



Meeting Minutes

Meeting of the California Water Commission

Wednesday, December 16, 2020

Remote Meeting

Beginning at 9:30 a.m.

1. Call to Order

Chairperson Alvarado called the meeting to order at 9:30 a.m.

2. Roll Call

Assistant Executive Officer Laura Jensen called the roll. Commission members Teresa Alvarado, Samantha Arthur, Daniel Curtin, Alexandre Makler, and Matthew Swanson were present, constituting a quorum.

3. Closed Session

The Commission did not hold a closed session.

4. Approval of November 18, 2020 Meeting Minutes

Commissioner Swanson motioned to approve the November 18, 2020, meeting minutes. Commissioner Curtin seconded the motion. All Commission members present voted in favor.

5. Executive Officer's Report

Executive Officer Yun reported that Executive Secretary Kimberly Muljat took a temporary assignment as a contact tracer and will be gone for six to nine months. Staff has completed two regional workshops on water conveyance and work is currently underway on the two remaining workshops to take place in January. Executive Officer Yun will be visiting the ACWA management committee meeting on Thursday, December 17, to give an update on the Commission's conveyance finance work and Water Storage Investment Program (WSIP). The Commission received a late comment from the Farm Bureau regarding item 8. It has been forwarded to the Commissioners and will be posted on the website. Reminded the Commissioners that it does take five affirmative votes to pass a notion today.

6. Commission Member Reports

Commissioner Alvarado participated in Waterpalooza, hosted by Sustainable Silicon Valley, earlier this month, and took part in the second Water Conveyance Workshop held by Commission staff.

7. Public Testimony

There was no public testimony.

8. Water Storage Investment Program: Options for Available Funding (Action item)

Due to the withdrawal of the Temperance Flat Reservoir project from the Water Storage Investment Program, the program has \$171,330,000 of funding available. Staff presented options for how the Commission may wish to consider managing the available funding.

Program Manager Amy Young's presentation listed options for utilizing Temperance Flat Reservoir project's Maximum Conditional Eligibility Determination (MCED). Staff recommended a combination of three options:

1. Adjust the MCEDs to two of projects that received less than their original request ("rank 3" projects). These projects – the Kern Fan Groundwater Storage Project and the Willow Springs Water Bank Conjunctive Use Project – have already been vetted and reviewed and provide public benefits that are unique and innovative, and making full their MCEDs would help ensure that they become a reality. This option would total \$46 million.
2. Give all seven projects a 2.5 percent inflationary increase in their MCEDs. This would help all projects equally and provide further certainty to the state supported projects. This option would total \$61 million.
3. Begin a screening process for new projects that would meet the program's statutory requirements. This is a three-step process and any project considered must meet the requirements of the statutory deadline for continuing eligibility of January 1, 2022. This option would utilize the remaining \$64 million.

Staff does not know if any new projects exist that would meet the statutory requirements, but opening the screening process is an opportunity to see what is out there. Staff recommends opening the screening as soon as possible. If the screening leads to a solicitation it would require rulemaking and drafting additional regulations, which is a public process. The second solicitation would likely open in early 2023 and would include an application and review process similar to the first solicitation..

The Commission could accept the staff recommendation of doing all three options, modify the staff recommendation, or defer a decision to a future meeting. Staff requested a that the Commission decide whether to move forward with the screening process at this meeting.

The Commission received public comment from Fiona Sanchez, Kern Fan Groundwater Storage Project Manager, in support of the staff recommendation. Ms. Sanchez noted that the January 1, 2022 deadline is fast approaching and applicants are working diligently to fulfill the requirements. Having more certainty over the level of WSIP funding will help them finalize their budgets and the other funding sources they will need to commit to, and it will also enable them to realize the public benefits in a timely manner with a lot more certainty. They would be happy to provide any additional information the Commission requests.

The Commission received public comment from Tal Eslick, Temperance Flat Reservoir Authority, in support of the staff recommendation and urged the Commission to screen for new projects. He recommended that funds be directed to new projects. He recognized that the Commission

cannot target geographic areas, but recommended seeking projects in critically over-drafted basins.

The Commission received public comment from Marguerite Patil, with the Contra Costa Water District and a Los Vaqueros Reservoir Expansion Project proponent, in support of the staff recommendation. Ms. Patil said the inflationary adjustments would get state procedure in line with how the federal government approaches these sorts of awards.

The Commission received public comment from Jerry Brown, Executive Director of the Sites Reservoir Project Authority, in support of inflation adjustment for all projects. Mr. Brown noted that more time is need to incorporate changes and make evaluations to determine how they will proceed with the proposed reduction the reservoir size for the Sites Reservoir Project, and that the staff recommendation provides the flexibility to address these open issues over the next few months.

The Commission received public comment from Ian Buck-Macleod, Water Resources Manager for the Friant Water Authority, one of four agencies that make up the Temperance Flat Reservoir Authority, in support of opening the screening process. Mr. Buck-Macleod explained that the valley is dealing with a very large water deficit as it comes to grip with the Sustainable Groundwater Management Act, and available funding could be put to great use in the valley.

The Commission received public comment from Bart Broome, with the Santa Clara Valley Water District and the Pacheco Reservoir Expansion Project, in support of an inflation adjustment for all projects. Since the Commission decided on its MCED, the total project cost for the Pacheco Reservoir Expansion Project increased significantly due to inflation and changes in conditions that were not known at the time of the application. Mr. Broome asserted that funds should first be made available to existing projects due to increase costs or changes in circumstances, and that the Commission should query all applicants to assess their need for additional funding.

The Commission received public comment from Terrie Mitchell, Manager of Regulatory Affairs for the Harvest Water Program, in support of inflation adjustment for all projects. The Harvest Water Program is looking at a potential funding gap.

Commissioner Swanson said current projects have already been approved and vetted by the Commission and we should look for ways to support those that are already heading down the path.

Commissioner Makler said the goal of the Commission is to see all seven projects be successful, though the possibility of opening up to new projects is an attractive option. He wants the Commission can make the most impact moving the existing projects forward, and is not convinced that increasing the MCED allocation or an adjustment for inflation is the best way to do that. He asked if a seven to 10 percent inflation adjustment across the board would be more effective than shoring up two projects and requested more details to justify additional funding.

Executive Officer Yun said that staff can do an analysis, and that the matter should be explored with the applicants themselves. Staff can ask applicants to come in to address the question on a project-specific basis.

Legal Counsel Holly Stout said, in regards to making inflationary adjustments individually, every project needs to be treated fairly within the existing competition. All inflationary adjustments will need to be made equally to all projects. Rank 1 and 2 projects (those projects that received full funding at the time of application) are moving forward based on their entire request, while rank 3 projects did not get as much as they asked for due to a shortage in funding. The Commission can adjust the MCEDs for rank 3 projects because they are eligible for more than they received.

Program Manager Young said that providing the two rank 3 projects the amount they were eligible for during the application process would help ensure the benefits agreed upon by all parties could actually occur.

Executive Officer Yun said that the shortages to rank 3 projects were a Commission decision based on the way the regulations were built. Rank 1 and 2 were fully fulfilled before rank 3 projects could be funded.

Commissioner Curtin said to be careful about revisiting decisions that were already made. It was complex and quite contentious and could be opening up a very complicated process. He voiced support for an inflationary increase as well as additional funding to the two groundwater projects. He noted that the possibility of potential small projects that meet the statutory requirements could be in play and supported staff recommendation as is.

Commissioner Swanson said that we have two projects that got some of their request but not all, and we should do what we can to get them to the level where they have the ability to move forward and to be successful.

Commissioner Arthur said it would be helpful to hear from the rank 3 applicants in more detail about how addressing their MCED relates to the public benefits. She requested status updates since the time of the original application and advocated for starting the new project screening process immediately.

Commissioner Alvarado asked staff to comment on what led them to develop today's recommendation.

Program Manager Young said staff talks to applicants and hears their challenges. Today's recommendation was a balance of what could help existing projects as well as consider how the Commission could provide an incentive to find new projects. Having a possible pool of new projects would be beneficial should more funding become available in the future.

Executive Officer Yun said staff regularly connect with the applicants and other state agencies that are involved in assessing the public benefits. Over the past few months, staff has been working with the pulse flow projects, moving the projects forward, working with DWR to make sure that the work that needs to be done with the State Water Project is being performed. Activities are occurring and staff is hearing from multiple parties on how they can manifest the public benefits and move the projects forward given some of the cost escalations they are seeing. Because of the January 1, 2022 deadline, 2021 is going to be a very busy year. He noted

that a Commission decision could be to open the screening process today and allow staff to bring back more information and applicants to come before the Commission next month.

Commissioner Makler said every project is different, they evolve over time, and noted that looking at the January 1, 2022 deadline can tell a lot about where a project is at. Do they have their entitlements? Where are they in the process? Will they be able to make the deliveries of key milestones? Is there another approach that would ensure these projects are more successful?

Legal Counsel Stout explained that the statute requires, by January 1, 2022, that the project must complete a feasibility study and be found feasible by the Commission, secure commitments for 75 percent of non-public benefit funding, and have draft environmental documents up for public review.

Commissioner Curtin voiced his thoughts that the projects are moving forward aggressively and are still viable. He reiterated his support for staff's recommendation.

Commissioner Alvarado mentioned a public comment letter that questioned the Commission's ability to remain consistent with Prop 1 in making adjustments to MCEDs.

Commissioner Arthur asked if regulations are needed for both rank 3 MCED increases and an inflation increase.

Legal Counsel Stout explained that the Commission was left with substantial discretion on how to set MCEDs and said that staff can explore the issue further if the Commission is interested in pursuing adjustments.

Commissioner Swanson motioned to move forward with the screening process. Commissioner Curtin seconded motion. Motion passed unanimously.

Commissioner Swanson motioned to adjust the two rank 3 projects MCEDs to their requested amount. Commissioner Curtin seconded motion. Commissioners Alvarado, Curtin and Swanson voted yes. Commissioners Arthur and Makler voted no. Motion did not pass.

The Commission directed staff to find out if the Commission has the discretion to adjust MCEDs for inflation, to begin the screening process for potential new projects, and to return next month with more information on how additional funding would be beneficial to the two rank 3 projects, and how the inflation adjustment would benefit all projects.

Commissioner Curtin motioned to adjourn. Commissioner Swanson seconded motion. Lacking a quorum, the meeting moved to a workshop at 11:01 a.m.