



Meeting Minutes

Meeting of the California Water Commission

Wednesday, April 18, 2012

State of California, Resources Building

1416 Ninth Street, First Floor Auditorium

Sacramento, CA 95814

Beginning at 9:30 a.m.

1. Welcome and Introductions

Chairman Anthony Saracino called the meeting to order at 9:32 a.m.

2. Roll Call

Executive Officer Sue Sims called roll. Joe Byrne, Danny Curtin, Joe Del Bosque, Kim Delfino, Luther Hintz, and Anthony Saracino were present, constituting a quorum.

Andrew Ball was absent at the time roll was taken. However, Commission member Ball arrived at approximately 9:45 a.m.

3. Approval of minutes

A motion was made and seconded to approve the draft minutes from the March 21, 2012 meeting. A vote was taken and the motion passed unanimously.

4. Executive Officer's Update

Ms. Sims provided the Executive Officer's update. At the last Commission meeting, staff was directed to write a letter to the U.S. Army Corps of Engineers (USACE) regarding Levee Vegetation. The letter was sent to USACE, posted on the website, and a copy was provided to each Commission member in their binder. The new website is up and running. Department of Water Resources (DWR) Director, Mark Cowin, has his confirmation before the Senate Rules Committee today (April 18). Also, Carl Torgersen, was appointed Deputy Director for the State Water Project by the Governor and Nancy Vogel was appointed Director of Public Affairs. Ms. Vogel was formerly a reporter from the Sacramento Bee and LA Times, and worked for Senate President Pro Tem Darrell Steinberg's Office. A dedication ceremony will be held on May 2 in Oroville at the *Ronald B. Robie Thermalito Pumping-Generating Plant*.

5. Update on the Bay Delta Conservation Plan (BDCP) including a discussion of financing by Dr. Jerry Meral, Deputy Secretary, California Natural Resources Agency and additional panelists (9:30 a.m.)

Dr. Jerry Meral provided an overview of financing for the BDCP. There are currently two conservation measures included in the plan. Conservation Measure One consists of a facility to move water from the Sacramento River to the Tracy pumps. This may be done in several ways, but will be cost and estimates \$12 billion or more. All elements of that project would be paid for by State and federal water contractors who would receive water from the facility.

The rest of BDCP, which includes many other conservation measures such as habitat improvement, are expected to be paid for by the public. The funds can come from bonds, existing federal revenue such as the Central Valley Project Improvement Act (CVPIA) revenues, and other sources of state funds. Chapter 8 of the BDCP lists a wide variety of potential public funding sources.

He stated that refuge level one water would be paid for much as it is now by the Central Valley Project contractors. Other refuge water, such as refuge level three, is currently paid for by other sources. There is money for that purpose in the 2012 bond.

He explained that those who receive water through the new facility or through the South Delta are expected to pay for the new facility. San Joaquin River Exchange Contractors do not feel they should be expected to pay for the new facility costs as they have strong rights to water from the San Joaquin River and could revert to taking water from the river. Also, the Friant Kern service areas feel they have a strong water right through the Bureau of Reclamation and should not be expected to pay as much for the facility as other water contractors. That is a sensitive issue as that area accounts for one-sixth of the exported water. All of the other water contractors are expected to participate in the project.

Currently, the Coordinated Operating Agreement between the state and federal governments govern operations in the Delta. There will need to be further discussions as to who will receive benefits from the BDCP. Originally, the State Water Project was expecting to receive 60 percent while the federal contractors would receive 40 percent. It is important that an agreement be reached so that funding is available.

Dr. David Sunding, a professor of environmental economics at the University of California Berkeley, is conducting a study of identify and quantify benefits of BDCP. The study is expected to be released in May.

There is also a question as to what is the best way to finance the project. State and federal contractors have expressed willingness to use their own revenue bonds. In regards to the water bond on the ballot this fall, it provides substantial and important funding for the habitat elements of the BDCP. However, it is not vital to have funds from the bond this fall or from this water bond specifically. It needs to be demonstrated to state and federal fish agencies that there is sufficient funding for the project. Chapter Eight of the BDCP explains financing in greater detail.

Ms. Delfino asked for more explanation of refuge water funding. Dr. Meral noted refuge level one is paid for by the contractors. All other refuge water deliveries are not allocated directly to the contractors. That allocation is entirely up to the Bureau of Reclamation.

Ms. Delfino also inquired about the intended use of CVPIA restoration funds. Dr. Meral noted those funds could be used for any part of the restoration of habitat elements of the BDCP. The funds are currently used to fund activities upstream of the Delta. The Bureau of Reclamation seems open to using those funds pay for things not the responsibility of the contractors. This has not been explicitly stated, however, they seem open to the idea.

Ms. Delfino also inquired about the level of commitment the permitting agencies would need to see to know sufficient funding is available in the event the water bond does not pass. Dr. Meral noted that an array of potential funding sources are listed in Chapter Eight. These sources would not be adequate without additional new funding sources. If the bond is deferred, the permitting agencies would have to consider that the bond is on a future ballot and have some confidence in that. He added that the federal government also has significant responsibility. The permitting agencies are currently studying the funding and have not taken a position.

Ms. Delfino noted the plan includes \$100 million from the Cooperative Endangered Species fund and asked how realistic that is. Dr. Meral stated that amount is being discussed with the U.S. Fish and Wildlife Service.

Mr. Del Bosque inquired about the timeline of the plan. Dr. Meral stated public drafts of the environmental documents are expected to be released in July 2012. The comment period will extend through the end of the year and permitting agencies should make a decision by February 2013. Mr. Del Bosque also asked if the Rubio bill reflects the current timeline and Dr. Meral confirmed it is consistent with the current schedule.

Mr. Curtin noted that about \$2 billion of the planned \$3 to \$4 billion in habitat development is provided by the water bond. He asked if the amount of habitat work is flexible and where the additional \$1 billion would come from. Dr. Meral stated the

answer to that question will developed over the next 20 years as habitat projects are implemented, but there may be some flexibility. Mr. Curtin confirmed that although the bond is providing most of the funding, there are alternative sources.

Mr. Saracino inquired about the study by Dr. Sunding. Dr. Meral stated the study will try to quantify the value of habitat improvements through economic analysis using methods such as ecosystem services and willingness-to-pay.

Participants in the panel discussion were: Roger Patterson, *Metropolitan Water District*, Jason Peltier, *Westlands Water District*, Richard Roos-Collins, *Water and Power Law Group*, and Jay Ziegler, *The Nature Conservancy*.

Roger Patterson stated that Metropolitan Water District (MWD) has been very involved in the BDCP planning process and approximately 25 percent of water user investments have been from MWD. He would like to ensure that the plan will work successfully and is sustainable. There is a possibility that the cost for State Water Contractor water users will increase 45 percent. Operations, power, and maintenance costs for the conveyance facility are estimated to be \$83 million per year. Operations and maintenance of habitat improvements will be \$43 million per year. Securing state and federal funds in the future should not present a problem. MWD has committed \$250 million to BDCP's preliminary design and planning process. Recently, \$100 million more was needed to continue the process, and the board agreed to the additional funding.

Jason Peltier stated the BDCP is the most significant body of work ever done related to the Delta. It is a very unique project due in part to the water users paying the actual costs. There are several challenges that have presented themselves while working under Section 10 of the Endangered Species Act. First, it is difficult to displace the historic species-by-species approach. Trying to figure out the effects on species 50 years out is also quite challenging. There a number of different perspectives on what these effects may be, all by well respected scientists. We are confronting a history of false certainty about what is going on in the Delta and separate facts from reality in this process. Additionally, this realignment of funding, where water users are paying, has changed expectations about who will be making decisions.

Richard Roos-Collins, Principal at *Water and Power Law Group* and counsel for American Rivers, a non-profit conservation organization, stated that the organization is committed to the BDCP's success in providing a reliable water supply and sustaining the ecosystem. The administrative draft as released on February 29 does not describe an approvable project in the American Rivers' view. It is not a permitable project under Section 10 of the Endangered Species Act. Chapter Eight regarding finance is incomplete in various ways and is not ready for public release. It does not show how the new costs will affect water rates. It is important that the project is affordable as it will affect the entire state.

Jay Ziegler discussed regional self-reliance, the water bond, and Delta restoration. Mr. Ziegler noted that four bad budget years have made voters skeptical about bonds. The Nature Conservancy (TNC) has been actively involved in the water bond, and supported the last six successful bonds. He suggested that a reformed bond, leveraged by a user fee, would have a greater chance of success on the 2012 ballot. A smaller bond could get the project started and would not preclude a larger bond later on. TNC does not see an approvable project as it stands today, but recognizes that the BDCP is almost essential to the Delta. Although the BDCP may not be the solution to every challenge in the Delta, it would provide for a strong foundation. Time is essentially “running out” for restoration in the Delta.

Kim Delfino inquired as to where the funding will come from for upfront costs. Mr. Patterson stated there is front-loading for 14,000 acres of habitat restoration in 10 years at an estimated cost of \$20,000 per acre. Water contractors are currently undertaking 8,000 acres of restoration which could be combined with \$40 million per year of existing Cal-Fed funding. Jay Ziegler concurred with Mr. Patterson and added that funds may be strategically directed from Propositions 84 and 1E in the next five to 15 years. There is also an essential public funding component from the water bond. Mr. Peltier said business uncertainty is a significant challenge and noted there is a responsibility to the rate payers. Upfront costs associated with the tunnel need to have funding sources identified prior to breaking ground. Mr. Roos-Collins referenced BDCP Table 8-50, which shows estimated BDCP costs for years one through 10. He also stated certain species do not have 20 years to begin recovery.

Mr. Saracino asked what the “magic number” is for a viable project in regards to size, operations and funding.

Mr. Patterson stated there were too many uncertainties to answer that question.

Mr. Peltier stated that it is too easy to get caught up on numbers when there are many other benefits including reliability and regularized operations. He stated they would like to receive water deliveries similar to those in 1970-1990 but realizes that may not be realistic. He also recognized that the BDCP as written today, is not ready to be permitted.

Mr. Patterson stated that the BDCP is close to where it needs to be. Of 63 covered species, it creates improvements for 61 of those species. He believes it needs revisions, but they are within weeks of a workable draft.

Ms. Delfino said her assumption is the project relies greatly upon trying to meet the Natural Communities Conservation Plan (NCCP) standard as that is necessary in order to

gain public funding. She inquired as to what needs to change in order to meet those standards. Mr. Zielger suggested at looking first at the needs of restoration of the Delta before concentrating on water delivery.

Mr. Curtin spoke regarding issues of reliability. He asked about the impact of the bond being postponed, noting Dr. Meral said BDCP can move forward without the bond. Mr. Curtin also mentioned he was very encouraged by today's discussion. Regarding Mr. Ziegler's remarks about moving forward with a smaller bond, Mr. Curtin said he is nervous about opening up the content of the water bond for further discussion at this point and advocated moving that discussion further down the road. Mr. Ziegler said the only disagreement between them seems to be tactics, and suggested passing a smaller bond would improve voter confidence. Mr. Curtin mentioned the voters are only looking at the immediate situation. The voters will be more confident if the process comes together and a positive substantial effort is made. The bond is also critical in building a system that can respond to a natural disaster, addressing reliability issues, and enhancing water storage capabilities.

Mr. Ball agreed with Mr. Curtin. He also stated there is a bigger issue and that involves consequences to species and the possible inability to provide water to users if an earthquake were to occur. There is a need to move forward with a safe, reliable drinking water supply and to restore the Delta. The current economy implies the bond should not be put on the ballot. In regards to the strategy, taking smaller steps has the potential to cause problems. Small amounts of money do not have the ability to solve the problem. He suggested putting the bond forward "as is" sometime in the future.

Mr. Byrne thanked the panelists and agreed with the importance of the issue.

The Commission took a short recess and reconvened at 11:29 a.m.

Public Comments

Osha Meserve spoke regarding the BDCP discussion. She stated the following views:

The current draft of the BDCP shows no benefits to the local Delta community and water users. Additionally, it looks to destroy the agricultural and rural economy. It would take a quarter of agricultural land out of production. She inquired if it is realistically feasible to take so much water from the Sacramento River and said there is a need to move to a more reasonable project. She stated local water users and Delta interests have tried to participate in this process but it has been closed off. She was concerned by the closeness of the contractors to the design of the project, as Mr. Peltier had mentioned, as it is not leading to a permitable project. In the short term, she suggested working on Delta levees, as the South Delta Pumps will be in use for many more years even if a project is permitted.

Mr. Ball inquired how Ms. Meserve concluded a quarter of land would be put out of production. Ms. Meserve stated there are 500,000 acres in the primary zone of the Delta and the habitat conservation will take up 120,000 acres. One reason the habitat number is so high is because the conveyance number is also high. If the conveyance number becomes more rational there can be less done on the habitat side, therefore disturbing less of the agricultural community. Mr. Ball stated the conveyance number has not been agreed upon. Ms. Delfino asked what her opinion is of a western alignment in lieu of an eastern alignment. Ms. Meserve answered that it is equally concerning as all of the impacts would be transferred to another area. She asked the Commission to consider smaller alternatives and alternate pump locations.

Mario Santoyo clarified that the Friant Water Authority's board has not taken a position on funding for the BDCP. At this time, there are no direct benefits to their water users and so they have not committed any funds.

6. Update on the Quantification of Public Benefits project (approximately 11:00 a.m.)

Ajay Goyal, DWR Principal Engineer in charge of Statewide Infrastructure Investigations, provided a brief update on the progress of the quantification of public benefits over the last few months. The water bond allocates \$3 billion to Commission for public benefits of water storage projects. Projects must be cost effective and funding must be awarded through a competitive process. The Commission is required to develop regulations for the quantification and management of the public benefits of water projects, and must include information on economic evaluation of those benefits. Legislation calls for consultation with the Department of Fish and Game (DFG), the State Water Resources Control Board (State Board) and DWR.

A work team of DWR staff, the State Board, DFG, and consultants is gathering information for the regulations. DFG has been working on identifying their priorities and relative environmental values. Their report is currently under review. They have provided a one page briefing in the Commissioners' binders. The State Board has prepared their draft priority list, which was provided to Commission in advance of the meeting.

The team has made progress in working on a draft of the regulations. They are currently discussing of the meaning of "management of public benefits" and if that management passive or active. They considering if the team would go out and work with funded projects to ensure benefits are being met or if they need only receive information on the benefits.

There is a provision in the legislation which requires state agencies to prepare guidelines for their regulations. Staff is working on drafting the guidelines concurrently with the regulations. As part of the eventual funding process, the Commission will be integrally involved in evaluating projects. The guidelines describe the evaluation process and therefore the regulations must have language referring to the evaluations of projects by the Commission. Staff is considering the formation of a panel of experts to review applications and provide recommendations to the Commission.

Mr. Curtin clarified that they are considering the development of regulations in consultation with DFG and the State Board and that Mr. Goyal is considering recommending a committee to review the projects.

Mr. Goyal confirmed that saying the legislation also states the Commission will determine the funding. That will require evaluation by technical experts. Priorities will be provided by DFG and the State Board, but those are very broad. Someone with knowledge of the priorities will have to help in making funding determinations.

The team intends to provide an initial draft of the regulations and the guidelines to the Commission by August.

Ms. Delfino clarified that the methods currently in development will not serve simultaneously as project solicitation package (PSP) guidelines and that the PSP would be submitted separately.

Eric Oppenheimer, with the State Board, provided an update on the Board's involvement in the process as well as an overview of the draft priorities that were recently submitted to the Commission. The Board's role is to consult with the Commission and other involved agencies regarding the development of regulations for public benefits. Additionally, they must define their priorities and the relative environmental value of the water quality benefits associated with the water supply projects.

A draft report was submitted conveying the priorities in March 2012. The report identifies seven different categories of priorities. The first four are tied to the Board's 303d list of impaired water bodies identified under the Clean Water Act. Under the Clean Water Act, states are required to identify water bodies that are not meeting, nor expected to meet, their water quality objectives or are not supporting their beneficial uses. The list was analyzed and staff identified the water quality impairments that could be easily influenced or rectified through water supply projects.

In continuing this process, the State Board is asking for input on the draft report. Those suggestions will be evaluated and incorporated so the report can then be finalized. They

will also continue working with the Commission, DWR, and DFG as resources allow. They have a fairly narrow role and do not have resources for this project. Ms. Delfino commented geographic prioritization would be helpful. Mr. Curtin noted the Commission could evaluate benefits of several projects and then decide which projects help the overall water supply the most. Mr. Oppenheimer confirmed that was their intent as they designed the priorities.

Ms. Sims announced a change in the agenda. Agenda item nine, Agricultural Water Measurement Regulations, would be heard after item seven. Item eight, State Water Project encroachment permits was postponed until a later meeting.

7. Presentation on the Department of Water Resources' Integrated Water Management project

Gary Bardini, DWR Deputy Director for Integrated Water Management, provided a brief overview of the Integrated Water Management project. Integrating water management is about integrating public safety, economic stability, and environmental stewardship. He provided an overview of DWR's programs that provide those values to the State of California. The previous California Water Plan (CWP) looked at what should be done at a state level versus Integrated Regional Water Management level and how they should interact. He explained a visual aid that showed how various DWR programs work within this framework. Major issues in IWM include system deficiencies in public safety, ecosystem decline, less reliable water supplies, aging infrastructure, drought, and climate change. Over the last several years, many of these programs have been funded by bonds. They are looking at other financing options for these critical programs in the future. They are continuing to work to improve coordination and management across programs. In terms of funding, public safety is funded by approximately 90% state and federal funds, while water management funding is mostly local; however, both types of projects need to be coordinated at the state, federal, and local levels. He noted that the CWP is updated every five years and has become a venue for gathering information and shaping integrated water management. This year there is a new initiative to add financing issues to the CWP.

Jennifer Marr, Executive Assistant to Mr. Bardini, presented a project and storybook which compiled information on 50 DWR programs under IWM. Each program contributed a graphic along with a template which contains information about their program, future plans, and any programs they will be coordinating with in the upcoming year. A benefit of this document is integration of programs and events for efficiency purposes. It is also a way of sharing information with areas of the Department that can benefit from it. A gallery walk was conducted to allow staff to see all contributions to the storybook. Programs were able to coordinate as well as build relationships with each other.

Mr. Byrne asked if staff keep an ongoing list of which programs are networking with each other as well as a schedule to see any future points of contact. Ms. Marr explained their venues for continued cross coordination and follow-up. Mr. Curtin recommended a table of contents and an index.

Mr. Bardini closed the presentation by stating this was the first of many steps for this project. Future plans include bringing this project into the Water Plan into and continuing alignment with external agencies. A long term objective is to continue sharing information internally and planning funding sources as much of the funding provided by bonds will run out in the next five years.

~~8. Briefing on DWR regulations for State Water Project encroachment permits~~

This item was postponed to a future meeting.

9. Action Item: Consideration of Final Agricultural Water Measurement Regulations

Dr. Manucher Alemi provided an update on this topic. Since the last meeting, when the Commission approved the regulation after removing the word “devices,” the regulation was sent out for a 15 day comment period and DWR received several comments, which were provided in the Commission’s packets. He proposed an additional modification to section “b1B” of the regulation, which would trigger another 15 day comment period.

Lewis Bair, representing Reclamation District 108, presented an overview of a pilot study to see if the District can measure water deliveries at each delivery point with the accuracy prescribed in the regulation. The study used three devices at each delivery point. He explained the next steps for implementing this system as well as its challenges.

Mr. Saracino thanked him for the presentation and asked for an estimate of the capital expense at each farm gate. Mr. Bair estimated a capital cost of \$2,500 per farm gate and noted that the districts’ expensive Doppler devices may need to be replaced frequently. Mr. Saracino asked why Mr. Bair was meeting DWR’s accuracy standard was a challenge, when the federal government had already implemented more stringent accuracy standards for their contractors. Mr. Bair said that the federal contractors do not have to verify the accuracy of their devices in the same way. He emphasized that meeting a 10% accuracy standard will be very challenging due to factors such as sediment and flow levels. He also stated that this program will drive up the costs of water for landowners and was concerned that his landowners would not approve a rate increase. Ms. Delfino questioned why RD 108 would implement a program that they seem to have little confidence in, and why they had claimed it would not be possible to implement a system with multiple devices when they are now in fact doing that. Mr. Bair stated they are trying to be responsible water users and comply with the regulation. Mr. Saracino asked if RD 108 used volumetric billing. Mr. Bair explained that they do not generally

use volumetric billing but do have optional volumetric billing for those who choose it. He stated that 20% measurement accuracy sufficient to implement an effective volumetric billing program. He stated that his preference would be to measure at each turnout with a lower accuracy standard, versus measuring at the lateral with a higher accuracy standard.

Dr. Alemi pointed out that a water district would not be required to undertake a pilot study such as RD 108 to decide to measure at the lateral. In the proposed staff regulation, only an engineer's certification is needed. He reminded the Commission that the regulation does not require a 5% accuracy standard in the field, only in the lab. He noted that staff had worked with as many stakeholders as possible in the short time that they had to revise the regulation.

Dave Bolland, of the Association of California Water Agencies, stated that the text as proposed is ambiguous as to what steps water suppliers must take to determine they can measure at the lateral instead of the farm gate. He expressed concerns that there would be an enormous burden on water agencies.

Ms. Delfino stated that she believed the language favored the water districts requiring only an engineers' certification.

Todd Manley of the Northern California Water Association also stated that the staff suggestion was ambiguous and raised concerns about third party challenges.

Mr. Hintz suggested DWR clarify these issues further in their guidebook.

A motion was made and seconded to schedule a special meeting on this subject, approve the new language, and send out for a 15-day comment period as recommended by staff. A vote was taken and the motion passed unanimously.

10. Consideration of items for next California Water Commission meeting

A meeting was scheduled for May 8 at 9:30 a.m. to discuss the Agricultural Water Measurement regulations.

11. Public Comments

None.

Mr. Saracino adjourned the meeting at 3:15 p.m.