



Meeting Minutes

Meeting of the California Water Commission

Wednesday, October 19, 2011

9:00 a.m. PST

State of California, Resources Building
1416 Ninth Street, First Floor Auditorium
Sacramento, CA 95814

1. Welcome and Introductions

Chair Anthony Saracino called to order the meeting of the California Water Commission at 8:43 a.m.

2. Roll Call

Interim Executive Officer Sue Sims called roll. The following members were present: Andrew Ball, Dave Cogdill, Daniel Curtin, Joe Del Bosque, Kim Delfino, Luther Hintz, and Paul Kelley, and Anthony Saracino. Joe Byrne arrived shortly thereafter.

3. Approval of minutes

A motion was made and seconded to approve the draft minutes from the September 21, 2011 meeting. A vote was taken and the motion passed unanimously.

4. Executive Officer's Update

Interim Executive Officer Sue Sims noted that agenda items 1 – 10 would be discussed in the morning session and the Commission would begin with item 11 at 1:00 p.m. Item 8 will be taken out of order; all other issues would be addressed later in the meeting agenda. The Commission's second Water Storage Workshop is October 25 and topics will include groundwater storage, surface storage, and the public benefits of storage projects.

8. Action Item: Consideration of Agricultural Water Measurement Regulations (taken out of order)

Dr. Manucher Alemi, Chief of DWR's Water Use and Efficiency Branch provided an update on the status of the Agricultural Regulations. The 15-day public comment period closed. Based on comments, staff proposed adding five new definitions from the statute for clarification purposes. These changes were non-substantial and do not require an additional 15-day comment period. Alternatively, the definitions will be incorporated in the Guidebook. The Commission had a concern that the definitions may constitute as a substantial change according to OAL and would have to wait through another 15 day comment period, which may continue to prolong approval.

Dr. Alemi clarified the impacts of the proposed regulation to federal water contractors. To comply, suppliers have two options. The first option is to test 10% of devices. The second option is to have an engineer certify the existing devices are in compliance. There is no estimation on the cost of certification for this option. Documentation showing that a water agency is in compliance with federal standards will be sufficient for showing compliance with state standards. The estimated cost for the testing option would approximately \$32-34 million, however this would only be necessary if suppliers

do not have any documentation of compliance. Suppliers would still be eligible for grants if they submit a plan to comply.

Public Comments

Chris Hurd, member of San Luis Water District Board of Directors and farmer is served by the Central Valley Project (CVP) and a member of a board that implements accurate measurements and conservations. He spoke about the increases in water efficiency his district has implemented over the year including water measurement and water rates based on volume. He cited concerns about the expense of taking existing measurement devices out of the ground to test accuracy. He supported including §597.1 Applicability, paragraph (i) in the regulations.

Mike Wade, Executive Director of the California Farm Water Coalition, stated that it is costly and redundant to go through an inspection if a user is already in compliance with the federal standard and paragraph (i) merely reaffirms that the federal standard is in compliance.

Additionally, Mr. Wade raised concerns about legal access to private ditches. There is an extensive amount of work in obtaining the land ownership title and information on any changes that have taken place. His concerns include initial and ongoing legal and administrative expenses. District or agency counsel is not usually involved in these issues. He suggested the original language regarding legal access would be sufficient. Mr. Wade also raised concerns regarding the timeframe and asked if an extension, perhaps to 2015, would be possible. Staff responded the date is in the statute and cannot be changed.

Doug Obegi, stated that the Natural Resources Defense Council is not support of paragraph (i) being reinserted. He stated that doing so, would allow water users to skip the minimal requirements. He asserted that some CVP contractors are not measuring and are therefore not meeting the basic requirements for water efficiency.

Sheri Looper, of the U.S. Bureau of Reclamation explained that there are two sets of federal water contractors. Some contractors are not required to submit plans, however, paragraph (i) specifically refers to those that submit plans. Those who do not submit plans would be subject to the requirements of SBX7-7. She also explained the Bureau process for updating the 2008 criteria and noted that the requirements for +/- 6% accuracy had not changed for over 20 years.

Mr. Kelley made a motion to include paragraph (i) in the draft regulation. Mr. Curtin seconded the motion. The motion passed 5-4.

Ayes: Cogdill, Curtin, Del Bosque, Hintz, Kelley

Noes: Ball, Byrne, Delfino, Saracino.

A motion was made and seconded to delete the definitions added by staff including § 597.2 Definitions, subsections 2, 3, 4, 12, and 17. The Commission voted and the motion passed unanimously.

A motion was made and seconded to approve the regulations including paragraph (i), and excluding the definitions, and to send the draft out for a 15-day public comment period. The motion passed 6-3.

Ayes: Ball, Cogdill, Curtin, Del Bosque, Hintz, Kelley

Noes: Byrne, Delfino, Saracino

10. Update on Commercial, Industrial and Institutional Task Force Report (taken out of order)

Mr. Alemi gave an overview of the Commercial, Industrial, and Institutional (CII) Task Force. DWR worked with the California Urban Water Conservation Council (CUWCC) to convene the task force to look at CII water use and make recommendations. Toby Roy, chair of the Task Force, reported the task force is currently working on issues including metrics (how much water a particular product requires), improved measurement of water use, and recycling potable and non-potable water. The CII Task Force is also facing challenges including a lack of quality data. The report is about half finished.

5. Update on State Water Project Annual Report

Ms. Sims stated the annual review of the State Water Project report has been drafted and is currently under review by DWR staff. A final draft will be brought before the Commission for approval at the November meeting, at which point it will be sent to the State Legislature as required by law.

6. Briefing on the draft Central Valley Flood Protection Plan (informational item)

Mr. Merritt Rice provided a briefing on the Central Valley Flood Protection Plan. The plan takes a system wide approach to reduce flood risk in the Central Valley. The goals of the plan are not only to improve flood risk management but also to improve operations and maintenance, promote ecosystem functions, improve institutional support, and promote multi-benefit projects. Highlights of this plan include 200-year protection for urban communities and 100-year protection for other communities. Also included are proactive flood management and lower peak flood stages throughout the system. Investment costs for this plan are expected to \$13-16 billion, while the potential state cost between \$6.4 and \$7.7 billion.

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

Mr. Ajay Goyal updated the Commission of the status of ongoing work on the Quantification of Public benefits. He informed the Commission that the report has expanded descriptions of public benefits in all five benefit categories. Staff has begun screening the methods and making recommendations w. They have also been working with the Department of Fish and Game and the State Water Resources Control Board to establish priorities. The two departments will have their reports ready by the end of 2011. Staff will provide and updated report to the Commission by the November 16 meeting.

9. Update on Quantification of Efficiency of Agricultural Water Use Report to Legislature

Item 9 was postponed to a future meeting.

11. Update on DWR Activities related to Proposed Resolutions of Necessity for Properties in Sacramento, Yolo, and Solano Counties

Allan Davis, Chief of DWR's Delta Engineering Branch Real Estate Office, began his presentation with an apology to land owners who had recently received DWR legal documents from a process server late at night. While the documents were not directly related to any of the Resolutions of Necessity at today's meeting, he assured the public that the serving of all documents related to the Bay Delta Conservation Plan had been halted and would not be resumed until issues were resolved.

Karin Shine, DWR Staff Counsel provided the Commission with more background related to the four findings the Commission must make to adopt a Resolution of Necessity. She also explained the process that would take place after a Resolution of Necessity was signed.

Robin Brewer, DWR Senior Staff Counsel, explained that in signing the Resolutions of Necessity, the Commission would have to file its own Notice of Determination and would need to rely on DWR's Environmental Documents for geotechnical drilling.

Mr. Davis then gave an overview of the additional information that had been requested at the previous meeting. The Commission was provided with a copy of the Temporary Entry Permit, the proposed drilling schedule which takes into account factors including weather and the pear harvest, DWR's Environmental Clearance Protocols, the San Joaquin Superior Court Ruling leading to the need for eminent domain, photos of sites along Highway 160 showing DWR's inability to drill in the right of way for the road, and a letter sent to all land owners describing how any hazardous waste would be handled and DWR's willingness to quit-claim the permanent easements back to landowners after drilling was finished.

Ms. Delfino questioned the DWR's interpretation of the Superior Court ruling, saying there is nothing in the ruling that requires a permanent easement and asked why DWR could not ask for a temporary easement.

Mr. Tim Philips from the Attorney General's Office cited the case *Loretto vs. Teleprompter* in which a cable company installed a cable box on a property. The court ruled that permanently leaving the cable box on the property constituted "permanent taking." He stated that since DWR will be permanently leaving bentonite on the property to fill the drill hole, this also constitutes a permanent taking.

Ms. Delfino also raised the issue of clouding the property title. Mr. Philips insisted the leaving of a permanent structure exceeds the scope of a temporary easement and is in fact necessary.

Mr. Cogdill added that the court ruling does require a permanent easement and DWR is offering to quit-claim the property back in order to address the property owner concerns.

Mr. Ball agreed with Ms. Delfino's interpretation and added that a test pit does not require the filling of a hole with a permanent material so there should be no need for eminent domain on a property where only a test pit is planned.

Ms. Delfino questioned DWR's funding for the project. Mr. Davis assured her that DWR currently has 100% of needed funds to complete the geotechnical activities in question.

Public Comments

Mr. Daniel Kelley, attorney for Delta Ranch, noted that the specific agenda item related to Delta Ranch had been removed from this month's agenda. He stated that he is working with DWR on the Temporary Entry Permit and hopes to have resolution soon. He referenced the binder which had been provided to the Commission with the funding agreements for the project and stated that all of the agreements will expire in December, and the First Amendment Memorandum of Agreement (MOA) is now the operative funding agreement of the Bay Delta Conservation Plan (BDCP). Mr. Kelley cited a conversation at a Legislative Oversight Hearing that morning between Senator Lois Wolk and Dr. Jerry Meral in which they discussed the timing of the BDCP EIR/EIS. In the conversation, Dr. Meral said that the geotechnical drillings in question are not needed to complete the EIR/EIS. An administrative draft of the EIR will be circulated in February, and geotechnical Drillings will not begin until May. He also stated that while the geotechnical drillings may be necessary for preliminary engineering work, preliminary engineering is excluded from funding under the first amendment MOA. He asked the Commission to consider the proceedings at the morning hearing as a part of its record when making decision on the Resolutions of Necessity.

Mr. Davis responded that funds from the original funding agreements would not go away even though they expire and the money is currently available for geotechnical activities. He also stated geotechnical activities are necessary for the overall program.

Ms. Delfino noted that this timing issue is important because the draft Resolutions of Necessity state that the geotechnical drilling is necessary for to support the EIR/EIS for the BDCP, not for preliminary engineering design work and that the draft Resolution of Necessity would need to be revised to reflect the true purpose of the drilling.

Melinda Terry, with the North Delta Water Agency and Central Valley Flood Control Agency said she was also at hearing this morning. She pointed out that at the last Commission meeting, Mr. Gordon Enos testified that the geotechnical drilling is required to support preparation of the EIR/EIS but this morning Dr. Meral testified that DWR has enough information to complete the EIR/EIS. The letter inviting landowners to this meeting also asserted the information was necessary for the Draft EIR/EIS. She also raised concerns regarding funding. She stated the first amendment MOA says DWR may not commence work on preliminary engineering without written authorization. She suggested DWR wait for written authorization before proceeding and asked DWR to explain why certain parcels were removed from the agenda.

Mr. Davis confirmed that items 13, 14, 17, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35 were removed from the agenda. He stated that based on the time available on the agenda it would be impossible to get through 24 RONs so the total number was reduced to 9 properties.

12. Islands, Inc., RON 2011-05

Mr. Davis cited provided an overview of the property owned by Islands, Inc. He noted DWR has had a total of 31 contacts with the property owner via letter, telephone, email, and in person. Property owner concerns include a domestic well about 25 feet from the drill site. DWR does not believe drilling will impact the well. The Owner has requested more information regarding the drilling operation and that information

was provided. The owner is also concerned about interference with farming activities. DWR is willing to move drill site, has offered to work around harvest schedule, and is willing to pay for any damages caused by its actions.

Mr. Timothy Finley, an attorney representing the owner, referenced a written letter he had submitted to the Commission earlier that week. He noted that since the Commission's last meeting, Islands, Inc. has continued to negotiate in good faith with DWR. DWR recently committed in writing to a temporary easement. His outstanding issues included that DWR has not provided us with a specific description of easement boundaries, only provided a basic map. The map was not specific enough for the owner to seek independent appraisal. Additionally, DWR's last written offer from DWR does not reflect time frame modifications noted by DWR in their fact sheet. He pointed out that DWR seems to be requesting an easement over an existing Reclamation District (RD) 501 easement for levee maintenance and details must be worked out with the RD.

Mr. Cogdill stated a legal description of the property is required in order to adopt a Resolution of Necessity. He also noted there are many unanswered questions regarding funding and the BDCP hearing earlier in the day, and suggested the Commission would benefit from an executive session before moving forward with this process.

Mr. Kelley noted that as a water agency director for 16 years he had voted on many Resolutions of Necessity and not one had actually proceeded to court; passing a Resolution of Necessity may actually advance negotiations.

Ms. Delfino stated that the Commission needed more information with which to make its decision, especially a legal description of the property, and made a motion to table this resolution.

Mr. Ball encouraged property owners to proceed with negotiations with DWR to allow appropriate access to the property in the hopes of reducing the total number of Resolutions of Necessity to only a handful.

Ms. Shine pointed out that at this point the Temporary Entry Permit process had been ongoing for several years.

Cathy Crothers, Chief Counsel for DWR, provided clarification on the first amendment to the MOA referenced earlier in the meeting. It is an amendment to the MOA signed a couple years ago by the Staet Water Contractors, Reclamation and DWR, regarding collaboration on the BDCP process, including how to set up funding agreements. The first set of funding agreements were entered into for BDCP planning process. Funding for the TEP geotechnical work has been obtained under the first set of funding agreements which provided \$140 million for planning phase of BDCP. Supplemental funding agreements are in the process of being signed. But as to this geotechnical drilling work, the funding has already been secured. The supplemental funding mentioned the MOA will be used for preliminary engineering work, however, the work under consideration here has been funded. She clarified that the MOA requires authorization for Reclamation funds to be used for preliminary engineering work, but later specified that public water agency funds will be used for preliminary engineering work.

Mr. Ball stated that the goal of the borings is in fact preliminary engineering work and stated that the number of borings indicate a level of engineering beyond what is needed for the Draft EIR/EIS.

Mark Cowin, DWR Director, provided clarification on the necessity of the bore holes. He stated that although Dr. Meral testified that drilling is not needed to complete the Draft EIR/EIS, the drilling will be needed to obtain U.S. Army Corps of Engineers permits as part of the BDCP planning process. In order to proceed with those applications, 30% of the design work must be completed. The additional borings are needed to get to complete 30% design.

Mr. Saracino asked if the funding was in place to get to that level of design. Mr. Cowin said that it is his understanding that funding is available and reserved for the planning process, including the permitting process from the \$140 million previously mentioned.

Mr. Saracino reminded the Commission that there was a motion to defer this one agenda item until November.

Mr. Cogdill stated that he is not comfortable with the amount of data available and was concerned with the lack of legal description and the funding issues. He stressed the importance of proceeding in a proper manner and suggested deferring all resolutions before that commission that day. Ms. Delfino withdrew her previous motion. Mr. Cogdill made a motion to postpone Agenda Items 12, 15, 16, 18, 19, 20, 21, 24, and 25 to the next meeting. Mr. Curtin seconded the motion. The motion passed 8-1.

Ayes: Ball, Byrne, Cogdill, Curtin, Del Bosque, Delfino, Hintz, Saracino

Noes: Kelley

Mr. Curtin suggested the Commission hold a two-day meeting in November and/or add a December meeting to the calendar.

Mr. Saracino proposed to continue hearing testimony on the remaining agenda items in order to inform the Commission's future decision making process.

15. RON 2011-09, Seebeck, et al

16. RON 2011-13, Seebeck, et al

Mr. Davis provided an overview of the first property, as both were had similar ownership. He stated DWR's real estate office has made 18 attempts to contact the property owner but has had no meaningful contact or negotiations with the owner.

Mr. Tom Keeling, attorney for more than 100 landowners, spoke on behalf of owners. He cited issues of authority for the project and funding as the main concerns. He also noted the property is currently occupied by lessees, not the owners. He claimed that the property owners have not received a legal description of the permanent easement and had not had time to seek an independent appraisal. The property owners believe this action is premature due to the ongoing litigation TEP issues.

Additionally, Mr. Keeling clarified the process for the motion of pre-judgment possession and that there is no way DWR could take possession of the property before the Draft EIR is released.

Mr. Cogdill asked if the client would allow DWR on the property to stake to proposed easement. Mr. Keeling said he would advise his client to allow access for that purpose.

18. Mello, RON 2011-11

Mr. Davis provided an overview of the property. DWR has made 18 contacts with the property owner. The property owner has raised several concerns related to CEQA issues, but not specific to his property. The owner has requested to move the drill site and DWR has agreed. The owner also has concerns regarding a cloud on the title. DWR has offered a Temporary Entry Permit option. The owner expressed concerns regarding potential seepage. DWR has asked for proposed provisions to the contract to address these concerns. The owner has indicated he will not be willing to negotiate until all of his concerns have been adequately addressed.

The owner, Mr. Seven Mello spoke regarding this property. He stated that he is a farmer, president of RD 563 and had served for eight years as a member of the Delta Protection Commission. He currently a director of the North Delta Water Agency and a member of the board of directors of the Central Valley Flood Control Association.

Mr. Mello expressed concerns regarding any isolated facility that would allow water to be sent to southern California without first sending it through the Delta. He believes condemnation of property is not appropriate until NEPA and CEQA have been complete. Mr. Mello also raised concerns regarding drilling too close to the levee and suggested DWR should be working with local reclamation districts in the planning of these drill holes. Mr. Mello questions how the easement will affect crops, water rights, water wells, and gas wells. He raised concerns about seepage and would like DWR to be responsible for seepage in perpetuity. He asked CWC to refrain from approving any resolutions until all property owner concerns are addressed.

19. River Maid Land Co., RON 2011-12

20. River Maid Land Co., RON 2011-14

Mr. Davis provided an overview of the properties. DWR has made 26 contacts or attempted contacts with the landowner. DWR has sent the owner paperwork for an independent appraisal and has agreed to work with the owner's schedule.

Mr. Daniel Wilson spoke regarding these properties. He raised concerns about long term seepage at the drill sites and suggested the wells should be cased with cement, not back filled with bentonite. He also stated that the proposed drill site was near a levee and he was unaware of the local Reclamation District being contacted at any point regarding the drilling. He noted that one drill site was within 10 feet of a natural gas line.

DWR Senior Geologist Mark Pagenkopp responded to his concerns regarding the casing of the well and refuted the claim that drill hole may cause levee failure.

Mr. Wilson disagreed, noting that he has an engineering degree and has seen many holes create seepage in the Delta.

19. Backer, RON 2011-17

Mr. Davis provided an overview of the property. DWR has made 15 attempted contacts with the property owner but has had no contact until earlier that morning when the owner cited concerns regarding seepage. Owner was not present at this time.

24. Amistad Ranches, RON 2011-20

Mr. Davis provided an overview of the property. DWR has made 15 contacts with the property owner. The property owners had requested that four of the five proposed drill sites be moved, to which DWR agreed. DWR is waiting for the owner to provide revised language for the temporary easement.

25. Peter and Karen Stone, RON 2011-21

Mr. Davis provided an overview of the property. DWR has made 21 contacts with the property owner. DWR is accessing the adjacent property through this property. The owner proposed drill sites should be moved to alternate locations on the property and DWR accommodated that request. The owner raised concerns regarding what happens if DWR finds hazardous materials on the property and concerns regarding flooding. DWR will do everything it can to avoid causing flooding, but must report any hazardous materials.

Mr. Peter Stone spoke regarding this property. Mr. Stone raised concerns regarding drill holes being too close to the levee. He had hoped to meet with DWR and four nearby property owners with similar concerns, but was told by DWR that could not be accommodated. He noted that the proposed Resolution of Necessity is the same today as it was at the last meeting and said he would like to see changes to the documents based on his recent negotiations with DWR. While he came to an agreement with DWR about the new drill sites, he has not seen the new access road or drill locations. He noted he came to resolution with DWR regarding the timing of the drilling and agricultural impacts. He did not recall seeing a legal description of the property. His biggest concern is hazardous materials and he requested environmental tests be eliminated. He noted certain issues were not included in DWR's protocols including restoring topsoil, damages to the property, and water quality testing.

36. Consideration of items for next California Water Commission meeting

The Commission agreed to hold a two day meeting on November 16 and 17. Ms. Sims recommended hearing only critical items at the November meeting, including Resolutions of Necessity and the Agricultural Water Measurement Regulations, and postponing any discretionary items.

37. Public Comments

Melinda Terry, Executive Director of the Central Valley Flood Control Association, noted she had submitted a letter to the Commission the previous evening. She raised concerns about potential flooding due to the drilling operations and suggested DWR needs to coordinate with the local Reclamation Districts. She also thanked Mr. Davis for his apology regarding the process servers and noted DWR's response to the issue was quick.

Dante Nomellini Jr. spoke representing the Central Delta Water Authority. He praised the Commission's decision to not adopt any resolutions and stated that the serious problems will not be fixed before the next month's meeting. He stated that landowners need to know exactly where DWR intends to drill. He stated that DWR should have conducted pre-condemnation surveys to determine the exact locations. He questioned the need to test for pesticides and suggested DWR needs better protocols. He asked DWR to do a better job of explaining the funding agreements and suggested giving the landowner an option for a temporary easement in the Resolution of Necessity.

38. Adjourn

The meeting was adjourned by Mr. Saracino at 4:39 p.m.