



Meeting Minutes DRAFT

Meeting of the California Water Commission

Wednesday, February 20, 2013

State of California, Resources Building

1416 Ninth Street, First Floor Auditorium

Sacramento, California 95814

Beginning at 9:30 a.m.

1. Call to Order

Chairman Joe Byrne called the meeting to order at 9:36 am.

2. Roll Call

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

3. Approval of Meeting Minutes

A motion was made and seconded to approve the draft minutes from the January 16, 2013 meeting. A vote was taken and the motion passed unanimously.

4. Executive Officer's Report

Ms. Sims provided the Executive Officer's update. The Commission members were given a flyer for the Integrated Water Management Summit on April 3, which will be sponsored by the Water Education Foundation and Department of Water Resources, and co-sponsored by the Commission. Commission staff looked into a resiliency study of the State Water Project (SWP). They found several efforts being made by DWR that may provide data for the study including condition assessment programs, the Emergency Response Plan, and studies of risk reduction. A project description will be brought before the Commission for consideration. Plans are moving forward for the proposed workshop on strategies for investing in the public benefits of water projects, to be held on March 20. Attendees will include a representative from the Federal Bureau of Reclamation and Tim Quinn from the Association of California Water Agencies. There will also be an update on CALFED surface storage investigations. Additional discussions on the workshop would take place later in the meeting.

5. Briefing on Portfolio-Based Conceptual Alternative for the Bay Delta Conservation Plan

Barry Nelson, Senior Policy Analyst for the Natural Resources Defense Council, presented the Portfolio-Based Conceptual Alternative (alternative) for the Bay Delta Conservation Plan (BDCP). The alternative is not a proposed project, but encourages BDCP to consider a new direction to address Delta challenges including a crashing ecosystem, vulnerable levee system, and water quality concerns. Concerns about the current BDCP proposal include whether or not it would improve water reliability, its effect on the ecosystem, and whether or not it is financially feasible. Currently, the BDCP consists of a large facility, aggressive pumping rules, and habitat restoration. The proposed alternative includes a smaller facility, protective pumping rules, levee improvements, and smaller habitat restoration in the Delta. The savings from a smaller facility would be used to reduce levee failure risk in the Delta and invested south of the Delta in local water supplies, south of Delta storage, water use efficiency, and water agency collaboration. Potential benefits of the alternative include more water, improved reliability, better environmental results, lower cost, and broad support for further analysis. A balance between ecosystem restoration and water supply reliability is very important. The alternative is based on limited modeling and current information. Mr. Nelson requested the alternative be analyzed by BDCP.

Jonathan Clay, of the San Diego County Water Authority (SDCWA), also discussed the conceptual alternative. SDCWA supports a Delta fix, and further analysis of the best process. San Diego will always depend on imported water regardless of the county's efforts to conserve water. San Diego's demand for water has not increased; however, their costs have almost doubled in recent years. He noted that San Diego is planning a desalination plant, which will come online in the next several years, yet that was not included in the demand analysis for BDCP. Additional BDCP alternatives should be analyzed and analysis should be more thorough. He noted that San Diego will most likely fund a significant amount of the project.

Ms. Delfino asked the presenters to respond to questions raised previously by Jerry Meral, including why they were requesting analysis of this alternative when BDCP is already analyzing a smaller facility, and what is lacking in the current BDCP process. Mr. Nelson said both BDCP and the alternative look at smaller facilities, but there is significant difference. The alternative proposes investing the savings from a smaller facility in other areas for better performance. If the current BDCP uses a smaller facility, in isolation will

likely not perform as well as a larger facility. The alternative will enhance the performance of the smaller facility through a portfolio approach. The cost of the alternative proposal was estimated based on a 2010 BDCP study of a 3,000 cfs facility with two tunnels, which would cost \$7 billion. Based on this information, the cost estimate for one tunnel in the proposed alternative was \$5-7 billion. However, the state has recently increased its cost estimate for one 3000 cfs tunnel to \$8.9 billion.

Mr. Del Bosque asked if bond funding is an integral part of the feasibility of the project. Mr. Nelson stated the current BDCP assumes significant bond funds for habitat restoration, with the facility being paid for by water users. The alternative used similar assumptions but has not created cost allocations for each aspect of the project. Mr. Del Bosque also asked about the type of proposed storage for south of the Delta. Mr. Nelson stated there is a network of surface storage and groundwater storage facilities that are integrated in their operations. The alternative would add to this network; additional storage may be surface, groundwater, or conjunctive use. The alternative recommends analyzing conjunctive use.

Mr. Curtin raised a concern about the impact the alternative project may have on the Delta. He noted that during certain times of the year, more water can be exported from the Delta without harming the ecology. An alternative with a smaller tunnel would reduce the capability of the project to move more water during these times. Mr. Nelson stated that more storage south of Delta is necessary to have some place to store water pumped during that time. He said modeling of the alternatives is necessary to estimate how much water could be pumped.

Ms. Delfino clarified the alternative proposal incorporates the costs of south of Delta storage, alternative water supply and levee improvement; whereas the current BDCP cost estimate does not. Mr. Curtin asked how a smaller facility would change the "aggressive pumping rules" associated with the BDCP. Mr. Nelson stated the current BDCP contemplates pumping rules that are more aggressive than the pumping rules in the proposed alternative.

Mr. Curtin asked for Mr. Nelson's thoughts on above Delta storage. Mr. Nelson said the south of Delta storage was included in the alternative due to concerns raised by environmental groups.

Public Comment

Greg Zlotnick, from the State and Federal Water Contractors Agency, provided the Commission members materials, including a comparison of BDCP and the alternative proposal, a press release from the contractors, and two letters. BDCP, like the Delta Plan, is a project separate from the California Water Plan, which does include many of the approaches suggested in the portfolio alternative. He supported the approaches but does not believe they should be part of the BDCP. He also stated that a smaller facility is not a new idea and analysis has been performed. He quoted Mr. Nelson as saying "a smaller facility on its own won't perform as well as a larger facility." What should be accounted for are benefits that will be missed by not having the larger facility. There is also a question of reliability in relation to local investment.

Ms. Delfino asked if Mr. Zlotnick believes alternative water supply and south of Delta storage should be analyzed as part of BDCP. He asked that the question be directed to Dr. Meral. Ms. Delfino requested that he relay the question to the State Water Contractors.

Mario Santoyo, from Friant Water Authority, said if storage is being considered in the alternative proposal, there needs to be more definitive information as to what is being discussed. The Friant Water Authority depends on conjunctive use and there is little room to increase that without additional surface storage. He questioned if the alternative proposal is looking at existing or new conjunctive use and encouraged the Commission to look at feasible alternatives.

Erik Ringelberg, Ecological Services Group Manager, supported the direction of the alternative proposal.

6. Legislative Update

Kasey Schimke, DWR Assistant Director of Legislative Affairs, provided a legislative update. The deadline for bill introduction is February 22 and there have been several hundred bills introduced this week. A fourth bill to make changes to the water bond of 2014, AB 142, has been introduced. No hearing dates have been set for these bills. Limited water-related legislation has been introduced. DWR's budget proposal for the Salton Sea Species Conservation Habitat program goes before budget committees this

spring. A hearing will be held Friday at the Salton Sea to discuss the Species Habitat Conservation program.

Mr. Curtin asked about bills regarding a drinking water crisis and financing options for drinking water. The Department of Public Health or the Water Board may be able to provide information on this, as it is outside of the purview of DWR.

Ms. Delfino asked about a letter written by Assemblymember Manny Perez to the Joint Legislative Audit committee on Salton Sea, and whether DWR was involved. Mr. Schimke said DWR is not directly involved in that issue.

7. Briefing on California Statewide Groundwater Elevation Monitoring Program (CASGEM)

Mary Scruggs, DWR Supervising Engineering Geologist, briefed the Commission on the CASGEM program, created by SBX7-6. Through the program, local entities monitor and report groundwater elevations. DWR then makes that groundwater data readily available to the public. DWR is required to prioritize and investigate groundwater basins, and submit a report to the Governor and Legislature. CASGEM was implemented in 2010 and efforts have resulted in 143 designations covering 115 basins and subbasins, 63 designated monitoring entities, and 7,845 CASGEM wells.

Program accomplishments include development and implementation of the online submittal system, submittal the first set of data, designation of monitoring entities for the basins, and incorporation of alternate monitoring. A report on the status of CASGEM has been submitted to the Governor and Legislature. Future benefits of CASGEM include development of groundwater elevation maps, hydrographs, and trends in groundwater for resource planning.

AB 1152 has implemented certain changes in the program. It allows local agencies without a current Groundwater Management Plan who have been collecting and reporting groundwater data to become monitoring entities. It also allows alternate monitoring techniques. CASGEM only allows one monitoring entity per geographic area. Local agencies must be in compliance with CASGEM in order to qualify for State grant funding.

There have been several challenges in implementing the program including a lack of funding, disagreement over basin boundaries, updating the data base. DWR is currently developing a tool for prioritization of basins.

8. Update on Status of Resolutions of Necessity and Eminent Domain in Support of Bay Delta Conservation Plan

Christopher Martin, DWR Staff Counsel, provided an update on the Resolutions of Necessity and Eminent Domain including of Temporary Entry Permits (TEP), litigation, condemnation of properties, and next steps.

DWR sought access to properties for geotechnical and environmental surveys with either the consent of the property owner or by court order, which is possible without eminent domain. The purpose of the surveys was for evaluations for the proposed Delta water conveyance infrastructure. DWR's efforts were challenged by some land owners in court, ending with a ruling that DWR's geotechnical work constitutes a taking. In order to continue with survey work, DWR was forced to proceed with eminent domain. DWR has appealed the court's decision. While the appeal is pending, DWR has proceeded with eminent domain in four counties. Before DWR can exercise power of domain, it must come before the Commission to seek Resolutions of Necessity. That was done in February and March of 2012 and resolutions were adopted.

Last fall, at court hearings on DWR's motions for early possession, judges in three of the four counties where resolutions were filed, ruled that DWR's eminent domain complaints were deficient as they failed to name all holders of recorded interests in the property as defendants. The Code of Civil Procedures requires the fee owners of the properties be notified and given the opportunity to provide public comment. DWR amended its complaints to include the additional property interests. Some easement holders were public agencies that had preexisting public uses on those properties. As a result, additional sections of code of the Code of Civil Procedure require a determination to be made that the new use is either compatible with or more necessary than the existing public use. This is to be addressed in the Resolutions of Necessity and in the complaints. Several defendants have demurred to DWR's complaints on the basis that the current Resolutions of Necessity do not specifically address those requirements. DWR has elected to come back before the Commission and seek to address those requirements prior to the issue being considered in court. Currently, there are 18 resolutions to be amended. DWR will bring the amendments to the Commission for consideration in March and April 2013.

9. Action Item: Approval of Revised Commission Procedures for Resolutions of Necessity and Eminent Domain

Spencer Kenner stated, as was mentioned earlier in the meeting, additional requirements have been added to the Resolutions of Necessity. Therefore, the Commission's procedures should be updated to reflect those requirements. A motion was made and seconded to adopt the updated procedures. A vote was taken and the motion passed unanimously.

10. Review of DWR Regulation Calendar for 2013

Spencer Kenner presented the DWR Regulation Calendar for 2013. The calendar is routinely submitted to the Office of Administrative Law (OAL) to give advance notice of upcoming regulations. This year's calendar includes State Water Project Encroachment Regulations and an amendment to the Agricultural Water Measurement Regulation.

11. Action Item: Initial Consideration of Amendment to Agricultural Water Measurement Regulation

Kent Frame, of DWR's Water Use and Efficiency Branch, presented proposed amendments to the Agricultural Water Measurement Regulations (regulations), which were adopted by the Commission and approved by the Office of Administrative Law (OAL) in July 2012. Some of the stakeholders have encouraged changes. The current report form uses the fiscal year calendar. However, the calendar year format would be preferable as it is easier to use, allows for a longer turnaround time, and coincides with the State Water Board's diversion reporting requirements. Upon the Commission's approval of this amendment, a 45-day public comment period will be held, followed by a hearing. With additional approval from the Commission, the rulemaking package will be submitted to OAL in May and become effective in January 2014.

A motion to approve these changes was made and seconded. A vote was taken and the motion passed unanimously.

12. Briefing on Draft Discussion Paper: *BDCP and Delta Farmland*

Katy Spanos, DWR Attorney, briefed the Commission on the draft discussion paper *BDCP and Delta Farmland*, which identifies potential strategies for dealing with impacts to agricultural land as a result of BDCP. Currently, departments under the Resources Agency consider the conversion of agricultural land on a case by case basis. In the context of

CEQA agriculture is considered in the project formulation, and CALFED strategies, and social and economic impacts are considered. Following the release of the Central Valley Flood Protection Plan and the Administrative Draft of BDCP, DWR realized they needed a more comprehensive approach. Last Spring, DWR began reaching out to the Delta agricultural interests for discussion. There was also recognition that some agricultural lands with protected species would be converted to non-agricultural lands. BDCP worked on a cultivated land strategy that would provide protection to those species outside of the restoration areas.

Discussion papers were developed with the intent to find what the communities would like done. Meetings have occurred with both State and federal agencies. The purpose of this effort is to develop a list of strategies, in the context of agricultural resources, to be used by decision makers as the BDCP moves forward. Another draft of the paper will be developed. DWR is currently working on details of the strategies and continuing to meet with agencies. Ms. Delfino asked for a delineation of what falls under CEQA and what is specific to DWR.

Public Comment

Erik Ringelberg thanked Ms. Spanos and DWR for developing a program dedicated to protecting California's agriculture. Their work can potentially return benefits to impacted areas and allow for statewide farmland protection. He encouraged the Commission to consider the agricultural protection measures as part of the BDCP.

14. Public Comment (Taken out of order)

Sean Rossi, DWR Senior Hydroelectric Plant Operator, spoke regarding the State Water Project (SWP) recruitment and retention crisis, which is a health and safety concern. The number of personnel has decreased. Previously, the San Joaquin Field Division had approximately 20 – 30 electricians for nine facilities. Today there are only seven. The three most concerning issues include lack of personnel, deferred maintenance, and overall sustainability of the SWP. Recent attempts to address these issues have come across as a "quick fix" and the problems still exist. To remedy the situations would be costly; however, resulting issues from lack of personnel are even more expensive. Failure to recruit and maintain the necessary amount of personnel may result in major incidents leading to the shutdown of water flow. Employees are working overtime to pick up the workload left by inadequate staffing.

Mr. Byrne thanked Mr. Rossi for his comments and said the Commission has had several discussions on this issue and is aware of current discussions taking place. Additionally, he would like to be better informed on the subject.

Mr. Curtin asked about a report on the fire at Thermalito. Ms. Sims said the assessment and clean up is still in process, but will schedule an update on its status.

13. Consideration of items for next California Water Commission meeting

The March meeting will include the Public Benefits Financing Strategy workshop, which will be followed by a presentation on BDCP by Dr. Jerry Meral and initial consideration of amendments to the Resolutions of Necessity. Workshop participants include a representative from the Bureau of Reclamation and Tim Quinn from ACWA, with the opportunity for one additional speaker. An update of surface storage investigations is also scheduled. It is expected to be a full day meeting. Mr. Byrne suggested ending the workshop by 1:00 p.m. with a carryover into April, if needed.

Mr. Curtin asked about a short document regarding public benefits. Staff has developed short concept papers on the topics of water quality, ecosystem, and recreation to be distributed prior to the workshop. Questions to be answered relate to quantification and evaluation of benefits. Mr. Hintz requested Director Cowin to be included in the workshop. Mr. Byrne suggested soliciting feedback on Commission discussion regarding intent, instead of asking legislators their intended purpose of the statute. The consultants will also be in attendance for the workshop. Mr. Del Bosque noted there is sufficient time to understand the intent of the legislation in going forward.

Mr. Byrne requested additional information on the Salton Sea. DWR and DFW will be briefing the Commission on Salton Sea later this spring.

Mr. Byrne adjourned the meeting at 12:23pm.