



Meeting Minutes

Meeting of the California Water Commission

Wednesday, March 15, 2023

Warren-Alquist State Energy Building

1516 9th Street, Rosenfeld Hearing Room

Sacramento, California 95814

Beginning at 9:30 a.m.

1. Call to Order

Chair Matt Swanson called the meeting to order at 9:30 a.m.

2. Roll Call

Commissioners Bland, Curtin, Gallagher, Makler, Steiner, and Swanson were present, constituting a quorum. Commissioner Matsumoto joined the meeting at 9:34 a.m., during Agenda Item 5. Commissioner Solorio joined the meeting at 9:36 a.m., during Agenda Item 6. Commissioner Arthur joined the meeting via Zoom at 10:35 a.m., during Agenda Item 9. Commissioner Curtin left the meeting at 12:04 p.m., during Agenda item 10.

3. Closed Session

The Commission did not hold a closed session.

4. Approval February 15, 2023, Meeting Minutes

Vice-chair Steiner motioned to approve the February 15, 2023, meeting minutes. Commissioner Curtin seconded the motion. All Commissioners voted to approve the minutes.

5. Executive Officer's Report

Executive Officer Joe Yun said staff has worked with the Shingle Springs Band of Miwok Indians on the Tribal Comment Policy and will bring it before the Commission at the April meeting. The third drought working group meeting was held February 22; the fourth and final meeting is scheduled for March 29. Staff will report on the advancement of the drought work at the April meeting. Some of the October Big Notch Resolutions of Necessity (RONs) were missing a required statutory reference. The Commission will repeat Step 2 of the RON process for these properties at the May meeting.

6. Commission Member Report

Commissioner Gallagher attended the Northern California Water Association's annual meeting on March 3 in Chico. Commissioner Matsumoto served as executive sponsor in the drought working group on February 22.

7. Public Testimony

There was no public testimony.

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

On December 20, 2022, the Department of Water Resources (DWR) notified the Commission of its intent to seek RONS for the Big Notch Project (BNP) in furtherance of a potential eminent domain action for additional properties, Batch E. DWR cannot commence an eminent domain proceeding unless the Commission first adopts a RON. At the Commission's February 15, 2023, meeting, DWR presented a report on each property, containing information required by the Code of Civil Procedure. At this meeting, the Commission considered whether there was enough evidence to satisfy the Code of Civil Procedure and adopt the RON for each property noted on the agenda, which requires that the Commission find that the public interest and necessity require the proposed project; the proposed project 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 required by Section 7267.2 of the Government Code has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence. To adopt the RON 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 that this is the second step for the RONS that were presented at the February 2023 meeting.

Liz Vasquez, Environmental Program Manager I 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 is a regulatory requirement to mitigate for SWP and Central Valley Project (CVP) impacts to endangered fish, 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 by the 2019 National Marine Fisheries Service (NMFS) Biological Opinion and the 2020 California Department of Fish and Wildlife (CDFW) Incidental Take Permit (ITP). The Fremont Weir diverts Sacramento River flood flows into the Yolo Bypass and disconnects the 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. In March 2022, DWR filed a Notice of Exemption with Yolo County which provided a CEQA exemption to allow acquisition of properties for restoration purposes.

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. 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 the RON does not stop negotiations, nor does it have any bearing on the discussions of compensation for infrastructure changes necessary for the property operation. DWR conducted several meetings with elected officials and landowners about how the adaptive management process will work. California Code allows condemnation of a property already dedicated to a public use for compatible public use if it will not unreasonably interfere with or impair the use as it exists or is expected to exist in the future. Existing conservation easements remain in priority and DWR's actions will not modify the terms of those easements.

8A. Westlands Water District. DWR is seeking a 346.1-acre easement. The land is currently used for agricultural land and open space.

Vice-chair Steiner asked Ms. Taylor if they have been engaged in dialogue with Westlands in response to the first offer, and was told yes.

Commissioner Curtin motioned to adopt the RON for the property. Commissioner Gallagher seconded. Commissioners voted 8-0 to adopt the RON. Motion passed.

8B. Sacramento-Yolo Port District. DWR is seeking a 3.43-acre easement. The land is currently used for agricultural purposes. Negotiations are ongoing.

Commissioner Bland motioned to adopt the RON for the property. Commissioner Solorio seconded. Commissioners voted 8-0 to adopt the RON. Motion passed.

8C. The Pacific Telephone and Telegraph Company (AT&T). DWR is seeking a 16.94-acre easement. The land is currently used for agricultural purposes. AT&T has easement interests on multiple properties and requested additional information, which was provided to them.

Commissioner Solorio motioned to adopt the RON for the property. Commissioner Gallagher seconded. Commissioners voted 8-0 to adopt the RON. Motion passed.

8D. Yolo Shortline Railroad Company. This is an amended RON, first presented to the Commission in April 2022, that was missing the compatible use clause. DWR is seeking a 43.26-acre easement. The land is currently used as a railroad corridor.

Public comment by Matthew Hofer, legal counsel for Sierra Northern Railway, who said the Commission cannot make a RON for this propriety because DWR refuses to negotiate with them. They have not heard from them in over a year. DWR has not made an offer pursuant to the revised RON. DWR did not describe the scope of the easement by stating how much additional water is expected to flow onto the property. Because DWR has not described how much they are seeking to take, the Commission cannot find that the taking is necessary. The

property is already dedicated to public use as a railroad. There is no evidence of compatibility. The existing level of flooding from other projects is already disrupting train traffic, causing damage to the trestle, and overtopping the tracks. To add more water may destroy the trestle entirely. Two activities on the properties provide a public interest: railroad and fish passage. There are possible solutions, but DWR has been unwilling to negotiate with them.

Public comment by Mike Hart, CEO of Sierra Railroad Company, who said the problem not being addressed is that this is the narrowest point of the entire flood control system and heavily constrained by the existence of their trestle. No one from DWR is even talking to them or inspecting the property. DWR has misled the Commission by telling them they are in negotiations. If we get any more flooding, you will see this trestle wrapped around Highway 5. It is overtopping now, and with debris flow, you can see the trestle move. DWR's water flow analysis acted as if this was a vacant piece of farmland. The structure pre-exists the floodwater bypass, and it wasn't built to deal with all the water being misdirected illegally. There are no legal flowage agreements over the property. It is important that DWR talks to them.

Vice-chair Steiner asked Ms. Taylor to respond to the comments. Ms. Taylor said the Attorney General's (AG) office, not DWR is dealing with them. Sierra Northern filed a motion to consolidate its eminent domain action with that of the flood action. The motions have been filed and are part of the public record. Discussions are happening directly with the AG's office. The scope of the easement and the flowage of water has been provided to them. There is a disagreement about the facts involving the flood waters.

Commissioner Bland asked Ms. Taylor if Commissioners could see the correspondence and discussions with the property owner and the AG's office, and was told that she would ask, but normally the status of negotiations is confidential.

Mr. Hart said there are no discussions or negotiations ongoing with the AG's office. If they are speaking with someone, he would love to know who. They filed an action for quiet title to demonstrate there are no legal flowage agreements of any sort.

Commissioner Matsumoto asked Ms. Taylor if any compensation would include consideration for impacts to the trestle, and was told yes.

Commissioner Curtin asked Ms. Taylor if she knew when the trestle was built, and if it was prior to the designation as a managed floodplain. She said she thought it was around 1911-1912, prior to the designation, but after the 1866 flood. Commissioner Curtin said the flooding is only going to get worse and it is important to have these bypass capabilities. He asked if this decision could be delayed until there was a meeting between the parties involved.

Ms. Stout said there is no requirement they adopt the RON at this meeting, but there are some concerns with DWR about the timeline.

Ms. Taylor said it could be included with the RONs at the May meeting, but it would be up to the AG's office as to how they want to address any meeting with the landowner. Commissioner Makler wanted to confirm that their action would satisfy the administrative process, but the landholder would not be left without an adjudicated remedy, and asked if there are there timeline implications with not moving forward with this today. Ms. Stout said this is only the administrative step. To complete an eminent domain action, DWR must go to court and ask a judge to make that determination. The Commission is not condemning anyone's property by this action. The four findings are the extent of any determination made today. Commissioner Makler said there seems to be a factual conflict as to whether an offer has been provided. Ms. Stout said the first written offer was made on December 23, 2021. Mr. Makler asked for confirmation that the fourth finding is not concerned with whether the two sides are talking. Ms. Stout said whatever is going on with the property is between DWR and the landowner.

Commissioner Bland asked Ms. Stout if today's administrative action does not preclude anything else with respect to the ongoing negotiations, and was told their only action is potentially authorizing DWR to move forward with an eminent domain proceeding if the parties cannot come to an agreement.

Mr. Hofer said they did receive an offer pursuant to the previous RON, but no offer has been made to the amended RON before them today, which would supersede the prior RON.

Vice-chair Steiner asked Ms. Taylor if the amendment required the process to start over, and a new financial offer to be made, and was told that the amendment made is the statutory clause that said this is a condemnation for compatible use. The impact of the first written offer is based on the rights DWR seeks, and the land it encumbers, based on fair market value by the appraiser. None of that information has changed.

Commissioner Gallagher motioned to adopt the RON for the property. Commissioner Matsumoto seconded. Commissioners voted 8-0 to adopt the RON. Motion passed.

8E. M.G. and D. Kleary 2015 Trust, et al. DWR is seeking a 44.744-acre easement. The land is currently used for duck hunting, recreation, and conservation land. The U.S. Fish and Wildlife Service holds a conservation easement.

Commissioner Curtin motioned to adopt the RON for the property. Commissioner Solorio seconded. Commissioners voted 8-0 to adopt the RON. Motion passed.

8F. Union Pacific Railroad Company. DWR is seeking a 155.2-acre easement. Property is currently used for operating a railroad corridor. Union Pacific holds an easement over the Sierra Northern lands, so DWR has combined their two property rights and executed a preliminary engineering assessment.

Commissioner Solorio motioned to adopt the RON for the property. Commissioner Gallagher seconded. Commissioners voted 8-0 to adopt the RON. Motion passed.

8G. Conaway Preservation Group, LLC. DWR is seeking a 4,389.46-acre easement. The land is currently used for field crops part of the year, and migratory waterfowl and aquatic habitat. California Waterfowl Association holds a conservation easement.

Public comment by Gary Livaich, representing Conaway Preservation Group, who said they have submitted written objections to the RON. His client understands the project as permitted, and the argument concerning public use and necessity. But the RON includes condemnation or taking for future use. He asked if anyone could inform his client what that future use is, and would it additionally impact what you are taking from their property. For what purpose and for what project is the taking of future use? The proposed easement talks about future construction and operation of fish passage and floodplain restoration projects. The RON does not define them, nor does the easement. The widening of the Sacramento Weir has components for habitat restoration and fish passage. Is the RON empowering and authorizing DWR to acquire those property rights from his client for those future projects? If so, how do we compensate them in this eminent domain case that you are ultimately going to resolve to move forward with today? They must be compensated once and for all during this action. How are we going to have appraisers determine what these future impacts will be? How are they going to be valued today? It is speculative at best. The project as permitted is well defined. November 1 through March 15 with a maximum of 6,000 cfs. But is this future operation going to include 12,000 cfs, as noted in the notice of exemption that has been filed, past March 15? The Conaway group has been involved in all of the stakeholder meetings. It was agreed that November 1 to March 15 was a burden that they all could handle. Are you authorizing DWR to go past March 15? If so, how are we going to farm? Put the adaptive management in the RON. The federal government said there has been no settlement, and that DWR has not requested an independent compatibility determination. He asked if he could be informed if any of the RONs adopted in October that need to be amended include folks that he represents, and was told that DWR is required to go through the notice process. The AG is taking the position that the necessity components of the RON you are adopting is conclusive.

Commissioner Curtin asked Ms. Taylor for a response to the conclusive presumption question, and was told that the Commission is not building the project, and thus not subject to the regulatory requirement to implement it. DWR is here to prove they have done their due diligence in seeking a RON. The issue of conclusive presumption is a response the AG has provided to Mr. Livaich regarding the Lower Elkhorn Lower Levee Setback Project, and is very specific to a question he asked about the Central Valley Flood Protection Plan and property rights. It is a factual issue, for a different case.

Vice-chair Steiner asked Ms. Taylor to speak to the possibility of unmitigated flow for 365 days and how any future change of use might require another hearing, and was told that if the project footprint changed and it impacted the properties they would have to come back. She reminded the Commission they are approving the acquisition of property rights. Adaptive

management is a statutory requirement, they have provided Mr. Livaich the adaptive management plan, which is not an operations plan, but a series of steps for best available science, with objective goals for the fish species being targeted. As the project goes through operations, they start measuring the data. If the data does not meet the goals, there is a very long process involving scientist and stakeholders on how to change the project's operations. As part of their analysis, they checked with the fishery agencies and found the maximum flow needed would be 12,000 cfs, and that is what the compensation is based on. DWR does not have the authority to operate beyond 6,000 cfs, that would require separate project approvals.

Commissioner Makler asked Ms. Taylor to clarify that the RON being approved today is moving forward the administrative step that facilitates moving on to negotiation or judicial action, and that the property owner will still have the opportunity to negotiate with DWR, and was told yes, the Commission is only deciding if DWR met the four findings for the RON.

Mr. Livaich asked if he could get a commitment from DWR that the detail regarding the easement will be negotiated and/or decided by the court, and Ms. Taylor said no, it is the compensation that will be decided by the court.

Commissioner Matsumoto asked Ms. Taylor if the compensation for the easement considers adaptive management changes, and was told the two biggest factors for the landowners were how many days the water would be on their land and depth of that water. Compensation is based on the worst-case scenario of 12,000 cfs. There are additional acres included in the eminent domain, because of adaptive management, that may not be impacted by the 6,000 cfs.

Commissioner Curtin motioned to adopt the RON for the property. Commissioner Solorio seconded. Commissioners voted 8-0 to adopt the RON. Motion passed.

9. Water Storage Investment Program: Projects Update

Executive Officer Yun and Water Storage Investment Program (WSIP) Manager Amy Young provided an update on the progress of projects being considered for funding in the WSIP. Mr. Yun said projects are on their own schedules to complete the statutory requirements before requesting a final award hearing. Staff is in communication with each applicant to supply information to the Commission as well as the Water Supply Strategy Strike Team. The final funding dates shown are staff's best estimates based on what we hear from applicants and state agencies. The Strike Team is working to coordinate state and federal permitting efforts, and to accelerate or maintain project schedules. While there is no statutory deadline for a final award, the Commission has the discretion to decide that a project is not making sufficient progress and is no longer eligible for funding. These updates are intended to give Commissioners a better understanding of project status and to promote dialogue.

Ms. Young said the Harvest Water Program has expended its early funding, and anticipates the project to be ready for final funding in a few months. The Los Vaqueros Reservoir Expansion Project has amended its early funding agreement and extended the contract time. The project

is expected to come in later this year with draft contracts for the administration of public benefits (CAPBs), followed by a final award hearing.

The Willow Springs Water Bank still seeks a state water contractor so they can connect to the SWP for the pulse flows that will satisfy their ecosystem benefit. Although the Commission approved early funding modification for this project in July 2022, the applicant is yet to move forward on the amendment. Staff is asking for direction from the Commission to schedule the applicant for a future meeting.

The Sites Project Authority submitted additional information on their water right application, and are working to finalize their recirculated EIR, which is expected to come out by June. The Inland Empire Utility Agency is working on a preliminary design report for the Chino Basin Program, expected to be completed in late spring, and will establish a permitting pathway for the program. The Kern Fan Groundwater Banking JPA has continued their design process for the Phase One recharge basin, and need a turnout for Phase Two to move forward with the project. Two locations are under consideration. A draft EIR will come out around July that addresses the three projects that have pulse flows for their ecosystem benefit. Valley Water will recirculate its draft EIR for the Pacheco Reservoir Expansion Project, moving their final funding hearing to August 2027.

Commissioner Makler said if it looks like the Willow Springs Project is not going to be successful, it would be good to know sooner rather than later in order to look at reallocating the funds. He asked for a briefing from the project's proponents and hopes they have identified and are in discussions with a state water contractor. Ms. Young said that could be arranged.

Vice-chair Steiner said they can ask proponents to come before the Commission to give updates, but do they have the authority to set deadlines for proponents to show progress. Ms. Stout said that was a grey area. The Commission can request periodic updates and have the authority to decide a project is not moving forward enough and pull their funding, but setting a date is harder to do. There is no statutory deadline to expend the money. Vice-chair Steiner requested Willow Springs Project proponents come before the Commission with an update. Ms. Stout asked, for agenda purposes, would they also like to add the possibility of changing or removing their funding. Vice-chair Steiner said that would be an appropriate action. She hoped that is not what they will be doing, but feels they have an obligation to ensure that the project is moving forward, and if not, to see if the funds could be better used elsewhere.

Commissioner Curtin had concerns about putting it in the same meeting, and would rather hear what they have to say first.

Commissioner Bland asked if there were benchmarks in the application that outline where they should be at a given time. Ms. Young said over time, most project benchmarks have moved.

Commissioner Curtin asked what Willow Springs' maximum conditional eligibility determination (MCED) was, and was told \$128 million.

Commissioner Bland asked in the event things fall apart for Willow Springs, what happens to that \$128 million. Ms. Young said the Commission would have to make that decision. In the past, the Commission decided to reallocate the funds to the other projects.

Commissioner Curtin said one option was to reopen the solicitation, but timelines in the statute made that almost impossible. Mr. Yun said when one project dropped out of the WSIP in 2020, the Commission decided to hold some money from the MCED to see if there were any potential projects out there that would qualify for a second solicitation. The statutory language says by January 1, 2022, projects must have a finding of feasibility to remain eligible. A screening process found two projects feasible. If funding becomes available and the Commission decides to open a second solicitation, only those two projects would be eligible. To date, the Commission has decided to support existing projects through inflationary adjustments.

Commissioner Gallagher asked if the Chino Basin Program and Kern Fan Project also need state water contractors. Ms. Young said that those projects already have state water contractors.

Commissioner Makler asked for Willow Springs to explain how much early funding has already been spent, what it has been used for, and what they plan to spend going forward, and why.

Commissioner Solorio asked if the final awards are done in one meeting or in a series of them, and how long does it take before the project receives its funding. Ms. Yun said the Commission will be supplied with all the necessary information to make their decision at that meeting. If the Commission decides they want additional information they have the option to delay that decision. Once approved, staff will strike a funding agreement, which should take a few months. The agreements are in arrears; the first check would probably go out in six months.

Commissioner Gallagher asked if this will be a monthly update, and was told yes.

Commissioner Matsumoto asked for the main three reasons that could be delaying the projects. Ms. Young said the projects came in at a conceptual stage. Once into the planning stage, things come up that could cause them to re-evaluate design. Mr. Yun said they did not foresee applicants waiting until late 2021 to establish feasibility. They are figuring out their permitting pathways. There are a lot of moving parts for these projects. Some of them have a large coalition of partners and need to move in a phased manner. There is a lot of work being done, but there are a lot of conversations that need to occur to advance the projects to the point where the statute allows them to come in for final funding.

10. Water Storage Investment Program: Harvest Water Program Virtual Site Visit

Terrie Mitchell, Manager of Legislative and Regulatory Affairs for the Sacramento Regional County Sanitation District (Regional San), presented a virtual site visit of the Harvest Water Program. Regional San's mission is to protect public health and the environment by conveying, treating, and recovering resources from wastewater responsibly and cost-effectively. Regional San provides wastewater conveyance and treatment for 1.6 million people in the Sacramento region, and treats on average 130 million gallons of wastewater per day. EchoWater is a \$1.7

billion treatment plant upgrade scheduled to come online in May, and will produce high-quality tertiary-treated recycled water. Regional San manages 2,150 acres of open space and wildlife habitat, known as the Bufferlands. Regional San has kept a \$1.7 billion project on schedule and on budget, and has demonstrated the ability to deal with ecosystem enhancement. The Harvest Water Program is an opportunity for California to invest in a water storage project that is drought resistant, not rain-dependent, resilient to the impacts of climate change, designed to optimize substantial public and ecosystem benefits, and exemplifies the concept of one water and a utility of the future by embracing approaches focusing on water reuse, establishing non-traditional partnerships, and fostering environmental stewardship and sustainability. The project is in southern Sacramento County, adjacent to Stones Lake National Wildlife Refuge. It will provide up to 50,000 acre-feet/year (AFY) of recycled water to irrigate more than 16,000 acres currently using groundwater. Their MCED is \$291.8 million. During the WSIP application process, the project received the highest relative environmental score and lowest implementation risk. Regional San has been working with a diverse group of stakeholders, whose input has been and continues to be critical. There was no opposition during the WSIP process. 32,500 AFY will be delivered during the traditional growing season, with 17,500 AFY delivered for wintertime application. Recycled water will allow groundwater storage to increase over time, known as in-lieu recharge. The public benefits include additional Sandhill crane habitat and vernal complex habitat, a longer migration window for Fall-run Chinook salmon, improved groundwater elevations, and reduced salinity load to the Sacramento River and Delta.

A pre-recorded video provided a virtual tour of the Harvest Water Program, featuring commentary from Regional San General Manager Christoph Dobson, Nature Conservancy Director of External Affairs and Policy Jay Ziegler, Environmental Defense Fund Vice President of Climate Resilient Water Systems Maurice Hall, and local farmers Walt Hardesty of Hardesty Ranches and James Silva of SB Farms.

Ms. Mitchell introduced Dave Richardson from Woodward and Curran, Eric Ringelberg from Fresh Water Trust, and Heidi Oriol from Regional San. The program is expected to restore groundwater levels up to 35 feet within 15 years, and 370,000 AF over the life of the program. Groundwater restoration is the foundation that produces the public benefits, greatly increasing the percentage of time groundwater elevations are within the riparian root zone, and extending beyond the recycled water delivery area. Through the Eco Plan they will work with growers and landowners to manage their lands differently. Additional program benefits include emergency fire response, farmland and open space protection, and meeting groundwater sustainability goals. The one water approach provides a local water supply and effluent discharge diversification for their customers. Outreach has included one-on-one site visits with landowners, direct mailers, and partnerships with the Farm Bureau, and other stakeholders. They have received letters of intent for 100 percent of the demand goal for summertime irrigation, approximately 42,000 AFY involving 62 landowners on more than 17,000 acres across 148 parcels. The program has remained fundamentally unchanged since the WSIP application process. The average annual delivery estimate incorporates cutbacks required by water rights during dry and critically dry years. The feasibility study, CEQA and NEPA documents, and all necessary environmental permits are complete. All capital projects are in final design. The

public benefits are largely the same as during the application process. There will be an increase in wetted acres and slight reduction in total acres to the vernal habitat, and a slight reduction in flow improvement to the Cosumnes River. The cost of the project has increased to \$597 million due to inflation and supply chain disruptions. WSIP and Water Infrastructure Improvements for the Nation (WIIN) Act grants total \$321 million, leaving a funding gap of \$321.8 million, which will be funded by Regional San rate payers or additional grant opportunities. Construction bids should go out by June.

Commissioner Bland asked if the National Pollutant Discharge Elimination System permit was an extension or a new application, and was told they are on a five-year renewal cycle.

Commissioner Makler asked what the impact to rate payers would be and how many labor hours will the project require. Ms. Mitchell said they are starting workshops with their board to see if there will be a need for rate increases. Mr. Richardson said of the \$600 million in capital costs they estimate about half would be material and half labor.

Vice-chair Steiner asked if they were looking into alternative power sources. Ms. Mitchell said the district installed a solar array to help with energy costs. Mr. Richardson said they are developing a co-generation project, using the digester gas from the treatment plant process as well as fuel cells. By raising the groundwater table, they will be lowering pumping costs.

Commissioner Matsumoto asked what is protecting the raising groundwater levels from being pumped out. Ms. Mitchell said the Groundwater Sustainability Agencies (GSAs) must meet their goals, and this project will be one of their key management actions. Until those levels are achieved, they will not be exporting groundwater. Mr. Ringelberg said all the GSAs in the program area have committed to recovering groundwater levels. Ms. Mitchell said have looked into using groundwater during times of drought, but are committed to not exporting 30,000 AF three out of 10 years after the sustainability levels have been reached. Commissioner Matsumoto asked if the flow benefit will reconnect the Cosumnes River and achieve the connectivity to enable fish passage. Mr. Richardson said the project will create connectivity from Twin Cities to upstream of Highway 99, but their sister agencies upstream are doing additional managed recharge that will eventually allow even further fish passage. She asked for more clarity on the five- to 10-year time frame, and Ms. Mitchell said they expect connections by the end of 2026.

Commissioner Solorio asked for an applicant's perspective on why these projects take so long. Ms. Mitchell said they have been involved with their stakeholders for more than a decade, the application process was very intense, and as they go from modeling to the design phase, they start to tweak things as they work with state agencies on the public benefits.

Commissioner Gallagher congratulated them on their partnerships, bringing both sides together and bridging the rural/urban divide. That is the future of California.

Commissioner Arthur asked about the changes to what they will deliver in critically dry years to the active wetland and Sandhill crane habitats. Ms. Mitchell said with the water right cutbacks

they could deliver the same benefit with a lower volume of water. Mr. Ringelberg said to meet their adaptive management thresholds, they backed off the maximum number and identified one where they would still be able to maintain all the ecological benefits and fundamentally achieve all the programs goals with less water. Mr. Richardson said after 23 years their cutbacks will phase out because the groundwater table will have risen. The only cutting back they would do for the Sandhill crane habitat is during extremely wet years. Commissioner Arthur asked if the original projected amount of water needed to achieve their goal was not accurate and has been refined. Mr. Ringelberg said for purposes of the winter crane management program, their original analysis was a little coarse. The re-optimization of the availability of water led them to the current conclusion. Commissioner Arthur asked for more detail on the ramp-up, and when the full benefits will be reached. Mr. Richardson said the benefits start immediately with the irrigation, will build up, and eventually level off. They are working with the state agencies on a set of milestones that will be achievable, but also aggressive. She asked if they knew where exactly the habitat benefits would happen. Mr. Ringelberg said they do have some estimations based on the modeling and the existing wetlands for the passive benefits, and have just started the recruitment process for the active benefits.

The Commission took a one-hour lunch break.

11. Water Storage Investment Program: Harvest Water Program State Agency Draft Contracts for the Administration of Public Benefits

WSIP regulations allow the State agencies to present a draft of their CAPBs to the Commission for information and comment. Staff from the California Department of Fish and Wildlife (CDFW) and State Water Resources Control Board (SWRCB) presented their most recent drafts of the CAPBs with Regional San for the Harvest Water Program. The draft CAPBs must be finalized prior to the final award hearing. The Commission will address the value of the benefits then.

WSIP Manger Amy Young said these draft CAPBs contain a firm articulation of the contract structure, public benefits, and other main elements. The agencies may consider comments before executing contracts. The Commission does not approve the CAPBs. The draft CAPBs are available on the Commission website. The comment period runs through March 21.

Kristal Davis-Fadtke, CDFW Water Branch Environmental Program Manager, said when developing the CAPBs, they first consider consistency with Prop. 1 regulations, plan for the long term, understand the scope of the project's control, and what happens if they do not achieve the benefits. Differences in the public benefits from the 2017 application include a decrease in the winter water delivery and increase in length of ramp-up period to achieve full Sandhill crane habitat acreage; decrease of flow volume into the Cosumnes River, delay in achieving maximum volume of flows, and decrease in days of flow during fall migration period of salmonids; delay in ramp-up period and decrease in functionality in the passive wetland and riparian habitat; delay in reaching full functionality for active wetland habitat; decrease in functionality target for the active riparian habitat; and a decrease in acreage in the vernal pool complex habitat. These 353 acres represent the only remaining vernal pool complex habitat within the water delivery area that can be protected. Projects will report on an annual basis, with an adaptive management

review report every five years, or annually if a trigger occurs. When that happens, a decision-making body begins a meet and confer process to identify limiting factors, and determines appropriate adaptive management actions. If the decision-making body cannot come to agreement, or if the project does not implement the actions, CDFW would initiate a public benefit dispute process. If a trigger happens again after a second five-year cycle, the decision-making body can decide if an adjustment is needed, or an alternative benefit can be achieved. If neither is possible, a contract amendment would be processed. CDFW can initiate the public benefit dispute process when the parties disagree on appropriate actions, adjustments, or feasibility, or in case of the project's failure to conduct adaptive management actions. CDFW's goal is to find a solution. To conclude a dispute process, the parties must mutually agree on a solution, which may require a CAPB amendment, or if they do not agree, CDFW would submit findings of insufficient public benefit to the Commission.

Sarah Sugar, Senior Environmental Scientist from SWRCB, said their role in the WSIP has been to identify water quality priorities and criteria for assessing "relative environmental value," conducting technical reviews of applications, and negotiating CAPBS with the two projects that proposed water quality benefits: Harvest Water and the Chino Basin Program. Harvest Water's water quality benefit is to deliver treated wastewater currently discharged into the Sacramento River to farmers and habitat in Sacramento County, thus decreasing salt-loading in Delta waterways impaired for salinity. The structure of their CAPB is similar to CDFW's, and focuses on how much recycled water Regional San delivers to users. The salinity of recycled water depends on the salinity of influent to their treatment plant. Measuring or managing for specific improvements in impaired Delta waterways is impractical. The performance threshold is the annual benefit they are contracting for. The adaptive management trigger will be based on a five-year average of deliveries. Performance thresholds vary depending upon hydrologic year. Adaptive management actions are linked to increasing demand when demand is the limiting factor in delivering water. Differences to the public benefits from the 2017 application include a decrease in the volume of water delivered, and the length of time of the CAPB.

Public comment by Erin Woolley, Policy Advocate for Sierra Club California, who said since this is the first WSIP project to go through the public benefit process, they ask that the public comment periods be extended from 14 days to 30 days.

Commissioner Makler asked if there was a force majeure exemption in the CAPBs. CDFW Legal Counsel Katie Miller said they are still working on force majeure language, but she could not foresee CDFW holding them to their public benefits in the event of a disaster. Commissioner Makler asked what happens if a state action prevents them from delivering the water to agriculture. Ms. Davis-Fadtke said CDFW is contemplating such circumstances, and that they would be resolved in the meet and confer process. Commissioner Makler asked if the Commission's public forum would be involved in the adaptive management process, and was told CDFW does not envision a public review process as part of adaptive management. Commissioner Makler asked how a member of the public might dispute a public benefit finding, and if they contemplate the need to hire additional staff to administer the CAPBs. Ms. Davis-

Fadtke said the five-year reporting will come to a Commission meeting, and there will be a need for long-term funding for CDFW to continue to administrate the contracts.

Vice-chair Steiner said during the ramp-up period there was a provision for a force majeure-like scenario where the triggers would not be implemented. Ms. Davis-Fadtke said that was laid out and articulated in the approach to the adaptive management plan, and would be explained in the five-year report.

Commissioner Matsumoto said the Commission's role is to ensure the public benefit, how any changes might impact the MCED, and provide public transparency. What are the incentives for the project to deliver earlier or deliver a better public benefit. Ms. Davis-Fadtke said they wanted a contract that will be successful and can occur. Ms. Mitchell said they anticipate the benefits being realized sooner. Commissioner Matsumoto asked what happens after the contract ends. Ms. Davis-Fadtke said the term is how the applicant monetized their benefit. At the conclusion of this contract, a lot of the benefits will still be provided. Commissioner Matsumoto asked presenters to describe how significant the changes to the benefits were. Ms. Davis-Fadtke said a difference of five or ten years over the course of an 84-year contract is minor. Commissioner Matsumoto asked if the project proponents are allowed to get additional sources of funding. Ms. Mitchell said they can pursue additional grant funds. Commissioner Matsumoto asked who will hold the fee on the easement interest. Ms. Mitchell said that is to be determined. Commissioner Matsumoto asked for an explanation of Conditions 7 and 8 in the CAPB, and why it is reducing deliveries more in dry years and less in critically dry years. Ms. Sugar said the SWP, CVP, and some water contractors protested the wastewater change petition because reduced flows would affect the project's obligations in the Delta. The performance threshold they have for Shasta critical years and for dry and critically dry years are the maximum Harvest Water can deliver. Mr. Richardson said they have a 50 percent cutback requirement in Shasta critical years. Commissioner Matsumoto asked what the Commission's role is in the case of a finding of insufficient benefits. Ms. Stout said the Commission would evaluate the reasons for the benefits not accruing, evaluate the reasons for the disagreement, and determine through the funding agreement whether to move forward a specific performance action to ensure the benefit does happen through a court order. Commissioner Matsumoto asked if the comment period could be extended, and will it remain 14 days for all the projects. Ms. Stout said, as a fairness issue, it should stay at 14 days. As important as the Commission is to the public process, normally these contracts would not be seen. Ms. Young said there is a schedule all parties are trying to meet so it was important to get the contracts finalized so Regional San can begin their bidding process.

Commissioner Bland asked if the operations and maintenance (O&M) costs have been figured in beyond the contract time. Ms. Stout said the O&M costs lie outside of WSIP funding. Government code does not allow bond funding to go to O&M.

Commissioner Arthur asked how the term relates to the value of the public benefit. Ms. Mitchell said they will be discussing that at the final award hearing. Mr. Yun said the administering agencies have been asked to focus on physical public benefits. The value of the

public benefits is in the Commission's realm, and staff will be looking at that. Commissioner Arthur asked if the Commission could think more about extending the public comment period.

Commissioner Solorio asked what protections exist for applicants to not be asked for more money or environmental reviews to address any perceived shortcomings in the project outcomes. Ms. Davis-Fadtke said the regulations require they complete environmental reviews before receiving funding. All projects could be affected by changes to regulations and rules that govern the operation of the SWP and CVP. Environmental rules do change, and that could affect what projects could provide. All they can offer is their best estimate of what is achievable at that time, based on the existing regulatory framework, and the robust modeling that has been done. The benefits are defined in the contract and will not be changed into something that will require additional review. It is important for applicants to secure environmental permits before the contract stage because that assures the benefit has been evaluated and any impacts have been fully mitigated. Ms. Stout said this is all covered by the adaptive management plan.

Chair Swanson said the CAPB drafts inspire a lot of confidence. They are building something that does not exist. The presentations were a great way to set the tone for future projects.

12. Department of Water Resources Grant Programs Update

DWR offers several grant and loan programs that support integrated watershed management activities addressing environmental stewardship, water supply reliability, flood risk, groundwater sustainability, drought, and more. In 2021 and 2022, the California Legislature authorized more than a billion dollars in funding to DWR for drought relief, providing support for reliable water supply and improved resiliency to drought.

Assistant Executive Officer Laura Jensen said the Commission used to hear regularly from DWR about their grant programs and the plan is to reinstitute that practice.

Arthur Hinojosa, DWR's Manager for the Division of Regional Assistance, offered an overview of grant programs. Despite the weather, there is an ongoing need for support across the state to respond to or prepare for drought. There was \$500 million in the 2021-22 budget to administer drought relief. In 2022-23 they were allocated another \$120 million for the Small Community Drought Grant Relief Program, and an additional \$200 million for urban drought relief.

Ashley Gilreath, Program Manager I, discussed the Urban Communities Drought Relief Grant Program. In 2021 they provided \$268 million for grant awards which was dispersed by June of last year. There were 288 awards across the state. The primary benefits the grants pay for include water supply, reliability, water conservation and reduced demand, groundwater recharge, ecosystem, and planning. Examples of grants include the Lake Cachuma Emergency Pumping Facility Pipeline Project, Metropolitan Residential Direct Installation Program, Regional Water Authority Water Bank, and the Sanctuary Forest Streamflow Augmentation. The 2022 Urban Community Program has \$300 million in funding with a focus on turf replacement and projects that will increase efficiency and save water. At least \$85 million must be spent on

underrepresented urban communities. They have only dispersed \$47 million so far. They have received 152 applications, requesting \$1.8 billion. There is \$232 million in funding left.

Steve Doe, Supervising Engineer, discussed the Small Community Drought Grant Relief Program. With \$321 million in funding, they have committed \$303 million so far, leaving \$18 million for emergencies and water hauling. There is over \$200 million in applications still outstanding. The program's objectives are to provide immediate and near-term financial and technical support to help small communities survive this and future droughts, allow for immediate temporary measures, and implement near-term and resilient infrastructure projects. Eligible applicants include a variety of public agency types, but eligible beneficiaries must be from small communities not supplied by an urban water supplier. They have awarded 127 grants so far. 93 percent of the funding goes to infrastructure. 72 percent of the beneficiaries are under-represented communities. Water hauling has helped 739 households in nine counties, mostly in Northern California. Examples of infrastructure projects include water storage tanks in Tulare County and emergency intake works in Clearlake.

Mr. Hinojosa said \$75 million in funding from last year was specifically for turf rebates, and \$100 million for water conservation. Half of that turf money and all the conservation money goes to grants. They are still administering \$400 million in grants in the Integrated Regional Watershed Management Program. They also support SGMA through grants. Other grant programs include urban stream restoration work and fish passage on the San Joaquin River.

Commissioner Bland asked if there is money in their program for water education and conservation awareness programs. Mr. Hinojosa said their conservation-specific fund can be allotted for any purpose that furthers conservation, including education and outreach.

Vice-chair Steiner asked if they have people who will go out and do installations and turf replacements, and is a training program a part of that. Mr. Hinojosa said they have acknowledged that need and it is still under development. A big part of changing landscapes at homes is educating people on how to take care of them. Vice-chair Steiner asked if they have reached out to technical schools and unions to be partners in this. Mr. Hinojosa said he was not sure.

Commissioner Makler asked if the next time they presented to the Commission they could explain any lessons learned over time, if some programs or efforts more successful than others, are they more successful in different regions of the state, are some vendors more effective than others, and if anyone is tracking that analysis.

Commissioner Matsumoto asked what their nexus is with programs that would provide permanent solutions and are these grants intended as a bridge to that. Mr. Hinojosa said for many, the emergency fix becomes permanent. There were more permanent fixes than temporary. A lot of situations they see were exacerbated and made a lot worse by drought, but often had underlying issues before drought. Mr. Doe said even though they refer to the projects as immediate and near-term, these are permanent fixes. The only part of the program you can

really call temporary is the water hauling. Those tanks last about two years, but they expect in those two years they will have more permanent fixes, such as laying pipeline and being connected to a water system. Mr. Hinojosa said in Glenn County they provided funds for water hauling and are working with the community to expand the City of Orland's infrastructure, so those getting temporary help will eventually have a permanent connection to the city.

13. Consideration of Items for Next California Water Commission Meeting

The next meeting of the Water Commission is currently scheduled for Wednesday, April 19, 2023, when the Commission will host another drought expert panel, this one focusing on wildfire and forest management, hear a report out from the drought working group, consider the Commission's Tribal comment policy, and receive presentations on groundwater recharge activities, the Water Plan Update for 2023, and relevant legislation.

14. Adjourn

The Commission adjourned at 3:29 p.m.