



Meeting Minutes

Meeting of the California Water Commission
Wednesday, February 15, 2012
State of California, Resources Building
1416 Ninth Street, First Floor Auditorium
Sacramento, CA 95814

1. Welcome and Introductions

Chairman Anthony Saracino called the meeting to order at 9:03 a.m.

2. Roll Call

Executive Officer Sue Sims called roll. Danny Curtin, Joe Del Bosque, Kim Delfino, Luther Hintz, and Anthony Saracino were present. Andrew Ball and Joe Byrne were absent. (NOTE: Commission member Bryne arrived at approximately 9:15am)

4. Executive Officer's Update

Ms. Sims provided the executive officer's update. DWR is working on the public benefits of water storage report and is currently reviewing and incorporating comments, along with the questions from the Commission. She noted that a memo answering some of the Commission's questions on valuing public benefits was sent out last week and will be posted on the CWC website. The Department of Fish and Game's report will be submitted in late March and an update is planned at the April Commission meeting.

She mentioned that an event in honor of former DWR Director Ron Robie is being planned at Oroville on May 2.

A new set of regulations will be coming to the Commission in the near future regarding encroachment permits for the State Water Project.

Staff Counsel Spencer Kenner discussed voting procedures for the Commission. He clarified that for a Resolution of Necessity (RON) to pass, six votes are necessary. However, for regular action items a simple majority is adequate. For instance, if only a quorum (five members) were present, three votes would be enough to pass a regular action item.

28. Action Item: Adoption of Committees (This item was heard out of order)

Chair Anthony Saracino suggested waiting until the Commission has nine sitting members to assign committee membership. Mr. Hintz agreed that with only seven sitting members, it would be agreeable to work through issues in an open meeting. Ms. Delfino noted that the committee structure was not used much in the previous year. Ms. Sims suggested that instead of Committee meetings, the

Commission could use the workshop format, similar to the Public Benefits Workshop at the previous meeting, and all members would be invited to attend. Mr. Del Bosque agreed with this approach. Mr. Saracino reserved the right to form ad hoc committees as needed.

Mr. Byrne arrived at this time.

3. Approval of minutes

A motion was made and seconded to approve the draft minutes from the January 2012 meeting. A vote was taken and the motion passed unanimously.

5. Update on DWR Activities Related to Proposed Resolutions of Necessity for properties in Contra Costa, Sacramento, and San Joaquin Counties

Allan Davis, Supervising Land Agent for the Department of Water Resources (DWR's) Delta Engineering Branch, reviewed the four findings that the Commission is required to make as part of a Resolution of Necessity. A declaration by Richard Sanchez, Chief of DWR's Division of Engineering supports those four findings. Attached to the Sanchez Declaration was a document outlining DWR's authority related to the State Water Project and its authority to acquire property for the project.

DWR's environmental documentation includes the Notice of Determination (NOD) and Mitigated Negative Declaration. If the RONs are adopted the Commission will submit its own NOD, relying on DWR's Mitigated Negative Declaration.

Mr. Davis clarified that the maps attached to the first written offer do not reflect the current placement of drill sites or access on each property. The most current map is attached to the draft RON. Changes have been made since the time of the first written offer based on DWR's conversations with owners.

Mr. Davis stated that DWR will send a letter to landowners regarding hazardous materials testing that will explain what tests are required, the process, and why they are necessary. This will go out by the end of next week.

DWR staff counsel, Karen Shine, provided an update on RONs that were adopted at previous meetings. The department is finalizing a declaration to support an order of possession. It should be finalized in a week and action begun shortly after.

Mr. Saracino asked DWR to summarize the essence of the letter on hazardous materials testing. Mr. Davis said it will include an explanation of what test will be performed under general circumstances, what tests will be performed if there are signs of contamination, and what tests will be performed under other specific conditions.

Ms. Delfino brought up a letter received from Central Delta Water Agency, suggesting a modification to quit claim language in the Resolutions of Necessity. She agreed that the suggested language, "...if no permanent easement has yet been acquired, the department will abandon its attempt to acquire a permanent easement on the property" was clearer than language previously adopted regarding the quit

claim. Ms. Delfino suggested using this language in Resolutions. Ms. Shine said the department did not object to this change.

6. - 25. Action Items: Consideration of Resolutions of Necessity for properties in Contra Costa, Sacramento, and San Joaquin Counties

At this time, the chair opened the floor to general public comment.

Melinda Terry, representing the Central Valley Flood Control Agency and North Delta Water Agency asked if the Commission had read her letter regarding the procedure of public comments. In it, she requested the opportunity to comment on any specific agenda item not be limited to only the landowner or a representative. Mr. Saracino agreed that comments on a specific parcel from additional members of the public should be heard on two conditions: 1) the speaker's comments are related specifically to that property and, 2) the comments are relevant and not repetitive.

Ms. Delfino agreed with Ms. Terry's comments.

Ms. Terry stated that no one has taken advantage of the time allotted to speak, and she is only asking for the opportunity to speak.

Mr. Curtin said he does not think there has been an issue with people not being allowed to speak. There is general comment time, and generally if someone has an issue they can speak during that time.

Ms. Terry disagreed, saying there was an instance where she wanted to speak regarding a specific property on behalf of a Reclamation District, as the drill site was near levee, and while she did get the opportunity to speak, the Commission attempted to enforce a rule allowing only one speaker per property. She stated that another example of an additional party with specific comments about a parcel would be its lessees.

Mr. Thomas Keeling made comments on behalf of the landowners in agenda items 6, 7, 8, 14, 15, 16, 18, 19, 21, 22, 24, and 25.

He requested to incorporate by reference all of the comments he made during the general comments portion of the January 18, 2012 meeting including: the right to take objections, problems with the identification of the project, DWR's failure to properly identify the actual locations of easements, the fact that a permanent easement is not necessary, these takings are not for the BDCP EIR as stated in some paperwork, the timing is premature, DWR has not addressed hazardous materials indemnification, and the manner in which DWR is attempting to leverage this proceeding to secure temporary easements.

Dante Nomellini, Jr. made comments representing Central Delta Water Agency and all of Mr. Keeling's clients listed previously. He clarified the suggested quit-claim language, saying he wanted it included in the RONS exactly as he proposed in his letter. He also stated that hazardous waste testing is a serious problem and suggested that the Commission should not vote on these RONS until DWR's letter regarding hazardous materials is read and taken into consideration. He pointed the Commission to

suggested language to be incorporated into RONS regarding hazardous waste testing on page 4 of his comment letter.

Mr. Saracino asked DWR to respond.

Mr. Davis agreed to take a more in-depth look at this language and see if some or all of the language could be incorporated in DWR's letter regarding hazardous materials.

Mr. Nomellini formally requested the Commission not adopt any RONS until the letter comes out or until language such as his is adopted.

Ms. Delfino said it would be odd to adopt RONS with this issue still pending. She suggested adding Mr. Nomellini's language directly into the RONS.

Mr. Davis stated DWR is not opposed to the suggested language.

Mr. Byrne wanted to be sure this language would not limit DWR from exploring a problem if one exists. However, if DWR is fine with the language, he is fine with the language.

Ms. Shine stated that the suggested language regarding "on-site indicators" is a very nice catch-all.

Mr. Saracino said that if there is no further comment, he would like to put this to a vote.

Ms. Sims clarified that the motion is to incorporate both Mr. Nomellini's suggested modification regarding quit claim language and the new paragraph 11 into all previous RONS, and any RONS passed at this meeting.

The motion was made by Mr. Curtin and seconded by Ms. Delfino. The motion passed 6-0. (1 absent)

Mr. Saracino stated the Commission would proceed with Resolutions of Necessity for any property owners who were present at the meeting, and then go back and take the remaining RONS in order. Only Mr. Elliot, representing Agenda Item 8, identified himself as present.

Mr. Davis noted adjustments to the agenda. Items 11 and 12 were removed as DWR has settled with these landowners.

8. Elliot Family Revocable Trust date April 13, 1993, RON 2012-07

Mr. Davis provided an overview of DWR's negotiations with the owner. DWR has made 11 contacts by letter, 12 by phone, one by email, and one site visit. The property is concerned that a permanent easement will cloud the title. DWR has offered a temporary easement alternative. The owner also has concerns about number and location of holes. In response, DWR has reduced number of drill holes to three CPT and three drill holes from 10 originally proposed.

Mr. Keeling spoke on the property owner's behalf. His comments were based on the opinion of an engineer concerning near levee drilling. In this case, one of the proposed borings is too close to the levee to be safe. Drilling exploratory holes near levees can cause preferential paths for the uncontrolled flow of water. Risks include impairment of the levee's integrity and levee failure from increased

seepage. This particular property is prone to boils and seepage. Many Reclamation Districts (RD) require a 300 foot setback from the levee. He recommended that setback, should this RON be passed. The perils of drilling near levees increase during the wet season as the pressure on hydraulic head is greatest. If a hole is not completed and grouted in one day, there should be continuous monitoring to address seepage, boils, and potential levee failures. DWR should indemnify and hold harmless the owner if such situations arise. The owners want to verify the depth of the holes, and receive a summary of all geotechnical data and results.

Jeff Carter spoke representing the Elliot family. He stated that there are accuracy errors in the documents being presented to the Commission. Page 2 of the supplemental staff report states the number of drill holes has been reduced to three, and some of the holes have been relocated. In the new maps attached to the RONs some holes have been removed, but none have been relocated. Information given to the Commission by DWR is not accurate. Secondly, he still has some issues with the locations. One hole is sitting next to a domestic well. This was pointed out during the site visit but it was not moved. DWR did change the easement location, but not the drill location. DWR is presenting they are accommodating us, and they are not. Mr. Carter's brother-in-law was out of town for three weeks. He is the only one who was contacted by DWR. Mr. Carter asked DWR who decided within the last month, which three holes are the right ones and what was the science behind the choice. He requested that the RON be delayed at and ultimately not be adopted.

Mr. Saracino asked what Mr. Carter's concerns were regarding the third hole.

Mr. Carter stated that he does not know exact location, because the map is not specific. He also questioned if any of the holes are necessary, given that seven holes were dropped so easily.

Mr. Saracino stated that he understands the concerns regarding the drilling too close to the levee and the domestic well, but does not understand the concerns related to the map not being clear.

Ms. Delfino stated that this is not a new issue and asked if staking the property would satisfy Mr. Carter's concerns. Mr. Carter stated that he had offered for DWR to stake the property last month, but it has not been done yet.

Ms. Delfino asked DWR to respond to Mr. Elliot's concerns regarding the domestic well and the levee.

Mr. Byrne asked Mr. Carter to confirm he had offered for DWR to stake the property.

Mr. Carter stated DWR had made phone calls to his brother-in-law-who is out of town. He said that DWR has not made any other attempt to get a hold of anyone else and that he has not had the opportunity to have that discussion or stake the property.

Mr. Davis responded that in regards to the maps, the third hole was in fact moved in consideration of the domestic well. He clarified the timeline for DWR's work with Mr. Carter. Staff visited the site a few days prior to the January Commission meeting and subsequently dropped the total number of holes from 10 to three. DWR sent a letter to all landowners in November asking to stake their properties. DWR has called Mr. Carter's brother-in-law, informing them about the staking but has not heard back. They are working with the brother-in-law because he is the owner identified in title report; Mr. Carter

does not appear on the title report. He stated DWR is willing to stake the property whenever that can be arranged. If upon seeing the property a drill site appears to be too close to a levee, DWR is happy to move that site.

Mr. Carter clarified that his in-laws own the property under consideration, but he has been asked by the family to represent them and he is able to speak on their behalf.

Ms. Delfino suggested an effort should be made to stake the property and this item should not be voted on today. She and Mr. Byrne encouraged the property owner to make every effort to have the property staked prior to the next Commission meeting.

Ms. Terry requested that when the staking occurs, DWR invite the local reclamation district's engineers.

A motion was made and seconded to table RON 2012-07 until a future meeting. A vote was taken and the motion passed.

Ayes: 6 Noes: 0 Absent: 1

6. Coney Island Farms, Inc.; RON 2012- 10

Mr. Davis presented the property. DWR is proposing two drill holes and two CPT holes. To date, DWR has sent 11 letters, and made 12 phone calls. The property owner opposes the Bay Delta Conservation Plan. No specific concerns or requests have been made to move drill locations.

Mr. Keeling stated that in addition to the general comments he made earlier, DWR faces an access issue on this property. The map shows a temporary easement going across water. It crosses a bridge, which is not owned by the owners of this parcel, but is owned by the Reclamation District. He does not believe DWR has access to use the bridge. Additionally, the land owner requests all copies of all data obtained from their property.

Mr. Davis confirmed access would be through the bridge. DWR is currently discussing access for the bridge with the Reclamation District.

Mr. Byrne stated that he does not have a problem moving forward before final access is granted by the Reclamation District, assuming there is no legal impediment. Mr. Kenner confirmed this was acceptable.

Mr. Curtin asked if there was a way to make the results easy to access.

Mr. Kenner stated that the owner would make a Public Records Act request, or access to records could potentially be a condition of the RONs. Mr. Curtin stated there should be a process to make that data easily accessible.

Ms. Delfino confirmed that assuming if DWR cannot get access, DWR will not go on property.

Mr. Davis said this is correct.

A motion was made and seconded to adopt RON 2012-10. A vote was taken and the motion passed.

Ayes: 6 Noes: 0 Absent: 1

7. Lucille Christensen Family Trust; Lorraine L. Croup 1992 Trust; RON 2012-25

Mr. Davis provided an overview of owner contacts and negotiations. DWR is proposing one CPT hole on the property. DWR has sent 13 letters, and made 12 phone calls to the owner. The owner's concerns include the proposed location of the hole. DWR moved the location at the owner's request. The owner was not present.

A motion was made and seconded to adopt RON 2012-25. A vote was taken and the motion passed.

Ayes: 6 Noes: 0 Absent: 1

9. Delta Wetlands Properties, An Illinois General Partnership; RON 2012-15

Mr. Davis provided an overview of landowner contacts and negotiations. DWR proposes two CPT holes and two drill holes. DWR has sent 13 letters and followed up with six phone calls, and eight emails. The owner expressed concerns that permanent easement will cloud the title. DWR has offered a temporary easement alternative. The owner was not present.

A motion was made and seconded to adopt RON 2012-15. A vote was taken and the motion passed.

Ayes: 6 Noes: 0 Absent: 1

10. Delta Wetlands Properties, An Illinois General Partnership; RON 2012-19

Mr. Davis provided an overview of landowner contacts and negotiations. To date DWR has sent 11 letters, made six calls, and sent eight emails. DWR proposes eight CPT holes and eight drill holes on the property. The owner expressed concerns that a permanent easement will cloud the title. DWR has offered a temporary easement alternative. Negotiations with the landowner are currently ongoing. The owner was not present.

A motion was made and seconded to adopt RON 2012-19. A vote was taken and the motion passed.

Ayes: 6 Noes: 0 Absent: 1

11. Removed from agenda

12. Removed from agenda

25. Wurster Ranches, LP; RON 2012-04

Mr. Davis stated the landowners for item 25 were present and suggested hearing item 25 at this time. Mr. Davis provided an overview of landowner contacts and negotiations. DWR proposes three CPT and four drill holes on the property. DWR has sent 11 letters, made 13 calls, and one site visit. The owners concerns included the proximity of the drill holes to gas lines. DWR has moved those sites in response.

The landowner stated that one of new drill sites is located over a phone line and another one over an old pipeline. He has continuing concerns about the location.

Mr. Saracino ensured Mr. Davis was aware of those concerns and would remove borings as appropriate.

Mr. Davis stated those issues have been addressed.

A motion was made and seconded to adopt RON 2012-04. A vote was taken and the motion passed.

Ayes: 6 Noes: 0 Absent: 1

13. Norman J. and Katherine Marks Trust; RON 2012-03

Mr. Davis provided an overview of landowner contacts and negotiations. DWR proposes two CPT holes and two drill holes on the property. To date, DWR has sent 10 letters, made 10 calls, one email, and one site visit. The owner's concerns include DWR's drilling activities. At a site visit with the owner and tenant, DWR confirmed there will be minimal impact on property. The owner was not present.

A motion was made and seconded to adopt RON 2012-03. A vote was taken and the motion passed.

Ayes: 6 Noes: 0 Absent: 1

14. Greene and Hemley, Inc.; RON 2012-06

Mr. Davis provided an overview of landowner contacts and negotiations. DWR is proposing one test pit on the property. DWR has sent 10 letters, made 16 calls, and one site visit. At this point, the owner has not been engaged in negotiations. The owner's attorney expressed concerns about damage to mature pear trees due to the drill rig; however, DWR is not planning any drill holes on the property.

Ms. Delfino recalled a conversation about moving the test pit and asked if that has been done.

Mr. Davis said it had not. Concerns at the January meeting were related to planned drilling activities. At this point DWR is not planning any drilling activities on this property.

Mr. Keeling said he is happy that DWR is no longer proposing drilling. He noted the owner has been in India since mid-January so the owner could not communicate with DWR. He hoped DWR will work with the caretaker to locate the test pit in the way least detrimental to the orchards.

Ms. Delfino pointed out that it has been clear that DWR's conversations with the owner do not end with the approval of RON and the owner has had significant time to have conversations with DWR prior to this meeting.

A motion was made and seconded to adopt RON 2012-06. A vote was taken and the motion passed.

Ayes: 6 Noes: 0 Absent: 1

15. Robert A. Sr., David and Kelley Dal Porto; RON 2012-13

Mr. Davis provided an overview of landowner contacts and negotiations. DWR is proposing one CPT and one drill hole on the property. To date, DWR has sent 12 letters, made 14 calls, sent nine emails, and made one site visit. The owner is concerned that a permanent easement will cloud the title. DWR has offered the option for a temporary easement. DWR understands that the proposed temporary access road crosses PG&E land. The owner has an easement and will provide a copy to DWR.

A motion was made and seconded to adopt RON 2012-13. A vote was taken and the motion passed.

Ayes: 6 Noes: 0 Absent: 1

16. Carolyn A. Nichols Revocable Living Trust; Eileen V. Nichols Revocable Living Trust and Victoria Island, L.P.; RON 2012-21

Mr. Davis provided an overview of landowner contacts and negotiations. DWR is proposing six CPT and three drill holes on the property. To date, DWR has sent 11 letters, and made eight phone calls. The owner has not identified any specific concerns.

Mr. Keeling spoke on behalf of the owner. He noted that this is a particularly ambitious drilling plan. This island is sensitive and intensely farmed. The owners do not think DWR needs this information. They are concerned about the number of holes on the parcel and lack confidence in the project due to the inaccurate maps, and DWR's moving target approach to locations and numbers of drill holes. Additionally, all of the comments made for Elliot property regarding drilling too close to the levee apply here. Those comments are incorporated by reference.

Mr. Saracino asked if the owners have they consulted with any geotechnical professionals in reaching this opinion.

Mr. Keeling responded that the owner's statement arises from DWR's history in these proceedings.

Ms. Delfino stated that it does not appear the concerns Mr. Keeling conveyed to the Commission have been expressed to DWR. Many other owners have commented that DWR has accommodated their requests.

Mr. Keeling stated that he has not been privy to the owner's direct conversations with DWR. They do not believe condemnation of this property is necessary, and point to DWR's history of change as evidence. This is not an engineering concern, but a concern about the process.

A motion was made and seconded to adopt RON 2012-21. A vote was taken and the motion passed.

Ayes: 6 Noes: 0 Absent: 1

17. Postponed

18. Arnaudo Bros. LP, Arnaudo Bros. Inc.; RON 2012-22

Mr. Davis provided an overview of landowner contacts and negotiations. DWR proposed one drill hole on this property. DWR has sent 11 letters, made six phone calls, and two site visits. The owner is concerned with the proposed project interfering with farming operations, but has expressed no specific concerns related to geotechnical activities.

Mr. Keeling stated there are concerns about the proximity of drilling to the levee. He also reiterated that the Reclamation Districts are concerned about this as well.

Mr. Saracino told Mr. Davis that he assumes his response to previous concerns about drilling too close to levee applies here and that this issue will be addressed on site specific basis in accordance with geotechnical standards.

Mr. Davis agreed that is correct.

Mr. Curtin asked if DWR has had any formal conversations with the Reclamation Districts about this issue and if this is a fundamental disagreement in the water industry.

Mr. Saracino said he knows this is an issue, but is very site specific depending on the type of levee and other factors. His understanding is that DWR is taking these issues into account.

Mr. Curtin asked if Reclamation Districts in general are being involved in this process.

Mr. Davis responded that DWR has sent out information to all impacted Reclamation Districts. Some have engaged, and some have not.

A motion was made and seconded to adopt RON 2012-22. A vote was taken and the motion passed.

Ayes: 6 Noes: 0 Absent: 1

19. Mark Scribner, Jr. Successor Trustee, Grace M. Scribner Living Trust; RON 2012-24

Mr. Davis provided an overview of landowner contacts and negotiations. DWR is planning one CPT hole on the property. To date, DWR has sent 12 letters, made 11 phone calls, and one site visit. The owner is concerned that a permanent easement would cloud their title. DWR has offered a temporary easement alternative. The owner is also concerned that the testing activities will interfere with farming operations. DWR stated they will avoid drilling during farming operations. The owner has requested that the hole be moved and DWR complied.

Mr. Keeling pointed out that there is some distance between Highway 160 and the proposed drill site. No temporary access road is shown. Mr. Davis confirmed that DWR will use Scribner Road - a public road - to access the property.

A motion was made and seconded to adopt RON 2012-24. A vote was taken and the motion passed.

Ayes: 6 Noes: 0 Absent: 1

20 . Postponed

21. The Conrad and Berniece Silva Revocable Trust, and The Conrad Silva Exempt Marital Deduction Trust; RON 2012-20

Mr. Davis provided an overview of landowner contacts and negotiations. DWR is requesting one CPT and one drill hole on the property. DWR has sent 11 letters, made six calls, and sent two emails. The owner has not expressed any specific concerns.

Mr. Keeling asked to clarify how DWR will access this property. They may take the public ferry to the island, but there are no public roads from ferry to parcel.

Mr. Davis stated that Mr. Keeling is correct. DWR will have to secure additional access rights from the local Reclamation District.

Mr. Keeling reiterated his request that this item be postponed due to access issues.

A motion was made and seconded to adopt RON 2012-20. A vote was taken and the motion passed.

Ayes: 6 Noes: 0 Absent: 1

22. Venice Island, Inc.; RON 2012-16

Mr. Davis provided an overview of landowner contacts and negotiation. DWR is requesting two CPT and two drill holes on the property. To date, DWR has sent 12 letters, made seven calls, and sent two emails. The owner has not identified any specific concerns.

Mr. Keeling asked to incorporate his previous comments about proximity to levees as mentioned in Item eight. He also raised an issue related to insufficient access to the property.

Mr. Saracino asked if the owner's concerns are related to access, and not drilling on the property.

Mr. Keeling stated that the owner objects to the Bay Delta Conservation Plan.

Mr. Davis stated that DWR is in negotiations with the adjacent property owners to secure a temporary access easement.

Mr. Keeling reiterated his request that this item be postponed due to access issues.

A motion was made and seconded to adopt RON 2012-16. A vote was taken and the motion passed

Ayes: 6 Noes: 0 Absent: 1

23. Postponed

24. Biagi Living Trust Agreement; RON 2012-14

Mr. Davis provided an overview of landowner contacts and negotiation. DWR is requesting one CPT and one drill hole. To date, DWR has sent 11 letters, made seven calls, and sent one email. The owner has not identified any specific concerns.

Mr. Keeling stated that the owner is concerned about the proximity of drilling to the levee, and incorporated comments about proximity made in agenda item eight.

A motion was made and seconded to adopt RON 2012-16. A vote was taken and the motion passed.

Ayes: 6 Noes: 0 Absent: 1

29. Action Item: Update on Strategic Plan and Consideration of Mission Statement

Commission Policy Analyst Rachel Ballanti presented a proposed Mission Statement for consideration. Members questioned the use of the word "advise" and asked if there was a better way to define the Commission's role. Mr. Curtin suggested going back to the statute. He also questioned the use of a Strengths, Weaknesses, Opportunities, Threats analysis for a public body.

Mr. Saracino appointed Ms. Delfino and Mr. Curtin to an ad hoc committee to further revise the Commission's mission statement and bring it back to the Commission for consideration. No vote was taken.

30. Consideration of items for next California Water Commission meeting

Items for the March agenda include four additional RONS that were postponed from today's meeting; final approval for the Agricultural Water Measurement regulation; a presentation on a State Water Project encroachment regulation; a presentation on NOAA's projects by DWR manager Jeanine Jones; a briefing on the lawsuit against the Army Corps of Engineers' levee vegetation policy; and legislative and budget updates. The March meeting will be a half-day meeting, beginning at 1:00 p.m. A public benefits update will be heard at the April meeting.

The Commission adjourned for lunch between 11:35 a.m. and 1:05 p.m.

26. Action Item: Update on Delta Levees Special Projects Program

Mike Mirmazaheri, DWR Delta Levees Projects Program Manager, provided an update on the Delta Levees Special Projects program. At the January meeting, Mr. Mirmazaheri made a presentation about the program including the authority for the program, a program description and framework, and DWR investment in the Delta. At this meeting, he provided an overview of the program's most current project solicitation package (PSP) for Hazard Mitigation Plan (HCP) Levee Repairs and Improvements. The program is funded through Propositions 1E and 84. The Natural Resources Agency has taken steps to comply with Governor Brown's recent executive order regarding contracting transparency. Expenditures under this program are posted on the Department of General Services' procurement website, as well as the State's bond accountability website. These funds are used for 'no regrets' projects including levee repairs and improvements and habitat enhancement. Projects are selected through a competitive process. He explained the difference between the HMP standard and the Army Corps of Engineers' PL84-99 standard. In the case of a flood emergency, meeting the HMP standard will allow impacted areas to receive funding from FEMA. He expects to present the final list of selected projects at the Commission's June 2012 meeting.

27. Action Item: Update on Office of Administrative Law Decision on Agricultural Water Measurement Regulation and Consideration of DWR Proposal for Revision to Regulation

Manucher Alemi updated the Commission on the recent decision by the Office of Administrative Law (OAL) to disapprove the Agricultural Water Measurement Regulations. The reasons for disapproval cited by OAL included clarity, consistency, necessity, inadequate response to comments, incomplete files, and an incomplete form 400. In response to OAL's comments DWR recommend, modifying section 597.3(b)(1)(B) and deleting section 597.1(i), as well as modifying the initial statement of reasons and completing the rulemaking files.

The OAL took issue with the department's use of a cost-effectiveness provision in section 597.3(b)(1)(B) and suggested it either be explained or deleted. During the public comment period, the Natural Resources Defense Council (NRDC) asked why limit measurement to one device to meet all conditions.

Staff recommends deleting section 597.1(i) because it is not consistent with the code: it references outdated Reclamation Criteria (2008), and the Reclamation Criteria for 2011 are not consistent with the State Regulation. Mr. Alemi stated that he had met with the federal water contractors and they had an alternate suggestion for revising section (i).

After incorporating any revision, the regulation will go out for a 15-day public comment period. DWR will have 120 days to resubmit the revised regulation to OAL.

Mr. Saracino confirmed that DWR staff recommends deleting provision (i).

Mario Santoyo, with the federal water contractors, agreed that the 2011 Reclamation Criteria and DWR's standards are not equivalent. He worked with Reclamation and DWR to revise section (i). The revised language would allow the federal contractors to submit their water conservation plans with an addendum addressing the gaps between federal and state criteria, and be in compliance with state law. This would allow them to have one process, prepare one plan, and know they were complying with state law.

Mr. Saracino questioned why the revised section (i) language is necessary. He asked if the federal contractors could submit a federal plan with a state addendum even if this language was not included.

Ms. Delfino asked why this is not already covered in section (f) of the statute which gives federal contractors an exemption from reporting requirements.

Mr. Santoyo stated he wants to make sure that federal contractors do not have to do anything in addition to the federal requirements.

Mr. Saracino stated that there is additional work to be done, in the form of an addendum, in order to comply with the statute.

Mr. Kenner clarified that if Mr. Santoyo is willing to comply with "gap" that in requires requirements between federal regulations and SBX7-7, there is no reason as to why he could not send the same set of plans and be in compliance with both jurisdictions.

Mr. Saracino added that inserting section (i) could cause OAL to reject the regulation again. Dr. Alemi confirmed that with the deletion of paragraph (i), federal contractors would not have to submit a separate state plan, only a state addendum.

Mr. Santoyo asked that this be memorialized in the guidelines.

Edward Osann, of the Natural Resources Defense Council (NRDC), encouraged the deletion of paragraph (i). He stated that the revisions to paragraph (b)(1)(B) provide an overly broad exemption from farm gate measurement to rice farmers. He believes this is not what is intended by the statute.

Mr. Saracino asked Mr. Osann for a proposed solution.

Mr. Osann said he is not presenting alternative language at this time; DWR should meet with stakeholders and come up with a mutually acceptable solution.

Ms. Delfino asked Dr. Alemi why DWR chose to keep the “commercially available” language in section (b)(1)(B) of the regulation.

Dr. Alemi stated that measurement devices need to be available on the market, but the language could be modified to also include devices built on-site.

Thad Bettner, Glenn-Colusa Irrigation District, stated he is comfortable with the proposed changes to section (b)(1)(B). His staff are currently working to comply with the regulation. The longer the regulation takes, the longer it will take for his district to implement measurement on the field, and the real goal of volumetric pricing. He encouraged the Commission and staff to move forward quickly as possible.

Todd Manley, of Northern California Water Association stated that no one is talking about an exemption, but a range of alternatives. He noted that in section (b)(1)(B), the words “comparable in cost” are underlined, however “commercially available” is not underlined suggesting OAL does not see a problem with including “commercially available.” He also asked about the process for submitting comments during the 15-day comment period.

David Bolland of the Association of California Water Agencies, and a member of the agricultural stakeholder committee, said DWR staff have found a solution to meet the requirements of the statute. It is important to move forward quickly. He encouraged the Commission to direct staff to get the 15 day comment period underway so they can meet deadlines.

Mr. Saracino proposed adding the language “commercially available or on-site built device or devices” to paragraph (b)(1)(B). A motion was made and seconded to approve the staff recommendations with the amendment. The motion passed.

Ayes: 6 Noes: 0 Absent: 1

31. Public Comments

Steve Evans, with the organization Friends of the River, invited the Commission on a number of field trips to look at some of the sites where dams the Commission may ultimately decide to fund will be located, including Temperance Flat dam, the McCloud River, and the Upper Sacramento River.

Mr. Saracino adjourned 2:38 p.m.