

## Meeting Minutes

Meeting of the California Water Commission  
Wednesday, March 21, 2012  
State of California, Resources Building  
1416 Ninth Street, First Floor Auditorium  
Sacramento, CA 95814  
Beginning at 1:00 p.m.

### 1. Welcome and Introductions

Chairman Anthony Saracino called the meeting to order at 1:05 p.m.

### 2. Roll Call

Executive Officer Sue Sims called roll. Andrew Ball, Joe Del Bosque, Kim Delfino, Luther Hintz, and Anthony Saracino were present, constituting a quorum. Danny Curtin and Joe Byrne were absent at the time roll was taken. However, Commission member Curtin arrived at approximately 1:15 pm and Commission member Bryne arrived at approximately 1:30 pm.

### 3. Approval of minutes

A motion was made and seconded to approve the draft minutes from the February 15, 2012 meeting. A vote was taken and the motion passed unanimously.

### 4. Executive Officer's Update

Ms. Sims provided the Executive Officer's update. The Commission is meeting regularly with Department of Water Resources (DWR), Department of Fish and Game (DFG) and State Water Resources Control Board staff on methods for evaluating public benefits of water storage. Progress is being made on DFG and State Board priorities. The project team is working on an outline of the draft regulations and guidelines, and will make a presentation to the Commission in April. The dedication of the Ronald B. Robie Thermalito Pumping-Generating pumping plant in Oroville will take place May 2, 2012. The Commission will also be launching a new website. Lastly, Dr. Jerry Meral has been invited to the April meeting to provide an update on the Bay Delta Conservation Plan (BDCP) and staff is working on a panel discussion regarding this topic.

### 11. Legislative and Budget Update

Chair Anthony Saracino noted agenda item 11 would be taken out of order. Kathie Kishaba, DWR Deputy Director for Business Operations, provided an update on the DWR FY 2012/13 budget. The Governor's January budget provided \$2.5 billion for DWR. The reduction from the previous years' budgets is due to the winding down of DWR's involvement in long term energy supply contracts. Projected expenditures are declining; however, funding was provided for 144 new positions in various programs.

The Senate will hold its first hearing today (March 21) on key budget proposals. The Assembly budget committee is scheduled for Wednesday, March 28. The following are the main areas of interest to be discussed:

**A. Operations Criteria and Plan (OCAP) Biological Opinions Habitat Restoration**

The Department is requesting 10 new positions that will be supported by approximately \$1.7 million in State Water Project funds to address habitat restoration requirements. This will also address State Water Project pumping impacts on specific fish species in the Delta.

**B. Delta Habitat Conservation and Conveyance Program (DHCCP)**

The public draft is scheduled to be released this summer. The Department is requesting 135 positions to address preliminary design activities, funded by \$25 million in State Water Project funds.

**C. State Water Project Operations**

The Department is requesting 35 new positions for the workload in areas of sustainability, compliance and safety. This is the second installment of a resource staffing plan which was presented and approved by the legislature in FY 2011-12. These are to be funded annually with \$4.2 million from the State Water Project.

**D. Salton Sea Restoration Program**

The Department is requesting \$7 million in reimbursement authority for positions funded by the Department of Fish and Game's Salton Sea Restoration Fund. These positions help protect fish and wildlife species dependent on the Salton Sea.

Ms. Kishaba noted the spring finance letters and May revise are forthcoming.

Mr. Saracino inquired about the difficulty in filling available positions within the State Water Project. Ms. Kishaba stated they have yet to arrive at a solution for that issue.

Ms. Delfino inquired about the Senate budget hearing. Ms. Kishaba stated the subcommittee was interested in the four proposals she presented and there would be subject matter experts who will testify to address questions from the legislature. OCAP is a topic of interest and the legislature would like more detail regarding the positions. BDCP is of interest due to the volume of positions as is the Salton Sea. Ms. Delfino also requested copies of Budget Change Proposals (BCP) be provided to the Commission at the next budget update. Ms. Kishaba stated that would be possible.

Kasey Schimke, DWR Assistant Director for Legislative Affairs, provided an update on relevant legislation currently tracked by DWR. AB 1578 relates to the Watermaster program and aims to authorize a local watermaster district. AB 1750 is similar to AB 275 from last year and would specifically authorize rainwater capture systems for non-potable uses. SB 200 by Senator Wolk relates to levee maintenance activities,

specifically state and local cost share distributions. There are a number of pieces of legislation relating to the California Environmental Quality Act (CEQA). SB 1201 seeks to open the Los Angeles River for public access. The county has concerns about liability if this were to happen. There are also pieces of legislation that aim to streamline judicial review and expedite legal proceedings related to CEQA. SB 1099 set a date in January and a date in July when all regulations would take effect.

Mr. Hintz inquired about how AB 1760 relates to DWR and he, as well as Mr. Del Bosque, also asked if rainwater capture is currently not allowed.

Mr. Schimke said that although AB 1750 has no cost to DWR, the Department is still involved in a water conservation effort. It is not currently against the law to use a rainwater capture system, this bill is more specific to the indoor water use process and an attempt to try to provide a process about who can design a rainwater capture system. Mr. Del Bosque also asked about the status of SB 250. It has not yet been heard in a policy committee.

HR 1837 has been passed out of the House of Representatives and has not been referred by the Senate to committee.

Mr. Byrne arrived at this time.

## **12. Briefing on Congressional Appropriations for National Oceanic and Atmospheric Administration Climate Change Research**

Jeanine Jones, DWR Interstate Resource Manager, requested on behalf of the Department that the Commission consider sending a letter in support of budget items related to NOAA's Climate Change Research Program. NOAA has recently received a reduction in federal funding as a result of political issues regarding climate change. Mr. Saracino directed staff to send out a letter of support on behalf of the Commission.

## **5. Action Item: Amendments to Resolutions of Necessity passed prior to February 2012 regarding quit-claim language and hazardous materials testing**

Spencer Kenner gave an update regarding the Resolutions of Necessity. In January, the Commission received a request to add clarifying language in the resolutions. This was voted upon and approved by the Commission. In order to provide all landowners proper notice and due process, the resolutions that were previously adopted were amended by a second vote to include the clarification language. This was duly noticed and the opportunity was given for public comment. No one spoke to this issue. A motion was made and seconded to amend the previously adopted resolutions. A vote was taken and the motion passed unanimously.

Ayes: 7 Noes: 0 Absent: 0

## **6. 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 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. The environmental documentation was also reviewed, including the notice of intent and mitigated negative declaration, which the Commission relied upon for its own Notice of Determination for Resolutions of Necessity. DWR's authority to acquire real property for the State Water Project was attached to the Sanchez declaration. Mr. Davis also stated letters regarding testing for hazardous materials and offering to provide the resulting geotechnical data have been sent out to the land owners.

**7. -9. Action Items: Consideration of Resolutions of Necessity for properties in Contra Costa and Sacramento Counties (Action may be taken on these Resolutions of Necessity at this meeting)**

General Public Comments

None.

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

Mr. Davis provided an overview of the property, noting DWR has sent 14 letters, made 15 telephone calls, sent eight emails, and conducted two site visits. The Department is proposing three CPT holes and three drill holes. The owner's concerns include a permanent easement clouding the title and the number of holes. DWR has offered a temporary easement and has reduced the number of holes from 20 to three. The owner also requested all three holes be relocated. DWR was only able to relocate one hole. The second drilling site is critical to obtain information for that specific area and the third hole is on a farm road which could infringe on the adjacent property. If moved off of the road, the drill site would interfere with mature trees.

Jeff Carter spoke regarding this property. He would prefer the hole near the levee be relocated as the land is very porous and the tile drains are already flowing heavily. Mr. Carter contacted an engineer who suggested the drilling site be 300 feet from the levee. DWR said they are not able to accommodate that request for engineering reasons. The second hole was relocated in response to owner's request. The last hole is approximately 26 feet from an operating well. Mr. Carter requested this hole be moved north to a road, which DWR stated is on a neighboring parcel. According to DWR, the property line goes down the middle of this road. Mr. Carter stated that he does not know how this information was obtained, as no one has gone to survey the property. Lastly, the property owners have not been properly compensated for the potential loss of 15 – 30 trees, nor indemnified against future losses.

Mr. Saracino inquired about the well and levee. Mr. Curtin also inquired about the well. Mr. Carter noted the well is used for irrigation. The owner is concerned about water quality, contamination, the effect of bentonite near water, and integrity of the well if drilling occurs in close proximity. When asked, Mr. Carter noted the land to the north is used for grazing.

The Commission asked DWR to address the reason for drilling near the levee and to discuss water quality and bentonite. Mr. Davis addressed the issue by stating DWR has limited information on this area and moving it may mean having to remove more trees. This drilling location also fulfills a requirement of the Army Corps of Engineers. He confirmed this area has undergone geotechnical evaluations that show no concern for levee integrity damage or seepage. Mr. Davis stated he does not believe any issues will occur but if they do DWR will address and repair the situation without any time limit. Mark Pagenkopp spoke on behalf of DWR regarding bentonite. He stated it is not a contaminant and does not cause damage to the environment which is why the material was chosen. It will act as a barrier to cross contamination if the water does have contaminants. It is also a better seal with no worry about caving.

A motion was made and seconded to adopt RON 2012-07. A vote was taken and the motion passed.

Ayes: 7 Noes: 0 Absent: 0

**8. Clifton Court, LP; Alba C. Moore Survivor's Trust, and the Moore Exemption Trust, RON 2012-09**

Mr. Davis provided an overview of the property, noting DWR has sent 15 letters and made eight telephone calls. The Department is proposing one CPT hole and one drill hole. Owner concerns include general opposition to drilling and the BDCP. Several other concerns were addressed in a letter. There have been limited negotiations and discussions.

Suzanne Womack and Sheldon Moore spoke regarding this property. Mr. Moore stated he would like his daughter to speak on his behalf. He also stated he does know who drew the map as they do not know what they are doing. Concerns were raised including previous drilling, squirrel control, reparations and security patrolling the forebay. Ms. Womack's concerns include honesty of DWR and the reason for drilling in that specific location. Mr. Davis offered to discuss an alternate location with the land owners. It was also confirmed that the resulting data from an adjacent drilling in 2009 was not sufficient for this project.

Ms. Delfino had a concern that not enough effort has been made to reasonably adopt this RON. Mr. Saracino asked Mr. Davis to address the lack of communication by stating whether DWR has been diligent in their attempt to engage the land owners, which Mr. Davis confirmed. Mr. Saracino stated that he would like to move forward with the resolution with the understanding that an agreement could still be reached between the landowner and DWR.

A motion was made a seconded to adopt RON 2012-09. A vote was taken and the motion passed.

Ayes: 7 Noes: 0 Absent: 0

**9. Tsakopoulos Family Trust, RON 2012-23**

Mr. Davis provided an overview of the property, noting DWR has sent out 14 letters, made four telephone calls, sent 16 emails, and had one meeting with the property owners. Outstanding issues include a lack of a project description, lack of an accurate legal description, necessity of both project and drilling on the owner's property, interference with farming operations, and damage to subsurface irrigation and gas lines. DWR offered to relocate the hole but the owner's preference is to remove it completely or drill on nearby public land. Drilling in the suggested location would not result in obtaining sufficient data, due to the distance from location proposed by DWR.

Kate Wheatley spoke on behalf of the property owners. Ms. Wheatley has attempted to obtain a reason for drilling on this specific land. The main owner concerns are the project description is not adequate, the lack of information regarding duration of drilling or the timeline of testing, and the lack of an adequate description of the easement areas. This information is needed by the Commissioners in order to adopt a resolution and the land owners need the information in order to properly respond to the proposals.

Mr. Saracino stated DWR has previously stated that the descriptions provided are adequate legal descriptions and therefore the Commission does have the information necessary to adopt a resolution.

A motion was made a seconded to adopt RON 2012-23. A vote was taken and the motion passed.

Ayes: 7 Noes: 0 Absent: 0

**10. Action Item: Consideration of Agricultural Water Measurement Regulations**

Dr. Manucher Alemi spoke regarding this topic. He asked the Commission to adopt the regulation with one change. During the recent 15 day comment period, five comments were submitted. The first was from Richvale Irrigation District. Their comment was in regards to requiring aggregated accuracy standards. The problem with this option is using an average will mask devices that are inaccurate. The second letter came from the Natural Resources Defense Council (NRDC) and the third from the Pacific Institute/Sierra Club. Both letters were in support of the modified regulation. One issue identified was an addition in paragraph "b" regarding additional devices. Sacramento Valley water suppliers submitted a letter addressing several issues. They feel DWR's response did not properly address the issues of necessity and clarity brought forth by the Office of Administrative Law (OAL). They also believe DWR can include cost effectiveness in the regulations. It was expressed that the changes made to section "b" added confusion and

standards should be more relaxed. They would like the regulation to be revised and sent out for an additional comment period.

Mr. Alemi proposed deleting “or devices” from section “b 1 B” of the regulations because this caused a lack of clarity as it could be interpreted to mean more than one device is required at the farm gate.

Doug Obegi, representing the Natural Resources Defense Council, spoke regarding this issue. He believes adding “devices” is consistent with the statute. He also said that cost is not a reason to avoid measuring at the farm gate according to the statute. NRDC would like to work with DWR on timing and pricing to ensure fairness to all water districts. Every farmer should find the most accurate and cost effective way to measure water at the farm gate. Mr. Obegi is opposed to providing an option for measuring at the lateral instead of at each individual farm gate. Ms. Delfino inquired as to why this change is not considered a substantive change and does not trigger a 15 day public comment period. Dr. Alemi answered by stating the change is significant but the change was not made to the original document that came back from OAL. He stated they were modifying a draft document and could send it out for a 15 day comment period but are not required to do so.

Mr. Curtin inquired about the time frame of the regulations. Dr. Alemi said the due date for the regulations and accompanying documents is June 9, 2012. There is time for a 15 day comment period as long as it is submitted to OAL in early May. OAL will have 30 working days to make a final decision.

In response to Mr. Obegi, Dr. Alemi said in terms of implementing section B in partnership with the Department, there is no deadline. The Department will be encouraging farmers to be in compliance and to report progress. In response to installing the devices upstream, Dr. Alemi stated that page 6 item 2 C II of the regulations addresses Mr. Obegi’s concerns.

Mr. Obegi believes a “race to the top” effect will take place once farmers start yielding results. In response, Mr. Hintz stated the water issues will be self correcting and if the farmers feel they are being mistreated they will let it be known. He does not see the point in pressing the issue at this time. Ms. Delfino confirmed that NRDC does not like section B and the agency learned about the suggested changes to this section 20 minutes prior to the meeting. She then stated it seems to be an important issue and everyone should be informed of the change and given the opportunity to express their opinion.

Brad Mattson, General Manager of the Richvale Irrigation District, commented that Richvale measures at the turnout for each grower, however water users billed on a different basis. The reason for measuring the turnouts is for spot checking in order to

ensure accurate deliveries to the growers. Any problems are addressed by the Board of Directors.

Dr. Juliet Christian-Smith, Senior Research Associate of the Pacific Institute, commented the Pacific Institute would not strongly support a regulation without the language “device or devices.” The legislation asks for pricing based on volume and only 75% of turnouts have to be in the accuracy range.

A motion was made and seconded to move to an additional 15 day public comment period, with “or devices” struck. A vote was taken and the motion passed.

Ayes: 5 Noes: 2 Absent: 0

### **13. Briefing on U.S. Army Corps of Engineers Levee Vegetation Policy**

Cassandra Musto of DWR’s Division of Flood Management gave a briefing on the Levee Vegetation Management Strategy. The U.S. Army Corps of Engineers has set forth policies regarding levee vegetation which DWR opposes. In 2007, a movement was made to begin a more aggressive vegetation removal process. In 2009, an engineering technical letter was issued which would have a negative impact on California’s endangered species due to the low percentage of riparian habitat. DWR estimated that it would cost approximately seven billion dollars to comply with the letter. Due to these concerns, the Corps issued the policy guidance letter (PGL) which allowed vegetation retention but increased analytical requirements. The Corps then issued a system-wide improvement framework which required all trees to be removed unless a variance is in place. It also treats vegetation as maintenance. A second PGL was issued in 2012 that still requires extensive applications and variances are not allowed except for where the levee meets certain criteria. The PGL does not address the National Environmental Protection Act (NEPA) nor the Endangered Species Act (ESA). Therefore, a lawsuit has been started.

DWR has implemented a levee vegetation management strategy and developed the California Central Valley Flood System Improvement Framework in response to the policies. The strategy includes removing trees and brush smaller than four inches and retaining lower water-side slope vegetation for erosion protection and to protect sensitive species. It also supports levee vegetation research. The goal of the strategy is to work towards compatibility with the Corps’ vegetation policy.

Ms. Delfino inquired how DWR’s plan aligns with the Corps finalizing their policy in April 2012. Mr. Rod Mayer of DWR answered that if DWR is not in compliance with the policy the Department may lose PL84-99 rehabilitation eligibility. However, the cost risk analysis shows this to be the most cost effective choice.

Mr. Kenner also provided an overview of the lawsuit. The Department of Fish and Game is suing the Corps due to a lack of compliance with the ESA and NEPA. Mr. Saracino

mentioned a letter could be sent by the Commission in support of the issues DWR has raised. Staff was directed to decide the most effective way to send and submit the letter.

**15. Action Item: Adoption of Mission Statement and Discussion of Strategic Plan**

Rachel Ballanti, Policy Analyst for the Commission, provided an overview of this topic. An ad hoc committee, formed at the last Commission meeting, discussed the mission statement. That resulted in a revised mission statement. Modifications were made to the proposed statement including defining the Commission as a public forum for “discussing water issues.” A motion was made and seconded to adopt the revised mission statement as follows:

*To provide a public forum for discussing water issues, to advise the Department of Water Resources, and to take appropriate statutory actions to further the development of policies that support integrated and sustainable water resource management and a healthy environment.*

A vote was taken and the motion passed.

Ayes: 7 Noes: 0 Absent: 0

Ms. Ballanti also reviewed a draft of the strategic plan. A decision was made to not implement an open ended survey. The plan will go out for public comment, revised, and brought back before the Commission. Mr. Byrne suggested developing a plan of implementation and to prioritize goals for the year.

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

Topics for the April Commission meeting included agricultural water regulations, a BDCP presentation, a briefing on public benefits of storage projects, DWR regulations for State Water Project encroachment, and the Integrating Water Management project. Mr. Byrne requested an update on BDCP funding.

**17. Public Comments**

None.

Mr. Saracino adjourned at 4:39 p.m.