



## **Meeting Minutes**

Meeting of the California Water Commission

Wednesday, March 16, 2022

Remote Meeting

Beginning at 9:30 a.m.

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

Chair Teresa Alvarado called the meeting to order at 9:31 a.m.

### **2. Roll Call**

Assistant Executive Officer Laura Jensen called the roll. Commissioners Alvarado, Arthur, Curtin, Gallagher, Solorio, Steiner, and Swanson were present, constituting a quorum. Commissioner Makler joined at 9:34 a.m.

### **3. Closed Session**

The Commission did not hold a closed session.

### **4. Approval February 16, 2022, Meeting Minutes**

Commissioner Curtin motioned to approve the February 16, 2022, meeting minutes.

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

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

Executive Officer Joseph Yun said a comment letter for agenda item 8J is now posted and was emailed to all Commissioners. He and Commissioner Solorio jointly presented at the March 4 meeting of the Water Advisory Committee of Orange County (WACO). The groundwater trading white paper agenda item was moved to May due to the number of comments received. The April Commission meeting will be in-person, in the California Natural Resources Agency (CNRA) auditorium, and will retain online public access and comment similar to what we have been doing. If Commissioners cannot attend in person, their remote location must be publicly accessible and posted with the agenda on April 8.

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

Commissioner Curtin said he needs to leave the meeting at 2:30 p.m. Commissioner Solorio said the WACO presentation was well received.

### **7. Public Testimony**

There was no public testimony.

**8. Consideration of Evidence in Support of Resolutions of Necessity for the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project (Big Notch Project)**

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 a 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 a RON at this meeting. Landowners will be called on first to make public comment after each item. Liz Vasquez, Environmental Program Manager from DWR's Division of Integrated Science and Engineering, 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 by the 2019 National Marine Fisheries Service Biological Opinion and the 2020 California Department of Fish and Wildlife Incidental Take Permit for the continued long-term operations of the SWP. 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.

**8A. Yolo Basin Farms Inc.** DWR is seeking a 158-acre easement. Land is currently used for duck hunting and conservation lands. First offer was not accepted; landowner expressed interest in extending a formal counter-offer; negotiations are ongoing.

**8B. Daniel G. Engstrom, et al.** DWR is seeking a 361-acre easement for two properties combined. Land is currently used for duck hunting and conservation lands. Negotiations are in preliminary stages.

**8C. Filemon D. Ong.** DWR is seeking a 12-acre easement. Land is currently used for open space. Landowner expressed interest in extending a formal counter-offer; negotiations are ongoing. Public comment from Andrew Hammond, who said his client would like to sell the property in full, and has been talking to Ashley Wilson via email.

**8D. Glide in Ranch.** DWR is seeking a 1,200-acre easement. Land is currently used for duck hunting. Currently in negotiations as landowner is seeking their own appraisal.

**8E. FarmTogether Stanley, LLC.** DWR is seeking an eight-acre easement. Land is currently used for orchards, but portion needed for easement is not farmable. Property is involved in a CEQA lawsuit and encumbered by a Yolo Land Trust easement.

**8F. ML Farms Inc.** DWR is seeking a 156-acre easement. Land is currently used for duck hunting and recreation. Negotiations are ongoing. Property is encumbered by U.S. Fish & Wildlife (USFW) easement.

**8G. AJK Farms.** DWR is seeking a five-acre easement. Land is currently used for orchards, but the portion needed for easement is not farmable. Property is involved in CEQA litigation; DWR is in negotiation with attorneys.

**8H. Dalhar Farms, LLC.** DWR is seeking a 7.6-acre easement. Land is currently used for orchards, but the portion needed for easement is not farmable. Property is involved in CEQA lawsuit; negotiations are ongoing.

**8I. Angelo K. Tsakopoulos Holdings LP, et al.** DWR is seeking a 176-acre easement. Land is currently used for irrigated row cropland, and is encumbered by a California Waterfowl Association conservation easement. Negotiations are ongoing.

**8J. Yolo Shortline Railroad Company.** DWR is seeking a 43-acre easement. Land is currently used as a railroad corridor. A comment letter has been received. Public comment from Sierra Railroad CEO and Sierra Northern owner Mike Hart, who said their trestle is inundated by water, there are no flowage agreements, and the trestle predates the bypass. Adding any incremental amount of water would be dangerous to the structure. Do not adopt this RON; engage in discussion with the landowner. It is a significant safety concern.

**8K. Arapaho Investment Company, LLC.** DWR is seeking a 15.69-acre easement. Land is currently used for agriculture, field and row crops, but the portion needed for easement is not farmable. Negotiations are ongoing.

**8L. Wooden Decoy, LLC.** DWR is seeking a 382-acre easement. Currently used for duck hunting and recreation. Property is encumbered by USFW conservation easement. There are no active negotiations.

**8M. Patrick Realty Corp.** DWR is seeking a three-acre easement. Land is currently used for an advertising billboard. Negotiations are ongoing.

At Chair Alvarado's request, Executive Officer Yun showed page 80 of the comment letter provided by the Yolo Shortline Railroad Company.

**9. Water Storage Investment Program: Consideration of Use of Remaining Funds for Existing Projects' MCEDs (Action Item)**

In January 2021, the Commission set aside \$63.9 million in funding for a possible second solicitation in the Water Storage Investment Program (WSIP). At its February 2022 meeting, the Commission chose not to proceed with a second solicitation and directed staff to prepare information about how the Commission could divide the \$63.9 million among the seven existing WSIP projects' Maximum Conditional Eligibility Determination amounts (MCEDs). WSIP manager Amy Young presented three options for the remaining \$63.9 million for Commission discussion and consideration. Option 1 was a 2.5% inflation adjustment to all seven existing project MCEDs. Option 2 was to adjust the MCED of the Sites Project, which had received less than its requested amount, as well as a 1.5% inflation adjustment to all seven existing projects. Option 3 was for the Commission to defer the decision to a later date. Options 1 and 2 would utilize the entire \$63.9 million.

Public comment from Erin Evans with Lighthouse Public Affairs, representing Valley Water and the Pacheco Reservoir Expansion Project, who encouraged the Commission to adopt Option 1, as costs have increased significantly, and an adjustment will reduce the burden on rate payers.

Public comment from Doug Maner with Friends of the River, who is concerned about the health of the Delta and Central Valley rivers, and asked that the Commission not allocate any more funds to Sites or Pacheco. Both are controversial, flawed, and face zealous opposition from the environmental community. There are better uses for the funds; please defer the decision.

Public comment from David Guy with the Northern California Water Association, who supports Option 2 because it is a really elegant way to provide inflation adjustments and recognize that the Sites Project was not fully funded.

Public comment from Jerry Brown with the Sites Project Authority, who said the success of the WSIP is enhanced by either Option 1 or 2. Option 2 is warranted because the Sites Project went through a right-sizing process. The Commission has been steadfast in their priority to fully fund all projects. This Commission values all project partners equally.

Public comment from Erin Woolley with the Sierra Club, who asked the Commission to not allocate any funds to Sites because diminishing flows in our streams are exacerbated by an over-allocated water system and inadequate protections for fish and wildlife, and she is concerned about potential impacts to threatened species and habitat in the reservoir footprint and surrounding areas. The WSIP was intended to fund projects that improve water quality and the ecological health of the Delta. Sites Project has the potential to do the opposite and will increase stress on an ecosystem that is already in decline.

Public comment from Maureen Martin with the Contra Costa Water District, a proponent of the Los Vaqueros Reservoir, who supports Option 1 and 2.

Public comment from Fiona Sanchez with the Kern Fan Groundwater Storage Project, who supports Option 1 and 2, and said they appreciate the inflation adjustment made last year. There has been a 25% increase in inflation since then. The State and the Commission are committed to making these projects a success.

Public comment from Mark Rockwell with the Fly-Fishing International Organization, who does not believe Sites should receive any more funds, and disagrees with the concept that during high flow events water can be diverted without damage to fisheries or the watershed. He also does not support additional funding to Pacheco because the claimed benefit to fish cannot happen. He supports using the funds for groundwater banking projects in the San Joaquin and Santa Clara valleys.

Public comment from Ashley Overhouse with Friends of the River, who does not think Sites or Pacheco should receive any more funding. She supports Option 3 to defer, and to seek counsel from the Legislature on how to spend that money.

Commissioner Curtin said that the Sites Project deserves full funding and he strongly supports Option 2. Sites will be the anchor to more water and will help manage the Delta in spite of some of the public comment.

Commissioner Gallagher said Option 2 is consistent with the Commission's previous decisions. Not fully funding them would show the Commission is not supporting the projects. It is the Commission's job to further them.

Commissioner Steiner wanted to clarify that the MCED would not be awarded until the project's final approval, and was told that these are the maximum amounts a project could get, and applicants would have to come before the Commission at a later date with all of the necessary requirements. She asked whether, under Option 1 or 2, any project would receive dollars at this time, and was told they could receive early funding. She asked if this money is limited to WSIP projects and was told yes, it is limited by the state for projects that have met the eligibility requirements, and it would take a large amount of work to divert it elsewhere.

Commissioner Arthur asked staff to explain what will come before the Commission in the final award step, and what analysis came up with the \$25 million figure for Sites. She was told that the draft Contracts for the Administration of Public Benefits (CAPB) will be reviewed by the Commission and the public before they are executed. Once all of the requirements have been pulled together by applicants, they can request a final award hearing. The Commission will look at how their project has changed since the original MCED, and will decide on what the final amount would be. She asked if during the CAPB process the Commission will hear from CDFW staff on the value of public benefits, and was told that during the final award hearings, Commission staff will bring forward information regarding value and collect requirements from applicants. The \$25 million figure comes from the feasibility study, which included information that shows in 2015 dollars the benefit available is \$25 million more than the original MCED.

Sites was originally shorted \$100 million in the original MCED. Commissioner Arthur said Option 1 is more appealing.

Chair Alvarado asked if a proponent is not able to secure permits will they be able to come for a final award hearing, and was told no, they will need their permits before a hearing is scheduled.

Commissioner Makler asked if Sites public benefits are not fully justified, can those funds be re-allocated as an inflation adjustment to other projects. He is more comfortable with Option 1, and would need to hear more detail about the Sites right-size and how it meets the criteria.

Vice-Chair Swanson said it would be good to put together a checklist of the specific things that need to happen for a project to be eligible to receive final funding. Commissioners are not making the final permitting decision. Commissioners' job is to verify that the state agencies that approve and license these projects have been satisfied. We want to be able to confirm that they have done the things they need to do. He is very comfortable with Option 2.

Executive Officer Yun said staff will bring to the Commission the process from here to the end, including decisions and timing of the work, as projects move forward on separate schedules.

Commissioner Solorio said there is a feeling that Sites did get shorted, and this is an opportunity to calibrate for that after last year's re-divvying up of resources. He is comfortable with Option 2.

Commissioner Curtin moved to approve Option 2. Commissioner Solorio seconded the motion. Commissioners Arthur and Makler voted no. Commissioners Curtin, Gallagher, Solorio, Steiner, Swanson and Alvarado voted yes. Motion passed 6-2.

#### **10. Six-Year Drought: Workplan (Action Item)**

In response to the December 14, 2021, letter from California's Secretaries for Natural Resources, Environmental Protection, and Food and Agriculture, Commission staff has developed a proposed workplan to support Water Resilience Portfolio Action 26.3, to "Develop strategies to protect communities and fish and wildlife in the event of drought lasting at least six years." Assistant Executive Officer Laura Jensen presented a proposed workplan for Commission consideration and approval. The goal of the Commission process is to gain a wide perspective about potential long-term strategies for managing sustained drought, and to produce a guidance document that helps position the state to manage severely constrained water supplies for at least six consecutive years. The timeline is purposefully flexible in order to adapt and respond to what the Commission learns along the way, as well as to accommodate activities and messaging surrounding the current drought, so the Commission can advance this work without disrupting the immediate drought response efforts. Step 1 is to engage representatives from other countries that have dealt with long-term drought; engage staff at State agencies to understand the existing drought strategies, plans, and actions; review relevant resources on long-term drought; and develop a framework for conducting on-going

conversations on this topic. In Step 2 the Commission will engage experts, key stakeholders, and the public to explore impacts, tools available, ideas for managing long-term drought; and capture projected challenges to fish, wildlife, and communities and possible strategies to address each challenge. Step 3 will use the information gathered to develop a white paper that describes a set of suggested strategies for state agencies to use to protect communities and fish and wildlife in the event of drought lasting at least six years. The Commission will not have implementing authority. During Step 1, staff will identify key components of international drought efforts, and establish regular communication with state decision-makers working on current drought issues to create a framework for proceeding with outreach. In August, staff anticipates sharing with the Commission what was learned in Step 1 and more details on the approach for Step 2.

Vice-chair Swanson asked if we will be getting a national and international overview, and will it include technology, investment, and other aspects that can drive to a solution, and was told yes, we have been asked to look outside of our country, but we will be looking at it from the state perspective, as in what the state can do to spur action.

Commissioner Solorio referred to a graphic of the 100-year drought in California that came from Stanford researcher Mary Lou Zoback, and said it would be nice to have participation from north, south, the Central Valley, and inland, as different regions of the state experience drought in different ways.

Commissioner Gallagher is looking forward to project and hearing how it is working for other countries. As the Commission creates a framework for proceeding, it will be important to consider what is possible in California legally and what is not. Diverse representation will be important.

Commissioner Makler expects it to be educational, impactful, and useful to not only the Commission but to other policy-making bodies in the state. The focus will be on agriculture and ecosystem, but a section on commercial and industrial sectors would be worthwhile. Is there an opportunity in those sectors to move toward air cooling instead of water cooling?

Chair Alvarado was a deputy at Santa Clara Water District during the last multi-year drought. A lot of regulations and water efficiency measures were passed during that time. The playbook has been well written, there is a lot to pull from. The Commission has done a really good job with public engagement, but will need to take it to the next level, take more time than with the previous white papers.

Commissioner Solorio said a big piece is communication, like the Flex Alert system for electricity, the state could find a way to send alerts or reminders about conserving water.

Chair Alvarado said to reach out to Yarra Valley Water in Melbourne to find out what they learned during their 10-year drought. Collaboration is key, we need to work collectively.

Commissioner Steiner motioned to support the workplan. Commissioner Arthur seconded the motion. Motion passed unanimously.

Chair Alvarado announced this would be her last meeting with the Commission, due to personal and professional demands. It has been an incredible honor and a true joy. She expressed gratitude for the leadership of Governor Newsom, Secretaries Crowfoot, Ross, and Blumethal, Director Nemeth, and Deputy Secretary Vogel. She thanked her fellow Commissioners and staff, and said we have made an incredible impact, and have grown in our role as a truly vital public forum.

Vice-chair Swanson noted that he and Chair Alvarado were the class of 2019, and she is going to be missed.

Commissioner Solorio said it has been an honor working with Chair Alvarado. She has been an outstanding Chair.

Executive Officer Yun thanked the Chair on behalf of staff, and said he is saddened that she will not be with us as we walk through this six-year drought item. Her leadership during Covid-19 was much appreciated, and her ability to handle virtual meetings is very much respected. Our role has grown, in no small part, because of her efforts.

Commissioner Arthur thanked the Chair, wished her the best of luck, and said she appreciated her leadership and poise.

Commissioner Steiner wished the Chair luck and thanked her for her patience with all of the new Commissioners who came on during her term.

Commissioner Curtin thanked the Chair and said congratulations and good luck.

Commissioner Makler wished the Chair luck and told her he was sad she was leaving.

Commissioner Gallagher wished the Chair the best and thanked her for her service.

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

The next meeting of the Water Commission is currently scheduled for Wednesday, April 20, 2022, when the Commission will consider adopting RONS for the landholders presented at today's meeting, and hear an informational presentation for the second group of landholdings being considered for RONS for the Big Notch Project. Commissioners will also elect a new Chair.

## **13. Adjourn**

The Commission adjourned at 11:48 a.m.