



## **Meeting Minutes**

Meeting of the California Water Commission

Wednesday, January 19, 2022

Remote Meeting

Beginning at 9:30 a.m.

### **1. Call to Order**

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

### **2. Roll Call**

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

### **3. Closed Session**

The Commission did not hold a closed session.

### **4. Approval December 15, 2021 Meeting Minutes**

Commissioner Steiner motioned to approve the December 15, 2021 meeting minutes.

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

### **5. Executive Officer's Report**

Executive Officer Joseph Yun said AB 361 has been extended and the Commission's first in-person meeting will now be in April. Following a miscommunication at the December meeting, the Shingle Springs Band of Miwok Indians reached out to Department of Water Resources (DWR) Tribal liaison Anecita Agustinez, who will arrange a conversation with the Tribe's Vice-chair. Staff found that boards and commissions handle public comment from Tribes differently. Some recognize Tribes first; others do not treat them differently from other commenters. Staff anticipates receiving a letter from the Tribe and will wait before formulating next steps.

### **6. Commission Member Reports**

Commissioner Makler needs to leave the meeting at 11:45. He attended an online Lunch & Learn with the Center for Law, Energy and the Environment, called "Putting Water in the Ground." Commissioner Arthur is part of the stakeholder advisory group for the groundwater trading process. Chair Alvarado had coffee with Santa Clara Water District Deputy Administrative Officer Don Rocha but did not discuss the Water Storage Investment Program (WSIP).

### **7. Public Testimony**

There was no public testimony.

### **8. Election of Officers (Action item)**

Commissioner Steiner nominated Chair Teresa Alvarado to serve another year. Commissioner Solorio seconded motion. Commissioner Gallagher motioned to close nominations and vote. Commissioner Solorio seconded the motion. Ms. Muljat called the roll. The Commission voted unanimously to re-elect Chair Alvarado. Commissioner Curtin nominated Vice-chair Matthew Swanson to serve another year. Commissioner Makler seconded motion. Commissioner Gallagher motioned to close nominations and vote. Commissioner Steiner seconded motion. Ms. Muljat called the roll. The Commission voted unanimously to re-elect Vice-chair Swanson.

### **9. 2022 Commission Workplan**

Assistant Executive Officer Laura Jensen presented an overview of planned Commission meeting activities for 2022, noting that activities are subject to change based on unforeseen circumstances. Major workflows include a potential second WSIP solicitation, a groundwater trading white paper, the Water Resilience Portfolio (WRP) directive on six-year drought planning, the State Water Project (SWP) annual review and clustered briefings, and Resolutions of Necessity (RON) for the Big Notch Project. In February, the Commission will consider a second solicitation for the WSIP, receive the 2021 SWP report and first SWP briefing for 2022, and hear a Sustainable Groundwater Management Act (SGMA) update. In March, the Commission may consider how to use the remaining WSIP funds if it decides not to pursue a second solicitation; the Commission will receive the final groundwater trading white paper and the six-year drought workplan and hear a presentation for the first group of Big Notch RONs. April and May are dedicated to Big Notch RONs groups 1 and 2. June will have the second 2022 SWP briefing event and the first six-year drought plan expert panel. Currently, a meeting is not planned for July. August will have WSIP project updates, the second six-year drought plan expert panel and a synthesis of drought small group discussions. In September, if the Commission had previously decided to open a second WSIP solicitation, draft regulations will be presented, as well as an update on the WSIP public benefit contracts from the administering agencies, and a presentation of Big Notch RONs group 3. October will wrap up Big Notch RONs and host a third SWP briefing event. November will have the SWP construction update, and staff will present the six-year drought plan white paper, and final regulations for the potential second WSIP solicitation. There is currently no meeting planned for December.

Commissioner Curtin asked if the six-year drought plan process included consideration of every possible exploration of new water. Ms. Jensen said the WRP action asks for the state to look at developing strategies to protect communities and wildlife in the case of a six-year drought.

Commissioner Solorio suggested visiting the WSIP projects, seeing how they might overlap with our drought planning work, and considering inflation adjustments for the existing WSIP projects.

Commissioner Alvarado asked about the approach and framing of the drought work plan. Ms. Jensen said the directive is to look at droughts that last six years or longer.

Commissioner Gallagher encouraged staff to seek input from a good cross-section of the state when planning the drought work and tap into the resources of the drought task force.

Commissioner Alvarado looks forward to hearing more details about the six-year drought work plan and digging in.

#### **10. Groundwater Trading: Draft White Paper**

Assistant Executive Officer Laura Jensen presented for Commission discussion a draft white paper containing preliminary findings around how to shape well-managed groundwater trading programs and the proposed next steps for state engagement. The draft white paper synthesizes the information the Commission gathered to support WRP Action 3.6. Staff heard from expert panels, a stakeholder advisory group (SAG), the implementing agencies, and the public through discussions, workshops, and localized outreach, and all of these inputs were used to shape the draft. The introduction explains how groundwater trading is a locally driven, voluntary tool to implement SGMA, allocations are a necessary precursor, and the state has limited authority to engage. It includes the status of groundwater trading programs in California, and a glossary of terms used in the document. The section on the Commission's role and approach notes that the Commission's scope is limited to talking about in-basin trading with protections for vulnerable users (natural resources, small- and medium-sized farms, and disadvantaged communities) and they are not considering surface water trading or groundwater banking and recharge. It also outlines the results from a stakeholder survey. The section on current state engagement details what the implementing agencies are currently doing in this realm, including DWR, the State Water Resources Control Board (Water Board), the Department of Fish and Wildlife (CDFW), and the Department of Food and Agriculture (CDFA). Cross-cutting themes include trust is critical, it takes time and information to be successful, there is a need for accurate data and a sound Groundwater Sustainability Plan (GSP), this is just one tool and might not be appropriate in all cases, and the state has a role to play. The concerns and risks section focused impacts of trading to natural resources, small- and medium-sized farms, and disadvantaged communities (DACs).

Commissioner Arthur asked to define small- and medium-size farms and was told the definition defines size based on sales from the farm and is not always the best definition to use in California. Commissioner Gallagher said it depends on where you are in the state and what you grow because California has some high-priced commodities that can be grown on a few acres.

Ms. Jensen continued with the Findings section and said the SAG stressed this is hard and complicated and requires significant investment and expertise to pull off. Findings covered the characteristics of well-managed trading, stakeholder engagement, accurate and reliable data, mechanisms for safeguarding vulnerable users and applying those safeguards, market power, oversight and enforcement, and the need to start small and scale up from there. Potential next steps for state engagement are broken into two groups. Group one covers what implementing agencies can do with existing authorities, including conduct SGMA-related oversight, convene stakeholders to share information, identify and assess GSA needs, engage and support vulnerable users, create digital resources and catalog available trading information, provide

allocation guidance, and develop best management practices. Group two actions may be out of existing state authority and could require legislation changes. These include evaluating existing authorities, creating standard principles, rules and oversight mechanisms, evaluating incentives for wetlands, and supporting groundwater technical assistance programs for farmers.

Public comment from Nataly Escobedo Garcia of the Leadership Council, who is disappointed with the draft white paper and opposes the establishment of market-based approaches to solving groundwater issues. It would exacerbate existing inequities in how water is managed and allow financially powerful entities to use water resources at the expense of small communities. The draft white paper does not acknowledge that Leadership Council has consistently opposed the formation of groundwater markets and trading programs.

Public comment from Ben King, a farmer in Colusa County, who is concerned about the disproportionate impact of economic power by the local political structure. The Human Right to Water (HR2W) should be a priority, and the draft paper should incorporate the Water Board's racial equity resolution. By not addressing water transfers and groundwater substitution rights it is setting up arbitrage opportunities for water marketers.

Public comment from Justine Massey of the Community Water Center, who had appreciation for the report, but was cautious about how trading can go forward. The recommendations proposed could fall flat if deeper problems are not addressed. DACs must be exempted from trading; there is no way they can compete for water as a commodity. The data gaps are wide; a lot of GSPs are already working on water trading plans that do not address these data gaps.

Public comment from Angela Islas of Self-Help Enterprises. They are currently participating in various sub-basin water market strategy developments. They are optimistic to see where the white paper is going but have a lot of concerns about outreach and engagement. They recommend reviewing a paper on how to protect DACs when structuring a water market.

Commissioner Arthur said there is a good opportunity in the potential next steps for other state agencies to define their roles and responsibilities, would offer the Commission's continued support as implementing agencies move forward, and would like to hear any additional public comments that might come in at the February meeting.

Commissioner Steiner asked if we have received any comments or reaction to the two-tiered allocation system to protect water for the environment, small farms, and the vulnerable, and would also like to hear any additional public comments at the February meeting. Ms. Jensen said we have not heard a lot from stakeholders about that system.

Commissioner Swanson said every constituency is concerned, not because they think it is working against them, but because there is not enough water. California is very early in SGMA and does not have a lot of data. We are just starting to see curtailment and changes, and we do not yet know the full effects. It is important to create flexibility for everyone where it makes

sense. This is not designed to move water from certain groups to others, but there could be unintended consequences. We as a Commission will be aware of these sensitivities.

Commissioner Makler said it is a multi-faceted process, with lots of stakeholder engagement. Trading or setting up a water market is not the goal. This is an exploratory look at the possibility of trading as an appropriate tool. Trading will not create any water, but it could create a lot of problems. We need to get the science and data right and bring the community together to understand the limitations within a basin. The state could look at different technology developments and pull together lessons learned from GSAs. He stressed the importance of transparency and price discovery and said price signals will help users and planners further any policy discussions.

Commissioner Gallagher said it is a hot button topic, a really important tool for some areas, really toxic for others. Letting GSAs decide if this is something they want to use is critical to seeing it succeed. Every area has different scenarios, and she has concern for it being overly prescriptive. Good data is really expensive, that is where the state can come in. This is just one tool, and we need to keep looking for ways to provide tools for everyone.

Commissioner Solorio said if and when water trading is going on we need to be sure safeguards are in place to avoid negative impacts. Residents should have access to the information and be involved in the decision-making process.

Chair Alvarado said the flexibility of regional approaches within a broader framework is important. The Commission should have a research and convening role in this process to the point of trust building. We should add additional public feedback to the February agenda.

#### **11. Informational Briefing on the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project (Big Notch Project)**

Commission Counsel Holly Stout said this is an informational item only, there are no RONS today. DWR staff will provide an overview of the project and the legal requirements for adopting a RON. The legal requirements you will hear are distinct from last June's briefing, which covered the Commission's process to adopt RONS on a step-by-step basis.

Maninder Bahia, from DWR's Division of Integrated Science and Engineering, provided an overview of upcoming work on the Big Notch Project, including its goals and impacts on SWP operations. The project's objective is to restore critical floodplain habitat that will support the growth of a healthy population of salmon and improve conditions for survival of sturgeon by improving migration pathways through the Sacramento River, the floodplains of the Yolo Bypass, and the Sacramento-San Joaquin Delta. The project aligns with California's WRP and draft strategy to conserve 30 percent of the state's land and coastal waters by 2030. The Yolo Bypass provides flood protection to the greater Sacramento area, is uniquely situated along the migration corridor for salmon and sturgeon, and is the most promising place to expand upon existing habitat and flooding. A 2009 National Marine Fisheries Service Biological Opinion made this project a requirement for the continued operation of the SWP. Stakeholder outreach began

in 2013 and identified the Yolo Bypass as the preferred location for floodplain restoration, developed alternatives with interested parties, and identified a preferred alternative which reduced impacts to landowners while maintaining the benefits to the project. The project includes excavating an intake channel and constructing a three-gate headwork structure at Fremont Weir. The project will add approximately two weeks of additional inundation. An easement will be needed for flowage of water over and upon the property as may be required for the present and future permitted construction and operation of the project.

Rachel Taylor, from DWR's Office of General Counsel, presented the legal considerations surrounding RONs. The four findings which need to be met in order to approve a RON are that the public interest and necessity require the proposed project, it is planned or located in the manner that will be most compatible with the greatest public good and the least private injury, the property described in the resolution is necessary for the proposed project, and that either the offer has been made to the owner or owners of record, or has not been made because the owner cannot be located with reasonable diligence. DWR has a duty to negotiate that continues through the RON process, with the intent to settle to the extent possible. Landowner engagement includes individual meetings during the pre-acquisition process. During the appraisal process, landowners are invited to participate in the inspection and can seek their own appraisals. If the landowners choose to object at an eventual trial, they must raise the objection at the RON hearing to preserve the right for the record.

Mr. Bahia went over the project schedule, which shows the real estate acquisitions continuing through 2023, construction to start in May 2022, and operations to begin in November 2023.

Commissioner Makler asked how many landowners there are and will the RONs affect the construction schedule. He was told there are roughly 40 acquisitions planned, and the planned construction is on existing DWR land; the easements they seek are for project operations only.

## **12. California Water Plan Update 2023**

Kamyar Guivetchi, Manager, DWR Division of Planning, briefed the Commission on the planned timeline and process for developing California Water Plan (CWP) Update 2023, the state's strategic plan for sustainably managing and developing water resources for current and future generations. The CWP provides a great opportunity to strengthen many actions in the WRP and related state investment. While DWR is required to prepare the CWP every five years, it can have no mandate, and cannot automatically appropriate funds, which means that the Legislature and the Governor must take additional actions to implement the plan. Over the past 20 years the CWP has broadened to include multiple sectors and to promote sustainability and resilience. The climate crisis will be a big part of this CWP update. The update will encompass state water code, the WRP, interested parties' input and state needs, and the Governor's priority on climate action. The update will focus on three key WRP themes: understanding climate change science, watershed resilience, and equity in water management. This update will provide cutting-edge information on how climate change will continue to impact California watersheds. As an example, in the Merced Watershed Study, a watershed network was built to bring together the data layers, currently managed by different entities, and overlay climate risk

vulnerability information to begin looking for opportunities for adaptation strategies and solutions. The update will integrate and synthesize HR2W policy and include equitable risk reduction and adaptation. A communication and engagement plan is designed to align and build support for the CWP Update 2023. DWR wants the Commission to be part of that outreach. A draft assumptions and estimates report will come out this spring, an administrative draft will circulate in the fall, followed by the release of the public review draft in early 2023, and the final update in December 2023.

Commissioner Curtin asked if the timelines developed for SGMA are adequate to the challenges, and do they need to be revisited. He was told the time frame is a big deal, and with each GSP update we learn what is working and what is not. Without deadlines it becomes hard to get people to focus. Those timelines have gotten us to where we are today. In 40 years are we going to solve all of our groundwater problems? No, but we will be on the right trajectory.

Commissioner Arthur asked if an opportunity exists to help support local GSAs in planning for extreme climate scenarios. She was told that people in the Merced Watershed are already doing things based on the results of the study, and people in other watersheds can do the same. DWR received funds to do similar watershed studies for all the San Joaquin Valley tributaries. In three to four years that information will be shared with local partners, who can take advantage of the analytical tools and data.

Commissioner Solorio said as we continue to get feedback on this plan, keep in mind we have been tasked with six-year drought planning, and how can we weave these things together and coordinate so we are not duplicating work. He would like to see a focus on new water in addition to conserving water. Mr. Guivetchi said the CWP is a good venue to connect plans.

Chair Alvarado said the themes chosen are important and mutually dependent; the watershed focus is valuable. This update will lead the nation. Mr. Guivetchi said the trick is to connect the dots with what has already been done and integrate and present in a way that resonates.

### **13. Consideration of Items for Next California Water Commission Meeting**

The next meeting of the Water Commission is currently scheduled for Wednesday, February 16, 2022, when the Commission will receive a draft 2021 SWP Review, host the first 2022 SWP briefing, consider whether to proceed with a second WSIP solicitation, hear about SGMA implementation, and receive an update on the groundwater trading white paper.

### **14. Adjourn**

The Commission adjourned at 12:27 p.m.