



## **Meeting Minutes**

Meeting of the California Water Commission

Wednesday, September 21, 2011

State of California, Resources Building

1416 Ninth Street, First Floor Auditorium

Sacramento, CA 95814

### **1. Welcome and Introductions**

Chair Anthony Saracino called the meeting to order at 9:02 am.

### **2. Roll Call**

Interim Executive Officer Sue Sims called roll. The following members were present: Andrew Ball, Joseph Byrne, Dave Cogdill, Danny Curtin, Joe Del Bosque, and Anthony Saracino. Kimberly Delfino was also present and participated by teleconference. Member Luther Hintz was absent.

### **3. Approval of minutes**

A motion was made and seconded to approve the minutes from the August 17, 2011 meeting. A vote was taken and the motion passed unanimously.

### **4. Interim Executive Officer's Update**

Ms. Sims updated the Commission on the Water Storage Workshop to be held on October 25. She also noted that agenda items 9, 17, and 19 would be postponed to a later meeting.

### **5. DWR staff update on Resolution of Necessity Process**

DWR Assistant Chief Counsel Ward Tabor, Chief of DWR Real Estate Services for the Delta Engineering Branch Allan Davis, and Chief of DWR Delta Engineering Branch Gordon Enas presented information on the proposed Resolutions of Necessity (RON) and Geotechnical Explorations in support of draft Environmental Impact Report/Environmental impact Statement (EIR/EIS) for the proposed Bay Delta Conservation Plan. Mr. Enas explained the types of drilling projects that would be done on the properties under consideration for Resolutions of Necessity. Mr. Tabor provided additional information on legal authority for the project. Mr. Davis provided additional information on project funding. Members asked clarifying questions and Mr. Davis responded that 90% of funds are in place and they plan to have the remaining 10% secured through agreements soon. Mr. Cogdill asked questions about the results of the borings taken so far. Mr. Enas described the soil types and pointed out that they could potentially find different types and strengths of soils at different depths with future

borings. Mr. Saracino invited public comments regarding the overall process, noting that comments regarding individual properties would be heard later.

Peter Stone, Delta landowner, commented on the BDCP process, the inclusion of “good science” in the process, and mentioned other possible solutions for Delta conveyance.

Tom Keeling, an attorney, made the following comments representing the landowners in listed in agenda items 6, 7, 8, 13, 23, 25, 27, 29, 30, and 32. He informed the Commission about the current litigation regarding the properties. He suggested the Commission consider holding off on these RONS until the appellate court makes a ruling in the case. He noted that funding must be in place at the time of condemnation. He argued that DWR cannot use its general statutory authority for a project such as the BDCP. He noted that some property owners who requested a “cost reimbursement form” for appraisals have not received the document from DWR and questioned how landowners can evaluate DWR’s offer without an independent appraisal. He stated that there is no need for a permanent easement. He cautioned members that they cannot determine if the public interest requires this project if there is no clear definition of the project. He stated there has not sufficient time for owners evaluate DWR’s offers.

Dan Kelley, representing the Delta Ranch Partnership and Sutter Home Winery, supported Mr. Keeling’s comments. He noted that his detailed comments were emailed to the Commission in a letter. He raised the issue of the “project” and stated even if the project is the Geotechnical Investigations for the BDCP EIR/EIS, at minimum the EIR/EIS would have to be fully funded - which it is not. He also stated that DWR refused to provide specific locations for drilling.

Joe Schofield, an attorney with Downey Brand, representing the North Delta Water Agency, supported the comments of the previous two speakers. He noted that the funding requirements for eminent domain are unique to DWR and not to be overlooked.

Dante Nomellini Jr., representing Central Delta Water Agency, addressed the issue of DWR acquiring permanent versus temporary rights. He stated the court did not require DWR to condemn a permanent easement, and that DWR has the option for a temporary easement. He also noted that the pending CEQA litigation was heard in August and a decision should come within 90 days. He asked that DWR provide protocols for pre-construction surveys and asked DWR what would happen if they did not get the information from these geotechnical borings. He advised DWR they needed to do pre-condemnation activities to ensure the selected drill sites will work.

Mr. Tabor clarified that DWR’s understanding of the court order is that it does require a permanent easement and cited *Lorreto vs. Teleprompter*. He also stated DWR is willing to quit-claim the easements back to the landowner after work is completed.

Mr. Ball suggested that there must be a better way to complete the drilling than the condemnation of property and recommended DWR return to acquiring temporary entry permits (TEP). He suggested TEPs should be much more specific and asked to see copies

of all TEP offers. DWR agreed to provide copies of the TEPs and pre-construction protocols before the next meeting. He believed condemnation should be reserved for actually building the tunnel.

Mr. Byrne and Ms. Delfino voiced concerns about the time and energy invested in negotiations with the landowners and asked if DWR could do more to negotiate with landowners. Ms. Delfino also questioned the need for a permanent easement.

**6 - 33. Initial Consideration of Evidence for Resolution of Necessity (RON) No. 2011-04 through 2011-31** (No final action was taken on any Resolution of Necessity at this meeting)

Mr. Davis proceeded to provide a brief description of each property including the location, proposed property rights to be acquired, number and types of drill sites, and a brief summary of any landowner negotiations.

**6. Richard Brann, Trustee; Richard Brann Revocable Trust; RON 2011-04**

Mr. Davis provided an overview of the property. He noted DWR had a meeting planned with Mr. Brann in the next month and they hoped to come to an agreement. Mr. Brann was not present.

**7. Islands, Inc.; RON 2011-05**

Mr. Davis provided an overview of the property. Mr. Timothy Finely, of Hansen and Pritchett, represented the owner. He stated that the owner would have accepted DWR's entry onto the property for three days over a two-week period but could not accept DWR's request to access the property for two six-month periods. He stated that the project did not meet the requirements for necessity and that the access requested by DWR imposed a hardship on agriculture because they are requesting access during prime growing season.

*Mr. Saracino announced a break for lunch and noted that Item 34 would be heard immediately after lunch. Meeting was reconvened at 1:02 p.m.*

**34. Action Item: Consideration of Resolution No. 2011-03 regarding the renaming of the Thermalito Pumping-Generating Plant in Honor of Ronald B. Robie (1:00pm)**

Mr. Saracino provided an overview of the proposed action. Ms. Sims summarized the staff report regarding the proposed renaming. Hon. Arthur G. Scotland, Presiding Justice, California Court of Appeal, Third Appellate District; Mark Cowin, DWR Director; and Curtis Creel, President of the State Water Contractors, spoke in favor of renaming the Hyatt Thermalito Pumping plant in honor of Ronald B. Robie. Mr. Kelley moved to approve the renaming. Mr. Ball seconded the motion. The motion was approved unanimously. Mr. Robie gave a thank you speech. A commemorative rendering of the facility plaque and copy of the signed resolution were presented to Mr. Robie.

**35. Action Item: Update on Agricultural Water Measurement Regulations and**

**Consideration of any proposed changes** (This item was heard out of order) Manucher Alemi, Chief of DWR's Water Use and Efficiency (WUE) Branch gave an overview of the status of the Agricultural Water Measurement Regulations. The emergency regulations will be in effect through January. During the 45-day public comment period for the permanent regulations many written comments were received. Most of the general comments were rejected (summary of comments and responses included in materials) but two comments were incorporated. Also, some non-content edits were made for clarification.

- Change 1: Deleted paragraph 597.1(i) regarding CVPIA contractors.
- Change 2: Changed the self-certification requirement to demonstrate lack of legal access (§597.3 b 2 A) to certification by the water supplier's legal counsel.

These changes are "substantial" and would trigger an additional 15-day public comment period. DWR plans on submitting its "final statement of reasons" to OAL on November 21 and the regulation would go into effect on December 21 if approved.

A motion was made and seconded to approve the staff changes to the regulation and begin the 15-day public comment period.

Tracy Quinn, from the Natural Resources Defense Council (NRDC), stated that her organization is disappointed with the outcome of the draft regulations and believes the draft regulation is weaker than the federal laws and does not live up to SBX7-7. NRDC is pleased that the language regarding the CVP exemption has been removed from the draft regulation (section 597.1i). However, NRDC says current language in the draft regulation regarding legal access to property is overly broad and exemptions for fluctuating flows are too large. NRDC has proposed language to DWR.

Robert Sawyer, an attorney with Best, Best, and Krieger, representing Friant Water Authority noted that he had submitted a comment letter to the Commission that morning. He stated that CVP suppliers are not exempt from agricultural water efficiency and reporting requirements because they must comply with federal laws and specified best management practices. These are reviewed and updated every three years by the Bureau of Reclamation. The legislature was aware of this fact when it considered the 2009 legislation SBX7-7, and specifically recognized the option (§10828) for federal contractors to submit a Bureau of Reclamation plan to the state and asked that section 597.1(i) be reinserted in the draft regulation. He stated the regulation should accept this option for compliance.

Spencer Kenner, CWC Staff Counsel, stated that he does not believe it is the charge of DWR to interpret this section of the law (related to CVP contractors) and disagreed with Mr. Sawyer that 597.1(i) should be included.

Mr. Cogdill supported inclusion of 597.1(i). Ms. Delfino opposed inclusion. Mr. Byrne agreed with Ms. Delfino and would like to clarify the Commission's authority on this matter but that the provision is beyond the Commission's legal bounds. Mr. Del Bosque asked what the negative impacts to the CVP contractors would be. Mr. Sawyer stated there would be financial impacts.

Sheri Looper, U.S. Bureau of Reclamation, clarified that not all CVP contractors have to meet the 2008 Criteria and those who do not meet the criteria would not be included in the exemption. She raised concerns about the fiscal impacts of complying with the state regulations, citing additional administrative and device certification costs that would result in no additional water conservation benefit.

Mike Wade, of the California Farm Water Coalition, on behalf of the San Luis Delta Mendota Water Authority, agreed with Mr. Sawyer's comments. He stated that the requirement for lack of legal access certification is redundant and unnecessary.

Mr. Byrne asked about the certification cost per existing water measurement device. Ms. Looper stated that it could be, as an example, approximately \$1,000 per device for propeller devices. The current federal requirements don't require certification, but do have verification processes on certain schedules and field testing. Ms. Looper said that the current CVP verification activities would not conform to the certification requirements in the proposed state regulations, as written.

Mr. Kelley supported the current draft language regarding legal counsel providing certification on the legal access issue and made a motion to approve staff recommendation in the interest of moving the regulation review process forward, and based on the expectation of more comments in the second comment period. Mr. Byrne is very sympathetic to the cost issue but asked if there are other considerations regarding the water measurement and efficiency standards for federal contractors. Ms. Delfino noted that a lot more information was needed on the cost issue (for certification of existing devices being used by federal contractors ) and asked about the status of alternative language that some of the stakeholders had previously offered to provide.

The motion stood to approve the regulation with changes proposed by staff. A vote was taken and passed 6-2.

Ayes: Ball, Byrne, Curtin, Delfino, Kelley, Saracino

Nos: Cogdill, Del Bosque

**8. Steven S. and Susan M. Oates; John W. and Rosalia Fernandez-Merwin; Alison L. Merwin-Eyster; RON 2011-06**

Mr. Davis provided an overview of the property. Mr. Tom Keeling reiterated his general comments that owners have not had time to evaluate the offers.

**9. ~~Tsakopoulos Family Trust; RON 2011-07~~**

Postponed

**10. Delta Ranch; RON 2011-08**

Mr. Davis provided an overview of the property. Mr. Daniel Kelley provided comments on behalf of the owner. He stated that DWR could get the information they need without condemning property. He stated that the proposed drill sites interfered with a water line and raised concerns related to the application of pesticides on the property. He mentioned issues with DWR when they accessed the property for environmental studies. He also stated that in a meeting DWR refused to provide maps showing specific drill sites.

DWR was given the opportunity to respond and disagreed with Mr. Kelley stating that they attempted to address Mr. Kelley's concerns.

Mr. Cogdill raised a questions about a possible drill site to the south west which Mr. Davis agreed to consider. Mr. Cogdill also asked Mr. Davis to consider drilling on levees.

Mr. Daniel Kelley stated he was willing to work with DWR provided that DWR addressed his concerns and considered their proposed alternatives. Mr. Ball questioned the legitimacy of the owner's pesticide concerns.

Melinda Terry, North Delta Water Agency, suggested a nearby property owned by the state be considered as an alternative drill site.

**11. Melvin Edward Seebeck, Jr., Trustee; Lois Arlene Seebeck, Trustee; Seebeck Family Trust; RON 2011-09**

Mr. Davis gave an overview of the property. The owner was not present. Mr. Ball noted that the property was located next to a road and asked if the site could be drilled using the easement for the road, thereby eliminating the need to seek access from the owner. Mr. Davis suggested the road was too steep. Mr. Ball asked DWR to provide more information regarding site selection for all properties and to provide maps showing the relative locations of the properties.

Ms. Terry noted that levees are not necessarily public lands.

**12. Melvin E. Seebeck, Jr. and Lois A. Seebeck; William G. Seebeck; The Seebeck Family Trust; Cynthia K. Seebeck, et al; RON 2011-13**

Mr. Davis gave an overview of the property. The owner was not present. Ms. Delfino asked a question regarding timing. She noted that the offer letter was send on August 2, six weeks prior to the meeting, and suggested that may not allow enough time.

**13. The Fahn Family, et al; Michael Fahn; RON 2011-10**

Caroline Dabney, DWR Senior Land Agent, gave an overview of the property. She noted that DWR is currently negotiating with the owners. Mr. Fahn spoke, expressing a concern for what would happen if DWR finds any toxic substances and who would pay for cleanup. He indicated he would be more willing to allow drilling if he could be held harmless for any toxic substances found or exposed by the drilling operation.

**14. Steve & Ann Mello Family Trust; RON 2011-11**

Ms. Dabney presented an overview of the property. Mr. Mello had been present at the meeting in the morning, but was not able to stay until his item was heard in the afternoon. It was noted that he submitted written comments to the Commission in the morning, which were distributed to the members.

Ms. Delfino raised a concern regarding timing and asked for more information on DWR's attempted contacts with landowners in order to make sure the process was not being rushed.

**15. River Maid Land Company; Attn: Chiles R. Wilson, Agent of Service, RON 2011-12**

**16. River Maid Land Co.; RON 2011-14**

These items were heard together. Ms. Dabney provided an overview of the properties. The owner was not present.

**17. ~~Mark G. Scribner, Jr. Successor Trustee; Grace M. Scribner Living Trust; RON 2011-15~~**

This item was postponed.

**18. Borges Ranch, LLC; Joseph M. Borges; Gina Borges-Valdez; Mark George Scribner, Jr. and Lorraine G. Scribner; Henrietta J. Brown; RON 2011-24**

Ms. Dabney provided an overview of the property. The owner was not present.

*The following items were heard out of order to accommodate landowners who were present at the meeting.*

**24. Peter & Karen Stone; RON 2011-21**

Mr. Davis provided an overview of the property. Originally, seven drill sites were proposed on this property. Through negotiations with the landowner that number was lowered to four drill sites.

Mr. Stone expressed concerns including a cloud on his title, the potential discovery of hazardous materials from the 150 year farming history of the property. He also raised concerns regarding flooding and requested water quality testing, both before and after drilling, to ensure that water quality was not harmed. He also requested the access road be moved out of the residential area of his property.

**21. George and Elizabeth Smith Trust; RON 2011-18**

Mr. Davis provided an overview of the property. Mr. Duncan Smith represented the property. He informed the Commission that the George and Elizabeth Smith are deceased. He stated that he had tried to install a cement pond on the property and was told that the soil was unsuitable. He pointed out a school and an abandoned sewage treatment plant very close to his property and accessible by public roads. He suggested these as alternative drill sites.

**25. Zehnder Family Trust; RON 2011-22**

Mr. Davis provided an overview of the property. Ms. Zehnder noted her property is next to Peter Stone's property. She stated she has not responded to DWR's request because the request is open-ended and undefined. She raised concerns regarding what DWR plans to do on the property and impacts to the property value.

**30. The Michael G. Leary Trust; Michael G. Leary, Trustee; Dennis Leary, Trustee; RON 2011-28**

Mr. Davis provided an overview of the property. Dennis Leary, 89% owner represented the property. He raised concerns regarding planned drilling in an area currently being used to grow alfalfa. He also noted that trilling may cause leakage and boils, and stated he does not want a tunnel under his property.

*Property owners for the remaining RONs were not present at the meeting.*

~~**19. Lucille J. Christensen Family Trust; Lorraine Croup 1992 Trust; RON 2011-16**~~

~~This item was postponed.~~

**20. The Backer Family Trust; John A. Backer, Trustee; Alice A. Backer, Trustee; RON 2011-17**

Mr. Davis provided an overview of the property. There has been no response from property owner.

**22. Robert Hilarides and Sharon Hilarides; RON 2011-19**

Mr. Davis provided an overview. There has been no response from property owner.

**23. Amistad Ranches, Inc.; Attn: Russell E. Van Loben Sels, Agent of Service; RON 2011-20**

Mr. Davis provided an overview of the property. The owner had requested four drill holes be moved and DWR agreed to that request.

**26. Marc & Kelly Ariza; RON 2011-23**

Mr. Davis provided an overview of the property. There has been no response from property owner. Mr. Curtin noticed the property is adjacent to Mr. Stones and suggested the drill site be moved to Mr. Stone's property, reducing the total number of properties that must be condemned.

**27. Donna L. Reed; RON 2011-25**

Mr. Davis provided an overview of the property. The property owner has requested an independent appraisal.

**28. Mahinder Singh Dhaliwal and Tawnya M. Dhaliwal; RON 2011-26**

Mr. Davis provided an overview of the property. There has been no response from property owner.

**29. J.H. Jonson & Sons, Inc.; 2011-27**

Mr. Davis provided an overview of the property. Negotiations with landowners are ongoing.

**31. The Douglas and Patricia Allen Trust; RON 2011-29**

Mr. Davis provided an overview of the property. There has been no response from property owner.

**32. W R Cave Ranch, LLC; Attn: Margaret Cave Baum; RON 2011-30**

Mr. Davis provided an overview of the property. There has been no response from property owner. Ms. Delfino noted the site is just off Highway 160 and questioned why not perform the drilling within the right of way for the road.

**33. Trustees of the Arch Revocable Living Trust; RON 2011-31**

Mr. Davis provided an overview of the property. Negotiations with owner are ongoing.

Comments from the Commission:

Mr. Del Bosque noted that he has been on the other end of these types of proceedings as a farmer. He advised the Commission and DWR that it is important to stay out of orchards and vineyards. He noted timing is important with row crops; you don't want drill rigs at harvest or planting times. DWR should coordinate with farmers and landowners on timing. He noted that DWR staff should not need special training regarding pesticides but should get information from farmers on pesticide application, and specific applications and re-entry periods.

Additional Public Comments:

Mr. Keeling spoke on behalf of the landowners in agenda items 23, 27, 29, and 32. Specific to items 27 and 32, property owners requested an appraisal cost reimbursement form from DWR was just mailed, not leaving time to get an independent appraisal before condemnation hearings began. He also noted that the Commission should consider farmers who leasing the land, not just the property owners. He was pleased to hear the DWR was willing to quit-claim the easement back to the property owner after drilling was completed.

Ms. Terry pointed out that all 28 properties under consideration were in North Delta Water Agency's service area. She requested a longer time frame for the process and asked the Commission not act on any RONs at their October meeting.

**36. Update on DWR activities regarding Quantification of Public Benefits of Storage Projects**

In consideration of time, this item was postponed and will be heard at a subsequent meeting.

**37. Briefing on State Water Project Report schedule and outline**

In consideration of time, this item was postponed and will be heard at a subsequent meeting.

**38. Consideration of items for next California Water Commission meeting**

Ms. Sims noted that each of the Resolutions of Necessity brought before the Commission today would be presented to the Commission again for possible action at the October meeting.

**39. Adjourn**

Seeing no additional public comments, Chair Anthony Saracino adjourned the meeting at 4:50 p.m.

Further information regarding this meeting will be available at [www.cwc.ca.gov](http://www.cwc.ca.gov). The webcast of this meeting will be available on demand at the following URL:

<http://cawater.rmxpres.com/webcast/data/dwr09212011/main.htm>