



Draft Meeting Minutes

Meeting of the California Water Commission

Wednesday, August 15, 2012

State of California, Resources Building

1416 Ninth Street, First Floor Auditorium

Sacramento, California 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, Luther Hintz, and Anthony Saracino were present, constituting a quorum. Andrew Ball and Kim Delfino were absent.

3. Approval of Meeting Minutes

A motion was made and seconded to approve the draft minutes from the July 6, 2012 meeting. A vote was taken and the motion passed unanimously.

4. Executive Officer's Report

Ms. Sims provided the Executive Officer's update. The Agricultural Water Measurement Regulations were approved by the Office of Administrative Law (OAL) on July 11, 2012. The Commission may wish to consider revisions to the regulations regarding timing of the reporting period. In May, a letter was sent on behalf of the Commission to Secretary Laird regarding critical issues of the State Water Project. Secretary Laird indicated in his response to the Commission that he is currently leading conversations on this matter and has a goal of resolving this issue by the end of the year. The Commission has been asked to serve to on the State Agency Steering Committee for the California Water Plan (CWP) Update 2013. The CWP is updated every five years. The plan assists California's water managers and guides State investments in infrastructure, innovation and advancing integrated regional water programs. The Commission's strategic plan has been nominated to be featured in the CWP Update 2013. Ms. Sims noted the revised Bay Delta Conservation Plan (BDCP) will be undergoing public review and the Commission may have an opportunity to participate in this process. Ward Tabor from DWR's legal office and

Dave Gutierrez from the Division of Safety of Dams will present revisions to DWR's Federal Advocacy program in September. Issues to be addressed include funding, crediting and the role of the Commission.

5. Update on State of the State Water Project workshop

Ms. Sims provided an update on the State of the State Water Project (SWP) workshop. The workshop may be sponsored by the Commission or it may be part of the Association of California Water Agencies Conference in December. It will partially fulfill the Commission's responsibility to conduct an annual review of the SWP. The workshop will provide an overview of challenges and opportunities for the project. Other activities may also be addressed including construction, operations, State and federal investments, climate change, energy, policy and regulatory issues. More details on the workshop will be provided as they become available. Mr. Curtin requested that energy issues related to hydropower be included in the workshop. Ms. Sims confirmed that it will. Ms. Sims said the workshop is currently being planned for San Diego in December.

6. Briefing on DWR regulations for State Water Project encroachment

Leroy Ellinghouse, Senior Land Agent with DWR's Division of Operations and Maintenance provided an overview of the State Water Project encroachment permit regulations. The Commission will need to approve the permit regulation before it is submitted to the Office of Administrative Law (OAL). In 2005, Senate Bill 543 was passed which provided DWR the authority to enforce a permit program for encroachments on the SWP right-of-way. SWP encroachments have been addressed informally; however, DWR would like to move forward with a formal procedure for permits. The draft regulations will be brought before the Commission in October and, upon approval, will be submitted to OAL by November. This will be followed by a 45-day public comment period, and a one-year deadline for final approval.

Mr. Saracino asked when the Commission would have the opportunity to take public comment. Mr. Ellinghouse stated that the law requires one-public comment period through the OAL process. However, if the Commission is interested in holding a public comment period prior to the OAL process, that can be arranged. Prior public outreach efforts resulted in attendance of a total of three people. Staff anticipates owners of land within the SWP right-of-way may be concerned in the future. A primary issue is likely to concern municipalities with greenbelts on the right-of-way, as trees and pipelines cannot share a space. Within the regulations, DWR adopted a policy for trees that follows the

general guidelines of all high pressurized pipeline facilities. Approximately 200-400 trees will need to be removed statewide.

Mr. Curtin asked why the regulations are being created seven years after Senate Bill 543 was passed. Mr. Ellinghouse responded that there have been an increasing number of unauthorized encroachments and it is necessary to have a formalized permit process to address this issue. Additionally, the permit process would keep the department from needing to resolve these issues in court and encountering legal fees. He clarified the regulations would allow the department to fine people who have encroachments in their right-of-way, require them to remove the encroachments, or remove the encroachment and at the owner's expense.

Mr. Del Bosque asked if any of the encroachments are agricultural plantings. Mr. Ellinghouse noted a recent encroachment in the San Luis Obispo area where a property owner planted an orchard. The local water contractor reminded him of the necessary 60 foot clearance for the right-of-way. While the owner did not agree, he made some minor adjustments. If the department needs to get to the pipeline the trees will be removed. The property owner may put them back, but not at the department's expense.

Mr. Byrne asked if there would be a public hearing. Mr. Kenner stated that DWR may wish to hold a hearing and if significant changes to the regulations are proposed and another public comment period is noticed the regulation would come back before the Commission.

Jim Openshaw, DWR Senior Staff Counsel, confirmed a public process will be triggered upon submission of the regulations to OAL. He then reviewed the legal aspects of the regulation. The legislation which created Water Code § 12899 allows the department to control the SWP right-of-way. The proposed regulations will protect public safety, freedom of access for maintenance, and the integrity of the system. He defined encroachments as any kind of installation of structures. The regulations will mention specific types of vegetation that may or may not be allowed and describe exceptions to the permits. Pre-existing right-of-way agreements will be grandfathered into the new regulations. Jointly owned facilities with the State will not be required to go through the process, however, the regulations do give the department authority to review and comment on those plans. DWR does not hold the authority to reject the plans.

Mr. Openshaw stated that drainage is a key issue. The statute declares drainage onto the right-of-way or into the aqueduct to be unlawful. It also declares unlawful encroachments to be a misdemeanor. The department has authority to provide notice to encroachers and ask that the encroachment be removed at no cost to the State. The encroachers may pay the initial cost or reimburse the department.

Mr. Byrne asked if the department intended to issue fines. Mr. Openshaw responded that DWR has the authority to issue fines of \$1,000 per day, however there are several options for enforcement.

7. Action Item: Consideration of 2012 Strategic Plan

Mr. Saracino noted any action taken on the plan will be deferred until next month when all members of the Commission can be present and weigh in. Rachel Ballanti, Commission Policy Analyst, provided an update on the strategic plan. At its June 20, 2012 meeting the Commission reviewed a draft of the 2012 Strategic Plan. The plan was then released for a 30-day public comment period. Comments were received from consultants, federal agencies, interested members of the public and DWR staff. Additional staff edits were made to reflect the postponement of the Water Bond and to incorporate a few of the comments.

The comments were categorized into three categories including incorporated, not incorporated, and those for further Commission consideration. The comments already incorporated were made for clarification purposes or made sense to include. The comments not incorporated either did not require a staff response, were outside of the scope of purpose for this document, or the Commission's jurisdiction.

The last set of comments recommended specific changes or brought up issues for discussion.

The first comment questioned if the Commission's purview included regions other than the Delta and Central Valley and if the Commission plans to engage in discussion regarding importing out-of-State water. Staff stated the Commission's responsibility is for the entire state and they may not have authority to discuss inter-state water issues. Mr. Saracino agreed with the staff recommendation and said inter-state water issues can be addressed on an as-needed basis.

The next comment stated Goal 3 could be strengthened by referencing U.S. Fish and Wildlife Service/National Oceanic and Atmospheric Administration in its strategies and questioned if the Commission will participate in discussions regarding smelt and salmon Biological Opinions and Reasonable and Prudent Actions. Staff stated discussion of engagement with specific agencies may be too specific for this document. The possible addition of a strategy of Integrated Resource Management and multi-agency collaboration may address this issue on a higher level. Mr. Saracino agreed with the staff recommendation.

The next comment questioned how the Commission views its role/partnership with Delta Stewardship Council (DSC) and Bay Delta Conservation Plan (BDCP). The staff response listed possible areas for engagement. This may also be addressed in the work plan. Mr. Saracino said a strategy might be included for regular engagement at their meetings. Mr. Byrne asked if there would be a work plan. Ms. Ballanti said the goals of the Strategic Plan would be implemented through a work plan that can be updated annually or as needed.

A comment from DWR recommended incorporating a strategy to promote Integrated Resource Management. A draft strategy was developed for inclusion under Goal 3. Mr. Saracino agreed.

Another comment asked about the method of measurements for Goal 1, Strategy A and how to define the value of this process. Staff recommended metrics include the number of workshops, hearings, white papers, website metrics and response to public comments. Metrics may also be addressed in the Commission's work plan. A second comment regarding this strategy questioned what other areas will be addressed in addition to SWP. Staff noted the SWP was intended to serve as an example of how that strategy would be implemented and recommended clarification text. Mr. Saracino agreed.

The next comment asked a clarification of Goal 3. Staff developed and recommended revised language. The Commission concurred.

The final comment was submitted by DWR Climate Change staff and suggested the addition of a strategy to address climate change. With their assistance, a strategy was drafted, which staff recommended adding under Goal 3. Mr. Saracino agreed.

A revised draft strategic plan will be provided to the Commission for approval at the September meeting.

No public comments were made.

Mr. Byrne inquired if the work plan will be updated on a regular basis. Ms. Ballanti stated the strategic plan is intended to last five years and the work plan can be updated annually or on an as-needed basis. Mr. Byrne is interested in development of the strategies and how to accomplish them.

Ms. Sims said staff can begin the work plan, which will be shared that at the next Commission meeting.

8. Update on work by DWR, in consultation with the Department of Fish and Game and State Water Resources Control Board, on Quantification of the Public Benefits associated with Water Storage Projects (approx. 10:15 a.m.)

Ajay Goyal, Chief of DWR's Statewide Infrastructure Investigation Branch, provided an overview of the working draft language for the regulations and guidelines. He noted the Department of Fish and Game (DFG) completed their ecosystem priorities and would present them later in the meeting. The State Water Resources Control Board's (Water Board) water quality priorities were presented at the April meeting. Mr. Goyal said that at this meeting, he would review staff work completed prior to the postponement of the Safe Clean and Reliable Drinking Water Supply Act (Water Bond) and would seek Commission direction on any further work to be performed.

Mr. Goyal reviewed the key provisions in the legislation. The Water Bond, if passed by voters in 2014, would provide three billion dollars for the public benefits of water storage projects. Funds would be awarded through a competitive process based on expected returns on public investment. The Water Code requires the Commission to develop and adopt regulations for methods of quantification and management of public benefits if the bond is approved. It also states DFG and the State Board will provide the Commission with a list of priorities. Chapter Four of the legislation requires each state agency to develop guidelines prior to disbursement of funds. Funding will be provided for the public benefit categories of ecosystem improvements, water quality improvements, flood control, emergency response, and recreation. Eligible projects include CALFED surface storage projects, groundwater storage projects, conjunctive use and reservoir

reoperation projects, and local and regional surface storage projects. All projects must provide a measurable benefit to the Bay-Delta watershed. The maximum state contribution towards the public benefit share would be 50% of the total project cost. Ecosystem benefits must be at least 50% of total public benefits. Funds cannot be used to pay for mitigation, existing environmental commitments, or Delta conveyance facilities. Mr. Goyal stated that in light of the postponement of the bond act to the November 2014 ballot, staff would like to know what next steps the Commission would like to take.

Mr. Hintz asked why water supply was not listed as a public benefit. Mr. Goyal stated it is considered a non-public benefit because it benefits a specific area only and the beneficiaries would pay for that portion of the project. Mr. Saracino stated the bond funds were not contemplated to pay for water supply. Mr. Hintz feels the public does benefit from improved water supply.

Mr. Curtin stated that in addition to the listed public benefits, the Commission should consider the impact of the project on the overall State system as part of the funding process. He would like to take an- integrated approach and see this issue clarified in the guidelines. Mr. Del Bosque asked for clarification of the emergency response category. Mr. Goyal clarified that water set aside for emergency purposes would fall into this category. Mr. Curtin suggested the Commission evaluate the capability of a project to respond to an emergency situation, instead of literally setting the water aside.

Economist Steve Hatchett presented the working draft of the regulation language. He noted that the regulation is an initial staff proposal, and this is the first time it has been seen publically. The introduction summarizes the relevant provisions of Chapter Eight of SBX7-2. There is a list of information to be submitted by applicants, steps for quantifying public benefits, priorities and relative environmental values, and a benefits management approach. Lastly, there is a process for reviewing the applications.

Information to be provided by the applicant correlates directly to specific sections of the law, cited in the statement of reasons. The application package includes: 1) quantified public benefits, 2) draft environmental documents, 3) feasibility study, 4) commitments for cost of non-public benefits, 5) relationship to priorities and relative environmental values, and 6) operations monitoring and management plans. Additionally, other criteria listed in the legislation must be met.

Mr. Curtin asked how staff envisions the projects will come forward: as they are ready or at one time. He said evaluating all projects at one time may be a better option. Mr. Hatchett stated that evaluation requires comparing more than one project; however, this is a decision for the Commission to make. Mr. Curtin noted that while \$3 billion seems like a large sum of money, is not a significant amount of money compared to the need. He requested this issue stay on the Commission's agenda.

Mr. Hatchett discussed the requirements for feasibility studies. Staff looked at examples from previous department grant programs and federal guidelines. Staff recommends that feasibility studies include purpose, cost estimate, detailed description, technical feasibility, description and quantification of all benefits, benefit-cost assessment, financial analysis, and legal and institutional consistency.

Mr. Del Bosque asked what the benefit-cost analysis covers. Mr. Hatchett explained this analysis quantifies, as best as possible, all of the possible benefits and costs of the project in monetary terms.

Mr. Hatchett discussed the review and evaluation process. Mr. Hatchett stated that items on this list may be re-ordered. It is difficult to clarify requirements of the application without knowing the specifics of each project. The quantification methods document will provide guidelines, possible data sources, and options of how to do things. Staff proposes applicants use these guidelines to quantify the benefits of their projects; then an expert panel would review the information to evaluate the benefits. The Commission may wish to hold a public hearing regarding the evaluation of the benefits after the expert panel makes its recommendation. The Commission would then use that information to make the findings.

Mr. Curtin asked what would be submitted to the legislature. Mr. Hatchett explained the Commission's findings and recommendation for funding would be submitted to the legislature, as stated in the Water Code.

Mr. Byrne said there would be more value in a panel that would review each application with the Commission rather than simply ranking the applications and making recommendations. He asked if there are other examples of expert panels. Mr. Hatchett noted examples of similar panels are listed in the statement of reasons. The Commission state what information the panel should provide in the regulations. It is typical for a panel

to provide a short summary along with its recommendations. Mr. Goyal explained the expert panel would be helpful in ensuring correct ranking of the priorities. The composition of the panel will be approved by the Commission; different experts may be appointed depending on the project. Mr. Byrne expressed concern about the differences in projects and how to go about ranking different aspects fairly. Mr. Curtin stated that the composition of the expert panel should be flexible in order to evaluate the different benefit claims of different projects. Roger Mann noted the expert panel should also evaluate the appropriate share of public funding. Mr. Saracino said a next step may be to consider what an expert panel may look like at a future meeting.

Mr. Hatchett discussed how to balance specificity with being overly prescriptive. Staff proposes the regulations contain “standards and protocols” but not define specific methods for each of the five benefit categories. Applicants will use the guidelines as well as any additional information available to help them decide how to quantify the benefits of their proposed projects. The expert panel will be responsible to ensure these responses are in fact reasonable. The regulations will list steps required for quantification. The steps are: define conditions without project, describe and quantify the physical benefits, quantify reduced or avoided costs, identify feasible alternatives and their costs, estimate the monetary benefit resulting from the physical benefit, use the discount rate to bring benefits to a common point in time, and provide documentation.

Mr. Saracino asked how to translate a physical benefit into monetary terms and how that would be incorporated in an evaluation of the project if monetary quantification is not possible. Mr. Hatchett said a feasible alternative and its cost can serve as an avoided cost which can also be taken into consideration, and fulfill a monetary value requirement. Mr. Curtin noted controversy may arise because 50% of the public benefits must be ecosystem benefits, and ecosystem benefits are the most difficult to quantify. Mr. Hatchett recognized the fundamental challenge of comparing benefits in a consistent way, noting this challenge is present in most feasibility studies. For this reason, the language “when possible” has been included in the regulations. If quantification is not possible, other aspects of the scoring system may be used to make a decision. Discounting can also be used to make a comparison using a consistent approach. Adequate documentation will also be required.

The working draft of the regulation contains broad priorities that are consistent with the priorities of DFG and the State Board and likely to be relevant to storage projects.

The final section of the draft regulation is monitoring, verification, and management. The law requires the regulation address management of public benefits. Staff was concerned that it would be challenging to distinguish these public benefits from pre-existing public benefits. Additionally, there are other agencies already charged with managing these benefits. This regulation would be encroaching on other laws and regulations if it were to define management too specifically. The regulations identify monitoring, verification, and reporting as reasonable management activities. Each project must have a project monitoring and reporting plan as well as a list of commitments for project operations, monitoring, and reporting. These commitments could be used by other regulatory agencies as a condition for permitting.

Mr. Curtin asked how the list of commitments would be enforced. He asked if the regulations could require a report be submitted to the Commission. Mr. Hatchett stated that while the Commission could require a report be submitted to the Commission, the regulation is currently written so the report would go to the appropriate permitting or management agency. Mr. Goyal stated that monitoring agencies usually require mitigation. Ecosystem enhancements could be required as part of the Biological Opinions for example. The Commission or DFG would not have funding for long term monitoring of ecosystem enhancements. These requirements will have to be developed addressed in the future. Mr. Byrne recommended making additional requirements to assure benefits are created. Mr. Curtin stated it may require more diligence on the part of the Commission prior to funding.

Mr. Hatchett also presented the working draft of the initial statement of reasons. It discusses consideration of alternatives and references used for the basis of the proposal.

Roger Mann presented the guidelines for the applicants. The guidelines are meant to serve as a bridge document and describe eligible projects, funding and funding constraints, quantifications steps, required documents, and the selection process and panel. Details about administration and contracts have yet to be added. Mr. Saracino said the Commission could drill into specific topic areas in the future.

Glenda Marsh, DFG Environmental Program Manager, presented the DFG's priorities for ecosystem improvements. These priorities are derived from a key DFG plan for ecosystem restoration in the Bay-Delta and its watershed. Ms. Marsh listed DFG's seven main

priorities and stated that project planners could use these priorities when planning their projects. DFG intends to participate in the project evaluation process by reviewing the project applications and providing feedback. They will specifically look at how the project addresses these priorities. The relative environmental value of each project will be based on addressing multiple priorities, expected magnitude of benefits, the certainty of benefits, and timeliness. She recommended utilizing a process similar to the endangered species permit process to monitor the projects. Mr. Byrne confirmed the agency issuing permits has a regulatory responsibility to provide oversight. A significant monitoring program would require additional funding.

Mr. Saracino noted that DFG's priority list was very comprehensive and asked if they had identified any priorities that have not been included on the list. Ms. Marsh confirmed all DFG priorities are included in the list. Mr. Saracino noted that priorities are not ranked. He stated that DFG's priorities could be used to aid applicants in crafting their projects, and questioned if this non-prioritized list would be helpful. Mr. Curtin added that the list gives the Commission the ability to rank priorities from their own perspective.

Mr. Goyal asked for direction on what steps should be taken next. Mr. Saracino said specific topics need additional discussion and review and directed staff to identify those topics and list them for future meetings. Ms. Sims listed some of the discussion topics including: composition of the expert panel, how to provide oversight to compliance, and ranking of the priority lists. Mr. Curtin requested the expert panel not be concrete as it should instead be project specific. Mr. Goyal suggested adding how to monitor and enforce the project. Mr. Curtin added that the state may not have resources to monitor the projects. It may be useful to find out what the monitoring agencies need from the Commission.

Public Comment

Robert Gore, California Roundtable for Agriculture and the Environment, suggested including the California Department of Food and Agriculture on the expert panel. He also recommended looking into ecosystem services.

9. Consideration of items for next California Water Commission meeting

Topics for the September meeting include the strategic plan, an update on the State Water Project workshop, the California Water Plan, groundwater and groundwater enhancement, climate change, coastal inundation, and a draft list of public benefit topics

for future Commission discussion. Mr. Hintz inquired about the status of eminent domain cases. Mr. Curtin suggested a future discussion regarding federal forest management and water absorption.

10. Public Comments

None.

Mr. Saracino adjourned the meeting at 11:58 a.m.