determined the scheduling of the feasibility determinations and was told it was based on when all of the required documents are expected to be submitted by the applicants.

Commissioner Makler asked where he could find an explanation of the documents that are required and was told where he could find the technical reference document.

9. State Water Project Briefing: Infrastructure Management

The Commission continued its 2021 State Water Project (SWP) briefings with an event on infrastructure management. SWP Division of Operations and Maintenance Manager David Duval talked about asset management and project prioritization, which builds upon other processes such as risk identification through inspections, condition assessments and studies, financial management, and resource planning to find the right balance between performance, cost, and risk.

The Division of Operations and Maintenance (O&M) has more work to do than resources to perform it, with more than \$8 billion in capital investment needs over the next 20 years. O&M identifies more than 300 projects each year totaling between \$300-\$400 million a year. DWR has human and financial resources for approximately 200 O&M projects totaling \$250 million each year. They use prioritization to determine how to do the right work at the right time with the right resources. A risk assessment is completed for every proposed project using the O&M risk matrix. This allows every project to be compared against another in terms of risk to the organizational goals and the amount of risk reduced if the project is selected. It also informs management of the risks accepted or carried forward if a project is deferred or not selected.

Risk is used to inform prioritization to select a portfolio of projects that reduces the most risk in the least amount of time with the available funding and resources. Risk scoring assigns a quantitative value to the risk associated with an issue or event. To do nothing is always an

option but to ignore it is not the same as a conscious decision to accept the risk. A project is not the only way to reduce risk. Operational changes, monitoring, response plans, changes in maintenance, further evaluation, etc. are all options that are considered. Risk often cannot be completely eliminated, but can be reduced to acceptable levels.

The Semi-Quantitative Approach is a seven by seven matrix of consequence criteria that includes public safety, personnel safety, compliance, water delivery, other SWP purposes, reputation and financial impact. Strict adherence to the criteria removes subjectivity and allows for comparison of risks across a diverse set of assets, as well as one project against others. A ranking system includes mandatory projects, risk scored projects, and value-based projects, and is intended to capture projects that do not show well in terms of risk, but are nonetheless important to the organizational goals. The result of the annual project prioritization process is a two-year prioritized project plan.

Ted Craddock, Deputy Director for the State Water Project, offered remarks about ensuring the resiliency and reliability of the SWP.

Financial Manager Hong Lin gave an update on the SWP budget and financial overview for the coming year, stating that the SWP has an annual revenue of just over \$1 billion and capital financing is around \$300 million on average. Funding sources include payments from the 29 SWP contractors, their cost-share partner the Bureau of Reclamation, power revenue, and a fund for fish and wildlife enhancement. Funds are used for O&M, debt service, capital projects, and planning programs.

SWP financial management goals are to ensure transparency and accountability, promote affordability through financial management, strategies for funding recreation and fish and wildlife enhancement, standardize processes for planning, address cash flow requirements, and maximize cost-share opportunities. SWP plans its annual budget through the Bulletin 132 cost planning process, aligns the calendar year planning with the fiscal year budget for the Governors Budgeting Process, and bills the water contractors on a calendar year basis through an annual Statement of Charges. The 2021 approved SWP Budget is \$969 million, with \$349 million in capital costs and \$629 million for programs, projects, and annual operations and maintenance costs.

Mr. Duval went over the top capital O&M Projects and their costs from 2021-2023.

Commissioner Steiner asked if they anticipated any hiring to keep up with the projected workload and was told they have been approved for 150 positions. She also asked if State Water Contractors will be asked to pay more to offset the increased cost of running the State Water Project during the heat wave and fire season, and was told that the SWP also generates power and is contributing to the grid and helping alleviate some of the power issues. The power portfolio includes a mix of purchases that mitigate financial risk and manage the project within risk limits for near-, middle- and long-term.

SWP Dam Safety Engineer David Sarkisian talked about the dam safety program. There are 26 SWP dams designed and constructed in the 1960s and 1970s that are diverse in size, storage, hazard, operations, environment, and stakeholders. The SWP Dam Safety Program elements include surveillance, safety assessments, reservoir operations, maintenance, design and construction, risk management, emergency preparedness and communication.

Surveillance includes early detection, inspections, instrumentation monitoring, and testing with robust data collection and analyses. Legacy and aging instrumentation will transition to new instruments and technologies. Dam safety assessments evaluate facility performance and design, considering modern standards and analysis methodologies. They employ conservative design and construction practices in accordance with regulatory requirements and modern industry standards, prioritize dam safety issues and align decision-making with risk management policy, maintain and exercise Emergency Action Plans (EAP) and Security Plans, partner with emergency management agencies and communities, and communicate and report dam safety issues and program status to internal and external stakeholders.

Eric Chapman, Deputy General Manager, State Water Contractors, said the project is entering a rehab phase that requires more inspection, maintenance, investment and down time. The SWP is subject to movement, earthquakes, fire, flooding, and other risks. It is unique in that it cannot be replaced. It is not operationally or economically feasible to take it out of service. It needs to work every year. The asset management process is the proper way to logically address aging infrastructure and retain reliability.

John Rowe, Superintendent III, Inland Empire/Perris Sector, California State Parks, said Lake Perris is surrounded by disadvantaged communities, and it is an honor to allow people to recreate at a low cost. When water is low, it impacts amenities like launch ramps and fishing docks. When planning and moving water, consider the impacts to recreation. DWR has done a remarkable job staying on top of harmful algae blooms. So many things happen within this system: moving water is the top priority, but recreation is important to future generations.

V. John White, Executive Director of the Center for Energy Efficiency, provided public comment. He said SB-49 directed CNRA and the Energy Commission to examine how to optimize the SWP to enhance water delivery and clean energy. They want to see a tangible commitment in supporting and engaging the state's climate goals through leadership, transformation, perception, prioritization, and engagement with the public and other agencies.

Commissioner Makler said DWR is an unsung hero in the California energy sector and asked about capital budgeting, the level of capital investment and growth, and if additional personnel will be covered by rates or tax dollars. He was told there has been an overall capital investment of \$8 billion since SWP's inception. They must be creative when looking for partners and are looking at federal funding opportunities and alternative financing options.

Commissioner Gallagher asked about the reserve in the budget, if rate payers are paying for it, and if it is spent on catastrophic event. She was told that contractors pay 95 percent and that

cash management is critical, with a minimum amount of \$30 million in reserve available to do any emergency work.

Commissioner Steiner asked if they do post-fire inspections of dams in fire areas and was told that they did. The biggest issue is the potential for woody debris on lakes and is recognized as a new potential hazard.

Commissioner Solorio asked if there was a deferred maintenance list, a total of those costs, and the timeliness of payments from State Water Contractors. He was told that a maintenance management initiative adds additional resources to focus on adding a more comprehensive advanced planning maintenance program to SWP. Capital improvement projects consider deferred maintenance, and contractors have to pay on time.

10. Groundwater Trading: Presentation on Groundwater Rights Law

Assistant Executive Officer Laura Jensen introduced the item by explaining that the presentations would provide context for the Commission's consideration of well-managed groundwater trading programs to support Water Resilience Portfolio Action 3.6, noting that the focus of the Commission's work will be on what role the state can play in protection for vulnerable water users. Ms. Jensen noted that staff has increased outreach to Groundwater Sustainability Agencies (GSAs) about the Commission's ongoing work in this area.

Amanda Pearson, attorney with State Water Resources Control Board (SWRCB), offered broad context on groundwater adjudication, which identifies water rights, and the Sustainable Groundwater Management Act (SGMA), which manages groundwater use with an eye to sustainability. Powers that GSAs have are not limitless. It might be hard to get markets off the ground if there is hesitancy to participate because of risks and disruptions by later management actions.

Water law attorney Valerie Kincaid, of Paris Kincaid Wasiewski LLP, talked about groundwater rights law and allocations challenges for market development. There are four types of groundwater rights: pueblo, overlying, appropriative and prescriptive. Allocations and groundwater accounting must consider groundwater and surface water, importing water, salvaging water, priority, prescription, and shortage. Pueblo water right holders have priority over all others. Overlying water rights have second priority, and allow the right holder to divert as much water as is reasonable to support beneficial use of land. Appropriators are junior, unless they are prescriptive – which usually turns the rules upside down.

When managing shortages, water right priority rules require reduction by category. Shortages within overlying rights is correlative. Shortages within appropriative rights is first in time, first in right. A prior appropriator is entitled to take all the water he has previously used before a subsequent appropriator may divert water. For prescription to happen it must be during overdraft. Use is not a requirement to preserve an overlying water right. Subordination of dormant overlies is allowed in certain circumstances. Adjudications have treated this class of water right holder differently.

Using surface water in lieu of groundwater is a beneficial use of groundwater, promotes conjunctive use programs, and protects surface water users against prescription. It remains to be seen whether in lieu users can rely on banked groundwater for future use. SGMA requires disclosure and quantification of in lieu use. Adjudications often develop a physical solution that takes into consideration fairness or equity. It still must be based on priority.

Overarching policies include the Human Right to Water and practical consideration of public health and safety. Due to their rigidity, no market will be able to comply with all the rules. Rules that make the system more nimble will be more acceptable. Stakeholder buy-in is critical.

Ms. Pearson said the design of markets might help with managing the risk and uncertainties. Smaller markets might be more stable at the outset because there is less to challenge. When considering markets, it is important to understand hydrology, geomorphology, and the water rights situation, as well as how human drinking and environmental needs are being addressed.

Commissioner Makler asked about the challenges in identifying water rights when developing markets, and, from the point of view of water lawyers, what can a market do to help meet SGMA goals. He was told that markets between subbasins can be complicated and to be successful on a larger scale they must have a huge amount of stakeholder buy-in and participation. Markets can provide flexibility within SGMA and help prevent sea water intrusion and migration of groundwater contaminants. He then asked if a price signal would be set within markets and was told that markets involve voluntary participants, and while price would usually drive markets, due to the shock of a shrinking supply of water and lack of availability, markets are being driven by the need to access water as opposed to the price.

Commissioner Cordalis asked about Native American rights to groundwater and how those rights might be impacted by trading. She was told that tribes have federally reserved rights, which are senior rights and not affected by SGMA: they are in a separate system and can be removed for the sustainable yield before it is allocated. Tribal water rights are a variable that GSAs should consider when forming a market.

11. Consideration of Items for Next California Water Commission Meeting

The next meeting of the Water Commission is scheduled for August 18, 2021 when the Commission will hear WSIP updates on the Kern Fan Groundwater Storage Project and Pacheco Reservoir Expansion Project, receive a briefing on the SB-49 Emissions Reductions Study, and host an expert panel on groundwater trading.

12. Adjourn

The Commission adjourned at 1:30 p.m.