



## **Meeting Minutes**

Meeting of the California Water Commission

Wednesday, January 17, 2024

California Natural Resources Building

715 P Street, Room 221 B

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 Curtin, Gallagher, Makler, Matsumoto, Steiner, and Swanson were present, constituting a quorum. Commissioners Bland and Solorio attended remotely.

### **3. Closed Session**

The Commission did not hold a closed session.

### **4. Acknowledgement of California Native American Tribal Governments**

The Commission provided an opportunity for elected Tribal leaders and formally designated Tribal representatives to identify themselves and to specify the agenda item(s) on which they will comment, as described in the Commission's California Native American Tribal Leadership Comment Policy. No Tribal leaders or representatives requested to comment.

### **5. Approval November 15, 2023, Meeting Minutes**

Commissioner Steiner motioned to approve the November 15, 2023 meeting minutes. Commissioner Gallagher seconded the motion. Commissioners Bland, Curtin, Gallagher, Makler, Matsumoto, Solorio, Steiner, and Swanson voted to approve the minutes.

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

Executive Officer Joe Yun noted that a public comment on agenda item fourteen was received, distributed to the Commissioners, and would be posted on the California Water Commission website later in the day. Executive Officer Yun also noted that he had received further information from Eric Loboschfsky, who presented on the Agreements to Support Healthy Rivers and Landscapes at the previous Commission meeting in November. In response to a question from Commissioner Curtin on what acreage of habitat would be needed to support a functioning ecosystem, Dr. Loboschfsky relayed that one of the goals of the voluntary agreements is to double the salmon population over thirty years, and in that context, the commitment to restore 30,000 acres represents about 26 percent of the habitat needed to support that increased population. In response to Commissioner Steiner's question regarding

engagement of western Colusa County, Dr. Loboschefskey replied that the voluntary agreements are open to including a larger contingent of water users within the confines of the State Water Resources Control Board's boundaries for the updated Bay Delta Water Quality Control Plan.

#### **7. Commission Member Report**

Commissioner Solorio noted that he was attending the Commission meeting via Zoom but that he would likely have to leave the meeting to attend other commitments. Commissioner Makler reported that he attended the California Foundation on the Environment and the Economy 2023 Water Conference in his capacity as a CalPine executive and there was discussion of water policy at that event. Commissioner Matsumoto reported that she was not involved in The Nature Conservancy's comments on the draft drought white paper.

#### **8. Public Testimony**

No public comment was provided on this item.

#### **9. Election of Commission Officers (Action Item)**

Commissioner Solorio nominated Vice Chair Steiner and Chair Swanson to serve another year. Commissioner Bland seconded the motion. Ms. Muljat called the roll. The Commission voted unanimously to re-elect Vice Chair Steiner and Chair Swanson.

#### **10. 2024 Commission Workplan**

Assistant Executive Officer Laura Jensen reminded the Commission that the proposed workplan is subject to change. Ms. Jensen noted the major workflows for the Commission in the upcoming year, including the development of the Commission's next strategic plan. Ms. Jensen walked through the 2024 workplan and provided an overview of the items that are scheduled to come before the Commission in the upcoming year.

#### **11. Water Storage Investment Program: Discussion on Project Progress and Commission Discretion**

Commission Legal Counsel Holly Stout noted that the presentation should not be interpreted as a policy or process, it is simply meant to inform the Commission of their discretion and how that discretion can be exercised. Ms. Stout summarized actions taken by the Commission in recent years, such as establishing maximum conditional eligibility determinations (MCEDs) and determining whether projects were feasible by the deadline required by Proposition 1.

Commissioner Curtin asked if the Proposition 1 deadline to establish feasibility was a statutory deadline. Ms. Stout confirmed that it was.

Ms. Stout then discussed shifts to the Water Storage Investment Program (WSIP) project timelines, the ways that the Commission receives information on the project progress, and the regulation that gives the Commission the discretion to determine whether to fund a project. Ms. Stout highlighted factors for Commissioners to consider when exercising their regulatory discretion and key decisions that the Commission must make when exercising their discretion.

She then presented a potential decision-making process for a hypothetical project as an example. Ms. Stout emphasized that each project should be evaluated independently.

Commissioner Bland asked if Commissioner discretion could be applied to a project that is contingent on federal funding. Ms. Stout confirmed that the Commission is welcome to consider federal funding and could invite a project to the Commission to gain further information on that topic.

Commissioner Steiner asked if the Commission determines a project has failed to make substantial progress would there be an obligation to return early funding. Ms. Stout confirmed that there would be no obligation to return early funding. Commissioner Steiner asked if emergency water storage would be considered an emergency response and therefore one of the public benefits of a project. Executive Officer Yun answered that it would depend on how the project defined emergency response. In response to Commissioner Steiner's first question, he clarified that if a project did not appropriately adhere to the funding agreement, then the State could pursue a return of the early funding amount.

Commissioner Makler asked about the legislative intent of Proposition 1 and what matters more to the Commission, how many projects are funded or the public benefits those projects produce. Ms. Stout answered that Proposition 1 provides a specific amount of funding for public benefits associated with water storage, which gives the Commission the discretion to determine how many projects to fund. Commissioner Makler asked if a project was to drop out of the program, if the Commission would then follow precedent and redistribute funds to the remaining projects on a pro-rata basis. Ms. Stout confirmed that redistributing the funds on a pro-rata basis ensures that each project is treated equally and cautioned against distributing funding disproportionately. Commissioner Makler asked whether a project that has reached completion is still eligible to receive reallocated funding in the instance that another project drops out of the program. Ms. Stout confirmed that completed projects could potentially receive pro-rata funding. Commissioner Makler asked if the early funding agreements were public and if specific milestones are listed in the agreements. Ms. Stout confirmed that they are public, and that each agreement has a project scope, schedule, and budget attached to it. Commissioner Makler asked if he would be able to determine whether a project has an early funding agreement and whether they are in compliance with that agreement by reading the project proponent's quarterly report. Executive Officer Yun noted that reviewing the quarterly report would not necessarily give Commissioners an idea of where a project is at in meeting the early funding agreement. Commissioner Makler asked if Proposition 1 assigns an end date to the WSIP program and Ms. Stout confirmed that it does not.

Commissioner Curtin expressed concerns over potentially reconsidering projects at this stage and noted that it is difficult for the Commission to determine whether the projects are on track. He asked that Commission staff notify the Commission when there are indications that a project might fail to meet the statutory deadlines.

Commissioner Makler asked whether it should be an objective of the Commission to determine how to best utilize the available funding, to avoid funding zombie projects that may end up dropping out of the program.

Commissioner Curtin expressed concern that the question posed by Commissioner Makler may be disruptive to the process, and that the Commission should rely on staff to inform the Commission when a project may be at risk of failing.

Commissioner Makler replied that he believes it is part of the Commission's responsibility to analyze the projects and provide direction to staff when they have concerns about a project.

Commissioner Matsumoto suggested using specific milestones or indicators to track each project and help the Commission make a determination on how the projects are progressing.

Executive Officer Yun offered that staff could tool the monthly reports that are provided to Commissioners to address these concerns.

Commissioner Gallagher asked that Commission staff add more detail to the monthly reports to help Commissioners have a deeper understanding of each project. Commissioner Gallagher suggested that using hurdles or indicators may be helpful.

Commissioner Swanson noted that the Commission has tremendous confidence in the staff to understand where each project is at and asked Commission staff to help the Commission reach the same level of understanding at a future meeting. Executive Officer Yun confirmed that staff will continue the discussion at the next Commission meeting.

#### **12. Water Storage Investment Program: Willow Springs Water Bank Progress Update**

Managing Director John Pérez, CIM Group, gave an overview of the Willow Springs Water Bank project's ongoing discussions with the Antelope Valley-East Kern Water Agency (AVEK) and their work towards creating a framework, scale, and design for the project. Mr. Pérez introduced Assistant General Manager for AVEK, Peter Thompson. Mr. Thompson discussed the joint plan being worked on by CIM, AVEK and GEI Consultants, Inc. and noted he is optimistic about the work that has been done so far. Regional Vice President John Whitt briefly discussed infrastructure updates.

Commissioner Makler asked if Mr. Whitt could provide further detail on the benefits of the infrastructure he discussed. Mr. Whitt clarified that the wells he had discussed were existing wells that would generate electricity while they were being utilized for water storage. Commissioner Makler asked about the status of the permitting for the project. Principal of Investment Jennifer Gandin answered that the status of the permitting depends on the ongoing negotiations with AVEK. Commissioner Makler asked if they could provide further detail in their next quarterly report regarding the status of individual entitlements. Mr. Pérez confirmed that they are happy to follow that guidance. Commissioner Makler asked if the project has enough

funding to complete the negotiations with AVEK and the entitlements process. Ms. Gandin confirmed the funding is adequate to meet their milestones.

Commissioner Makler and Commissioner Solorio thanked the project proponents for their work and for providing the Commission with an update.

### **13. Water Storage Investment Program: Projects Update**

WSIP Program Manager Amy Young provided an update on the progress of projects in WSIP. Ms. Young said that the Commission is very close to executing the funding agreement with the Harvest Water Program. The Sites project is nearing the end of their water rights protest resolution phase, and it would then go to a hearing phase. The Kern Fan project JPA is scheduled to provide an update to the Commission at its April meeting. The Pacheco project received a federal loan from the United States Environmental Protection Agency for planning and design. Ms. Young said staff expects to receive quarterly reports for the October to December 2023 period by the end of the month.

Public comment from Regina Chichizola, Executive Director for Save California Salmon, who is opposed to the Sites reservoir project due to the environmental impacts it will have on the Sacramento water system and the impacts it will have on Tribes and Tribal lands. She stated that Tribes do not feel like they have been properly consulted on the Sites reservoir and voiced concerns regarding the funding of the project, and the lack of an operations plan. Ms. Chichizola encouraged the Commission to continue discussions regarding WSIP projects.

Commissioner Curtin asked Ms. Young if she anticipates any of the WSIP projects needing resuscitation. Ms. Young said it is too early to make that determination.

Commissioner Bland asked if there is a methodology the Commission could use to ensure that a project remains viable. Ms. Young said that there is room for Commission staff to work with the project proponents to add better information to the quarterly reports. Executive Officer Yun added that the Commissioners asking for more information on the projects could serve as a course correction as well.

### **14. Drought Strategies: Presentation of Final White Paper (Action Item)**

Assistant Executive Officer Laura Jensen reviewed the steps that were taken to finalize the paper, provided statistics regarding the number of public comments received, and gave context to the Commission's consideration of those comments. She discussed major and minor changes to the paper, highlighting areas where language was modified or added to address comments. Lastly, Ms. Jensen reminded the Commission of their options to approve the white paper or ask that additional work be done prior to approval.

Public comment from Joe Byrne, speaking on behalf of State Water Contractors, who referred to a letter sent to the Commission requesting that the paper be delayed and noted that his organization would like more time to engage with the Commission on the paper as they have fundamental disagreements over some content.

Public comment from Donna Miranda Begay, former Tribal chairwoman of the Tübatulabal of Kern Valley and current Tribal cultural practitioner and researcher, who has participated in the outreach efforts for the drought paper since November 2022. Ms. Begay said she appreciates the paper for consulting with California Native American tribes and highlighted a few areas within the paper where she appreciates the language that was used. She asked that language be added to the paper to reflect discussions that occurred at the Tribal Water Summit 2023.

Public comment from Eddie Ocampo, who offered his support for the paper and recommended that the Commission approve the paper.

Public comment from Nataly Escobedo Garcia, representative for the Leadership Council, and on behalf of Clean Water Action and the Community Water Center, who noted comments that they would like this draft to address, such as the prevention of water quality impacts due to groundwater recharge projects. She also asked that the paper include demand reduction as a category of potential drought strategy, and to develop multiple strategies to reduce demand equitably.

Public comment from Regina Chichizola, Executive Director for Save California Salmon, who echoed concerns regarding the language on water quality and groundwater recharge, specifically noting that it would be beneficial to include language regarding utilizing floodplains for recharge as a strategy. She also stated that she would like to see more outreach to communities and Tribes in Northern California. Ms. Chichizola said that voluntary agreements have held up drought planning in the past and urged the Commission to take action on the comments regarding water quality.

Public comment from Soren Nelson, Association of California Water Agencies, who acknowledged the work that the Commission has done on the paper and despite not reaching a full consensus, he believes the paper is a good starting point.

Commissioner Gallagher applauded the amount of outreach that was done and thanked Commission staff for their work on the paper.

Commissioner Makler echoed Commissioner Gallagher's comments and added that he was curious about the next steps that may result from approving the paper. He suggested that the Commission may want to discuss some of the paper's topics in further detail, such as the complexity of the State's water rights system.

Commissioner Matsumoto also expressed her gratitude to the staff and to those that participated in the discussions, noting that while there may not have been consensus, the goal of the paper was to present ideas and the complexities surrounding drought.

Commissioner Curtin asked what would happen after the Commission approves the document. Executive Officer Yun said that the paper would be utilized by the Secretaries of the Natural Resources Agency, the California Environmental Protection Agency and the Department of Food and Agriculture to help them consider policies and funding related to drought.

Commissioner Curtin appreciated the feedback provided by Joe Byrne. He noted that he hopes that the paper serves as a starting point for the legislature in addressing these issues.

Commissioner Steiner moved to approve the draft drought white paper. Commissioner Matsumoto seconded the motion. Ms. Muljat called the roll. The Commission voted unanimously to approve the draft drought white paper.

The Commission took a one-hour lunch break.

#### **15. Update on DWR's Strategic Plan**

Director of the California Department of Water Resources (DWR) Karla Nemeth introduced Deputy Director for Strategic Initiatives Bianca Sievers to the Commission and provided historical context and background information regarding DWR strategic plans in the past, and then outlined the approach that was taken to develop the latest strategic plan. Director Nemeth noted that the new strategic plan would be a living document, would undergo an annual review and is applicable to the next five-year period. Director Nemeth and Ms. Sievers walked through the five goals of the strategic plan, hitting on specific objectives for each goal, noting how DWR intends to meet those objectives and identifying areas where the Commission could have opportunities to take action in support of meeting those goals.

Commissioner Curtin said he appreciated the Director's overview of the strategic plan and complimented DWR on the work that's been done to reach those goals. He added that DWR is moving in the right direction.

Director Nemeth commented on the direction that DWR is moving and noted a few examples of work already done, noting that employees of DWR take pride in the work that they do.

Commissioner Makler offered comments regarding weather whiplash and the importance of retaining support from taxpayers for the DWR strategic plan. Commissioner Makler suggested that DWR create a program for recruiting climate-interested individuals to the DWR workforce. Lastly, he offered his appreciation for the reports from DWR staff over the previous year.

Commissioner Steiner offered comments in support of the strategic plan and thanked Director Nemeth and Ms. Sievers for their presentation.

#### **16. State Water Project Annual Review (Action Item)**

Water Code section 165 requires the Commission to conduct an annual review of the progress of the construction and operation of the State Water Project (SWP). Public Information Officer Paul Cambra presented the draft 2023 Annual Review of the SWP for Commission consideration and approval. Mr. Cambra summarized the findings of the Commission and presented the Commission's recommendations to DWR. He reminded Commissioners of their options to either approve the report or suggest revisions, in which case Mr. Cambra would bring the report back to the Commission at a later date.

Commissioner Steiner motioned to approve the report. Commissioner Gallagher seconded the motion. The Commission voted unanimously to approve the report.

**17. Consideration of Items for the Next California Water Commission Meeting**

The next meeting of the California Water Commission is currently scheduled for Wednesday, February 21, 2024, when the Commission will receive the first State Water Project briefing of 2024, a WSIP Project Update, hear a presentation on the Commission's workplan for its next strategic plan, and consider a Resolution of Necessity for a Big Notch Project landholding.

**18. Adjourn**

The Commission adjourned at 2:00 p.m.

DRAFT