



Meeting Minutes

Meeting of the California Water Commission

Wednesday, April 20, 2022

State of California, Resources Building

715 P Street, First Floor Auditorium

Sacramento, CA 95814

Beginning at 9:30 a.m.

Commissioner Swanson attended from:

DD Ingredients LLC

5191 Kill Rd

Delphos, OH 45833

1. Call to Order

Vice-Chair Matthew Swanson called the meeting to order at 9:31 a.m.

2. Roll Call

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

3. Election of Commission Officers

Commissioner Steiner motioned to nominate Vice-chair Matthew Swanson to serve as Chair. Commissioner Solorio seconded the motion. Ms. Muljat called the roll. Commissioners Arthur, Curtin, Gallagher, Solorio, and Steiner voted in favor; Vice-chair Swanson abstained. Motion passed. Commissioner Curtin motioned to nominate Commissioner Fern Steiner to serve as Vice-chair. Commissioner Gallagher seconded the motion. Ms. Muljat called the roll. Commissioners Arthur, Curtin, Gallagher, Solorio, and Swanson voted to elect Commissioner Steiner as Vice-chair; Commissioner Steiner abstained. Motion passed. Due to his remote participation, Chair Swanson asked Vice-chair Steiner to moderate the meeting.

Commissioner Makler arrived at 9:39 a.m.

4. Closed Session

The Commission held a closed session from 9:40 until 9:55 a.m., to discuss anticipated litigation related to items 9E, 9G and 9H on the agenda. The Commission did not take any action in the closed session.

5. Approval March 16, 2022 Meeting Minutes

Commissioner Solorio motioned to approve the March 16, 2022, meeting minutes.

Commissioner Gallagher seconded motion. All Commission members present voted in favor.

6. Executive Officer's Report

Executive Officer Joseph Yun welcomed the Commissioners to the first in-person meeting in more than two years, and said this marked his fifth year as Executive Officer. Executive Officer Yun shared that the Los Vaqueros Reservoir Expansion Project applicants will be requesting an increase to their early funding at the May Commission meeting, staff has started the research phase of the six-year drought workplan, and the Commission will be asked to consider for approval Division of Safety of Dams regulations at the July 20, 2022 meeting.

7. Commission Member Reports

Commissioner Solorio said he will need to take a 10-minute phone call at 1 p.m. Commissioner Swanson said he will need to leave the meeting at 1 p.m.

8. Public Testimony

There was no public testimony.

9. Consideration of Action on Resolutions of Necessity for the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project (Big Notch Project) – Batch A, Step 2 (Action Items)

On February 10, 2022, the Department of Water Resources (DWR) notified the Commission of its intent to seek Resolutions of Necessity (RON) for the Big Notch Project (BNP) in furtherance of a potential eminent domain action. DWR cannot commence an eminent domain proceeding unless the Commission first adopts an RON. At the Commission's March 16, 2022, meeting, DWR presented a report on each property, containing information required by the Code of Civil Procedure. At this meeting, the Commission considered additional information, if any, to determine if there is enough evidence to satisfy the Code of Civil Procedure. To adopt a Resolution of Necessity requires a two-thirds vote of all members, which is a minimum of six votes in favor regardless of the number of Commission members present.

Commission Legal Counsel Holly Stout explained the difference between this meeting's process and the process at last month's meeting, explaining that, at this month's meeting, Commissioners will be considering adoption of RONs whereas last month's meeting was informational.

Analisa Martinez, Environmental Program Manager I from DWR's Riverine Habitat Restoration Program, presented an overview of the BNP, including its goals and impacts on State Water Project (SWP) operations. The BNP will enhance floodplain rearing habitat and fish passage in the Yolo Bypass and is required for the long-term coordinated operations of the SWP and Central Valley Project (CVP) compliance with the 2019 National Marine Fisheries Service Biological Opinion and the 2020 California Department of Fish and Wildlife (CDFW) Incidental Take Permit (ITP). The Fremont Weir diverts flood water into the Yolo Bypass and disconnects the Sacramento River and the floodplain during fish migration periods. The proposed BNP includes excavated channels and a gated headworks that reintroduce the connection for fisheries purposes. The operation period is from November 1 to March 15.

Rachel Taylor, from DWR's Office of General Counsel, presented information regarding the specific properties listed on the agenda and how those properties are necessary to meet the goals of the BNP, and updated the Commission about the efforts DWR has made to work with the landowners. DWR is seeking flowage easements for the purpose of fish passage as required mitigation for the long-term operations of the SWP, and has authority under the Water Code to acquire property rights required and necessary for the operation of the SWP. This provision allows DWR to acquire the property without changing, replacing or supplanting the existing public use. They are also seeking future rights for the adaptive management portion of the easements. DWR is not authorized to operate the project for adaptive management purposes. The adoption of an RON does not stop negotiations, nor does it have any bearing on the discussions of compensation for infrastructure changes necessary for the property operation.

9A. Yolo Basin Farms Inc. DWR is seeking a 158.06-acre easement. The land is currently used for duck hunting and conservation lands. The landowner is preparing a counter-offer for submittal. The Wildlife Conservation Board holds a conservation easement on the property.

Public comment from Mark Hennelly from California Waterfowl Association (CWA), who said they strongly oppose any changes to the conservation easements in the Yolo Bypass. Further flooding of the bypass would ruin waterfowl hunting activities and will lead to many property owners not pursuing wetland easements in the future.

Commissioner Makler motioned to adopt the RON for the property. Commissioner Curtin seconded. Commissioners voted 7-0 to adopt the RON for the property. Motion passed.

9B. Daniel G. Engstrom, et al. DWR is seeking a 361.98-acre easement for two properties combined. The land is currently used for duck hunting and conservation lands. The U.S. Fish and Wildlife Service (USFWS) holds a conservation easement on the property.

Comment from Gary Livaich, representing the landowners for agenda items 9B, 9D, 9F, and 9I, asked the Commission to deny the RON because DWR is going beyond what has been permitted for the BNP. There is no limit on the dates of operation or the maximum flow. DWR is also seeking authority for future undisclosed projects, but no evidence as to their need has been presented. This is the first time DWR has mentioned the adaptive management plan, but none of the landowners have been given the opportunity to see it. Make DWR come back with sufficient facts to justify the RON.

Comment from Dr. Polly Wheeler, Regional Chief of USFWS National Wildlife Refuge System, who said the proposed flowage easement is not compatible with their conservation easement. USFWS is in support of the BNP but is concerned there could be negative impacts to waterfowl habitat suitable for migratory birds.

Commissioner Arthur asked about Federal interest in conservation easements and how it relates to the today's decision, and for more information about weighing the greatest public

good vs. least private injury. Ms. Taylor said the existing conservation easements remain in place and unchanged. This is a managed wetland in a managed floodplain and they are being consistent with the flows. One of the decisions to use an existing floodplain was because flooding was already occurring on that land. They are impacting a small portion of the bypass.

Vice-chair Steiner asked Ms. Taylor to address what was said about the claim that DWR is seeking the right to pursue future projects that have not yet been disclosed, and was told that adaptive management is a statutory and regulatory requirement and DWR has to gather data and monitor the project to see if it is successful before determining if its management approach needs to be changed. DWR wants 7 to 10 years of data, but it could take up to 10 to 15 years.

Commissioner Curtin motioned to adopt the RON for the property. Commissioner Gallagher seconded. Commissioners voted 7-0 to adopt the RON for the property. Motion passed.

9C. Filemon D. Ong. DWR is seeking a 12.57-acre easement. The land is currently used for open space. The landowner has asked DWR acquire the property in full; negotiations are ongoing. Today's RON is for the easement only.

Comment from Andrew Hammond, representing the landowners, who agreed with Mr. Livaich's comment on the easement being very broad, and the owner is not interested in an easement but would rather sell the land.

Commissioner Gallagher motioned to adopt the RON for the property. Commissioner Arthur seconded. Commissioners voted 7-0 to adopt the RON for the property. Motion passed.

9D. Glide in Ranch. DWR is seeking a 1,195.41-acre easement. The land is currently used for duck hunting. The owner is preparing a counter-offer and seeking their own appraisal. USFWS and the National Resources Conservation Service hold separate conservation easements on the property.

Vice-chair Steiner reminded the Commission that Mr. Livaich's comment on item 9B pertains to this property as well.

Comment from Dr. Wheeler of USFWS, who expressed similar concerns as she did for item 9B.

Vice-chair Steiner asked Ms. Taylor to speak to the USFWS comments and letter regarding their easement priority restricting DWR's ability to move forward, and was told that Civil Code allows them to move forward but they would not be able to go to court to condemn or complete the process without the Federal government also completing their compatibility analysis.

Commissioner Curtin motioned to adopt the RON for the property. Commissioner Makler seconded. Commissioners voted 7-0 to adopt the RON for the property. Motion passed.

9E. FarmTogether Stanley, LLC. DWR is seeking an 8.76-acre easement. The land is currently used for orchards, but the portion needed for the easement is not farmable. The property is engaged in CEQA litigation and is encumbered by a Yolo Land Trust easement.

Comment from Michelle Clark, Executive Director of the Yolo Land Trust, who said they requested additional information from DWR on April 7 and have not received a response.

Commissioner Curtin motioned to adopt the RON for the property. Commissioner Makler seconded. Commissioners voted 7-0 to adopt the RON for the property. Motion passed.

9F. ML Farms Inc. DWR is seeking a 155.93-acre easement. The land is currently used for duck hunting and recreation. The property is engaged in CEQA litigation and is encumbered by a USFWS easement.

Vice-chair Steiner reminded the Commission that Mr. Livaich's comment on item 9B pertains to this property as well.

Comment from Dr. Wheeler of USFWS, who expressed similar concerns as she did for items 9B and 9D.

Commissioner Gallagher motioned to adopt the RON for the property. Commissioner Curtin seconded. Commissioners voted 7-0 to adopt the RON for the property. Motion passed.

9G. AJK Farms. DWR is seeking a 5.04-acre easement. The land is currently used for orchards, but the portion needed for the easement is not farmable. The property is engaged in CEQA litigation.

Commissioner Curtin motioned to adopt the RON for the property. Commissioner Makler seconded. Commissioners voted 7-0 to adopt the RON for the property. Motion passed.

9H. Dalhar Farms, LLC. DWR is seeking a 7.67-acre easement. The land is currently used for orchards, but the portion needed for the easement is not farmable. The property is engaged in CEQA litigation.

Commissioner Curtin motioned to adopt the RON for the property. Commissioner Gallagher seconded. Commissioners voted 7-0 to adopt the RON for the property. Motion passed.

9I. Angelo K. Tsakopoulos Holdings LP. DWR is seeking a 176.11-acre easement. The land is currently used for irrigated row cropland, and is encumbered by a CWA conservation easement.

Vice-chair Steiner reminded the Commission that Mr. Livaich's comment on item 9B pertains to this property as well.

Comment from Mark Hennelly from CWA, who said the increased duration and depth of flooding will unreasonably interfere with their conservation easement and its public trust benefit by depriving ducks and geese of their food resources and habitat cover and driving them away from the property during the wintering waterfowl period.

Commissioner Curtin motioned to adopt the RON for the property. Commissioner Makler seconded. Commissioners voted 7-0 to adopt the RON for the property. Motion passed.

9J. Yolo Shortline Railroad Company. DWR is seeking a 43.26-acre easement. The land is currently used as a railroad corridor. The landowner has filed an action to resolve issues with the state and local flood agencies regarding the operation of the Yolo Bypass as a floodplain.

Commissioner Curtin motioned to adopt the RON for the property. Commissioner Swanson seconded. Commissioners voted 7-0 to adopt the RON for the property. Motion passed.

9K. Arapaho Investment Company, LLC. DWR is seeking a 15.69-acre easement. The land is currently used for agriculture, field and row crops, but the portion needed for the easement is not farmable. Negotiations are ongoing with the landowner; DWR is awaiting a counter-offer.

Commissioner Curtin motioned to adopt the RON for the property. Commissioner Makler seconded. Commissioners voted 7-0 to adopt the RON for the property. Motion passed.

9L. Wooden Decoy, LLC. DWR is seeking a 382.74-acre easement. Land is currently used for duck hunting and recreation. The property is encumbered by a USFWS conservation easement.

Comment from landowner Deke Hunter, who asked why they are so far along in a process where USFWS cannot find themselves in alignment. Landowners cannot get good answers about timing, financial, and technical aspects. It is a worthwhile but flawed project. Landowners want to participate in the greater good but want better communication. It is a good program, but do not minimize the impact to everyone downstream.

Comment from Dr. Wheeler of USFWS, who expressed similar concerns as she did for items 9B, 9D, and 9F.

Commissioner Arthur asked Ms. Taylor about ongoing landowner outreach, and was told that negotiations are ongoing, along with discussion of the technical details.

Commissioner Curtin motioned to adopt the RON for the property. Commissioner Makler seconded. Commissioners voted 7-0 to adopt the RON for the property. Motion passed.

9M. Patrick Realty Corp. DWR is seeking a 2.96-acre easement. The land is currently used for an advertising billboard. The landowners have made an unofficial counter-offer.

Commissioner Curtin motioned to adopt the RON for the property. Commissioner Makler seconded. Commissioners voted 7-0 to adopt the RON for the property. Motion passed.

10. Consideration of Evidence in Support of Resolutions of Necessity for the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project (Big Notch Project) – Batch B, Step 1

On March 18, 2022, DWR notified the Commission of its intent to seek RONs for the BNP in furtherance of a potential eminent domain action for properties known as Batch B. DWR cannot commence an eminent domain proceeding unless the Commission first adopts an RON.

Commission Legal Counsel Holly Stout explained the difference between this meeting's process and the process at next month's meeting. There will be no action to adopt RONs at this meeting.

Liz Vasquez from DWR's Division of Integrated Science and Engineering presented an overview of the BNP, including its goals and impacts on the SWP operations. The BNP will enhance floodplain rearing habitat and fish passage in the Yolo Bypass and is required for the long-term coordinated operations of the SWP and CVP compliance with the 2019 National Marine Fisheries Service Biological Opinion and the 2020 California CDFW ITP. The Fremont Weir diverts flood water into the Yolo Bypass and disconnects the Sacramento River and the floodplain during fish migration periods. The proposed BNP includes excavated channels and a gated headworks that reintroduce the connection for fisheries purposes. The operation period is from November 1 to March 15.

Rachel Taylor, from DWR's Office of General Counsel, presented information regarding the specific properties listed on the agenda and how those properties are necessary to meet the goals of the BNP, and updated the Commission about the efforts DWR has made to work with the landowners. DWR is seeking flowage easements for the purpose of fish passage as required mitigation for the long-term operations of the SWP, and has authority under Water Code to acquire property rights required and necessary for the operation of the SWP. California Code requires DWR to obtain a RON from the Commission, as the appropriate governing body.

10A. Dan and Neil Dougherty, et al. DWR is seeking a 323.54-acre easement. The land is currently used for duck hunting. The property is encumbered by a USFWS conservation easement.

Comment from Dr. Wheeler of USFWS, who said they have a conservation easement interest in the property and will be providing comments to be included in the administrative record for RON hearings for parcels 10A, 10B, 10C, and 10D.

Comment from landowner Phillip Gaines who said the restoration of Putah Creek for the fall salmon run started decades ago by concerned citizens and scientists. In 2021, five adult Chinook salmon were counted that spawned, and either 76 or 82 were found dead that

succumbed to low water levels and over-heating. In August 2021, 25,000 adult Chinook were expected to spawn in Butte Creek, and CDFW counted 12,370 carcasses that succumbed for the same reasons. In October 2021 a storm dropped 5 to 7 inches of rain in the Yolo Bypass. Last month the area had two days of record temperatures. If there were salmon in the Bypass as a result of this project, they would have succumbed. Though well intentioned, global warming and lack of water were not considered in DWR's analysis. The conservation efforts for waterfowl are what saved what we have left. Flooding two additional weeks is a misleading statement. The periods of inundation will far surpass what DWR is forecasting.

Commissioner Arthur asked Ms. Stout to explain the process for public comment time limits, and will there be other opportunities to comment. She was told that since this is an informational item only with no action being taken, a step specific to Commission procedures, comments are limited to three minutes. In May, landowners will have five minutes to speak on these items. Comments at the May meeting need to be made to preserve whatever arguments they make in court for eminent domain proceedings.

10B. John and Judy Whitcombe, et al. DWR is seeking a 338.21-acre easement. The land is currently used for duck hunting. The property is encumbered by a USFWS conservation easement.

Comment from Dr. Wheeler of USFWS, who said they have a conservation easement interest in the property and will be providing comments to be included in the administrative record for RON hearings for parcels 10A, 10B, 10C, and 10D.

10C. WS2 Ranch, LLC. DWR is seeking a 493-acre easement. The land is currently used for duck hunting. The property is encumbered by a USFWS conservation easement.

Comment from Dr. Wheeler of USFWS, who said they have a conservation easement interest in the property and will be providing comments to be included in the administrative record for RON hearings for parcels 10A, 10B, 10C, and 10D.

10D. Ray and Della Thompson Trust, et al. DWR is seeking a 142.09-acre easement. The land is currently used for duck hunting and migratory bird conservation land. The property is encumbered by a USFWS conservation easement.

Comment from Dr. Wheeler of USFWS, who said they have a conservation easement interest in the property and will be providing comments to be included in the administrative record for RON hearings for parcels 10A, 10B, 10C, and 10D.

10E. Lynch Family Trust, et al. DWR is seeking a 160-acre easement. The land is currently used for row and field crop cultivation.

Comment from landowner Elizabeth Lynch, who said nothing has been sent to her address, but has instead gone to Sharon Campbell. She would like to incorporate Mr. Livaich's remarks, and those of all of the previous commenters, because they are relevant to her property. She requested a written record of what was said today so she can be more prepared for next month's meeting. She was told that a recording of the meeting is on the Commission's website, and that DWR is required to send notices to the address in the Yolo County tax assessor roll. They now have Ms. Lynch's information and she will be receiving copies in the future.

10F. Knaggs Ranch, LLC. DWR is seeking a 2,140-acre easement. The land is currently used for row and field crop cultivation.

11. Consideration of Items for Next California Water Commission Meeting

The next meeting of the Water Commission is currently scheduled for Wednesday, May 18, 2022, when the Commission will consider adopting RONS for the landholders presented in Item 10 at today's meeting, will consider a request for increased early funding from a Water Storage Investment Program (WSIP) applicant, will consider approval of the final draft groundwater trading white paper, and will hear informational briefings on the SWP.

Commissioner Solorio suggested seeing what the state or Commission could do on the financing side to help move the WSIP projects forward more quickly.

Commissioner Makler congratulated new Chair Swanson and new Vice-chair Steiner.

12. Adjourn

The Commission adjourned at 12:25 p.m.