



Meeting Minutes

Meeting of the California Water Commission

Wednesday, August 21, 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 9:31 am.

2. Roll Call

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

3. Approval of July 2013 Meeting Minutes

A motion was made and seconded to approve the July 17, 2013 meeting minutes. A vote was taken and the motion passed unanimously.

4. Executive Officer's Report

Sue Sims provided the Executive Officer's report. There may be opportunity for the Commission to work with the California State Board of Food and Agriculture in September in to discuss dry conditions, impacts on agriculture, and the Bay Delta Conservation Plan. The Commission's September 18 meeting will be held in Oroville and will focus on State Water Project (SWP) issues. Commission staff member Maggie Hunnicutt has accepted another job with DWR, but is still working with the Commission for the time being.

5. Update on State Water Project Water Supply Contract Extensions

Carl Torgersen, DWR Deputy Director for SWP, updated the Commission on the SWP water supply contract extension process. Water supply contracts were originally signed in the 1960s and provide the basis for financing the SWP. Most of the current contracts terminate in 2035. Therefore, the SWP cannot sell revenue bonds with terms extending beyond 2035. The resulting shorter bond terms may increase water costs. Objectives of the process include extending the terms, increasing cash reserves, and simplifying the SWP billing process. DWR is currently holding public negotiation sessions which should result in agreements in principle. These agreements in principle will be the basis for the contracts. Progress is being made, however decisions still need

to be made about the processes associated with the cash reserve and contract terms. The goal is to complete the contract extensions in 2015.

Ms. Delfino mentioned some conservation organizations have been participating and asked about their comments on some of the surrounding issues. Mr. Torgersen said their comments are being considered and will be responded to officially during the CEQA process. These comments discussed impacts to end users and how long they would be committed to a water supply contracts and separating BDCP from ongoing operations of the SWP.

Mr. Saracino asked about the substance of negotiations. Mr. Torgersen said the lengths of terms are being negotiated as well as the control of the cash reserve and processes around financial reporting.

Mr. Torgersen agreed to respond at a later date to a question from Ms. Delfino regarding urban preference issue in the contracts.

6. Action Item: Review of Updated Staff Draft of Proposed Regulations for Quantifying the Public Benefits of Water Storage Projects

Ms. Sims introduced the item. She noted the Commission had been asked about the public participation in the process to quantify public benefits. The purpose of today's item is to review regulations prepared by staff based on the previous draft and issues discussed with the Commission over the last several months. If the Commission is comfortable with this draft, it would be circulated in a more focused way over the next couple months to obtain public input on this version of the draft. The comments would be brought back to the Commission in November. Several drafts will be circulated before a semi-final draft is created in May.

Mr. Byrne asked if there will be any additional storage project case studies. Ms. Sims said that one more surface storage case study could be planned for the fall, and additional presentations on reoperation and groundwater storage could also be scheduled. Issues raised during these discussions can be used to inform the second draft of the regulations.

Ajay Goyal presented the updated staff draft of the regulations. A first working draft of regulations and guidelines were presented to the Commission in July 2012 along with a report on economic tools and methods. The Department of Fish and Wildlife (DFW) and the State Water Board have also presented their priorities to the Commission. Over the past year, the Commission has held in depth discussions on issue papers dealing with the definitions of various public benefits. In addition, input has been obtained from DWR legal staff. These discussions have informed the second staff working draft regulations which will be presented at today's meeting. If the Commission is comfortable with this draft, staff will solicit public comments over the next two months and revise the regulation. This is independent of the formal public review during the OAL

rulemaking process. Staff Counsel Maureen King reiterated that the Commission does not have formal rulemaking authority until after the 2014 water bond is passed, and current work is for drafting purposes only.

Ms. Delfino asked if the regulations and guidelines would be put out for public comment. Mr. Goyal stated that no changes have been made to the guidelines and those would be put out following the regulations. Ms. Delfino stated that the guidelines are necessary in order to review the regulations, and they should be reviewed simultaneously. Ms. King agreed. Mr. Goyal stated that staff would revise the guidelines over the next month and bring them back to the Commission at the following meeting.

Roger Mann, consulting economist, described the draft regulations and pointed out key changes from the previous draft. Most changes have been editorial. The introduction discusses the Act, rationale for the regulations, eligible projects, and eligible public benefits. Section 1 describes applicability. Section 2 defines terms. Several definitions have been added. The most significant change has been to add clarifications regarding the five eligible types of public benefits, as discussed with the Commission over the last year. Ecosystem benefits must be the result of restoration of aquatic ecosystems and native fish and wildlife. Mr. Saracino stated suggested using "restoration actions" in section 2(p)(1) to clarify that restoration does not have to have happened in order for restoration actions to be eligible for funding. Ms. King suggested language analogous to that used for water quality such as "contribute to restoration." Mr. Mann suggested that specific standards for claiming ecosystem benefits be included in the guidelines. Ms. Delfino suggested the evaluation panel be tasked with evaluating the likelihood of the project achieving the claimed benefits. Mr. Mann pointed out that in section 6(c) the regulations state that benefits with greater certainty would be given higher relative environmental value.

Mr. Mann reviewed the definition of water quality benefits. In the regulations, water quality benefits that contribute to restoration of aquatic ecosystems and native fish and wildlife in the Delta should be counted as ecosystem benefits. Other water quality benefits would be counted under water quality. Ms. Delfino stated the last sentence of this definition was vague and should include the public trust limitation in the act. Mr. Saracino said the Commission must discuss whether benefits to urban water quality should be included as a public trust benefit. Ms. Delfino stated the current definition in the draft regulations is too broad. Mr. Mann stated that public trust resources are not defined; all uses can fall under the public trust doctrine. Ms. Delfino suggested getting additional input from experts and the public on the definition of public trust resources. Mr. Saracino pointed out that as the regulations are currently written, the definition of water quality is inconsistent with water supply; they should be treated consistently. Mr. Mann clarified that water quality benefits to water utilities can be separated from water quality benefits for end users. It will be important to discuss whether water quality itself is a public trust resource. The definition in the regulation clarifies the definition in the act but does not replace it.

Mr. Byrne suggested language revisions to section 2(p) so the regulatory clarification does not appear to add to the statutory definition.

Mr. Mann then reviewed the definition of flood control benefits. There were no comments. Mr. Mann reviewed the definition of emergency response benefits. Mr. Saracino suggested changing "earthquake" to "natural or manmade disasters." Mr. Mann reviewed the definition or recreation benefits. There were no comments.

Section 3 of the draft regulation discusses information requirements. Staff has deleted an unspecified timing requirement. An Operations Plan had been separated from the Monitoring, Reporting and Assurances plan. An addition was made stating some ecosystem benefits must be quantified and language regarding cost effectiveness was added. Ms. Delfino asked staff to define "planning horizon" in the Definitions section.

Section 4 discussed the process for reviewing and evaluating applications for public benefits. Several unspecified timing requirements were deleted. Staff has been discussing language regarding conflicts of interest. Commission staff will meet with DWR Legal to review and revise the conflicts of interest language. Ms. Delfino suggested a place holder for the language in the interim.

Mr. Byrne asked about the content of the proposed panel recommendation. Mr. Mann suggested the panel would provide rankings based on expected return on public investment, beyond just economic factors. Mr. Curtin suggested that the panel should provide a scientific recommendation, not a subjective recommendation. Mr. Saracino said the recommendation could be something as simple as "this meets the criteria." Mr. Mann suggested changing the language from the panel providing "recommendation" to "evaluation." The Commission agreed. Ms. Delfino stated the panel is not charged with comparing one application to another. The panel should evaluate each project independently and the Commission would then rank the projects. Mr. Saracino asked how this Commission would be qualified or prepared to judge these projects. He suggested the panel should score the applications on each criterion and assign an overall score. The Commission could then evaluate and change that score.

Mr. Mann pointed out that there will be a public hearing on the evaluation criteria prior to the project solicitation.

Mr. Mann reviewed Section 5 on quantification of public benefits and Section 6 on priorities and relative environmental value. Section 6 includes the priorities provided by the State Water Resources Control Board and the California Department of Fish and Wildlife. Section 7 discussed monitoring and management of public benefits. It includes details on the Operations Plan and

Monitoring, Assurances, and Reporting Plan. Mr. Byrne asked how grant recipient performance is monitored in other programs and about consequences if they do not comply. Mr. Mann stated that the Operations Plan can be a good basis for assurances.

Mr. Saracino stated that the regulations do not include the methods for quantification of public benefits. He asked if they can be required, as they will be included only in the guidelines. Ms. King stated that can be addressed by cross-referencing the guidelines in the regulations.

Ms. Delfino asked if clarification of the 50 percent ecosystem benefits requirement would be included in the regulations. Mr. Goyal stated that that could be included in the guidelines. Ms. Delfino also asked when the Commission would discuss how many projects could be funded, and in how many rounds. Mr. Goyal said this could be included in the guidelines. Mr. Saracino stated this was within the discretion of the Commission and does not have to be spelled out in advance.

Ms. Sims clarified that staff would make revisions to the regulations based on the discussion at today's meeting and bring the revised draft regulations as well as the draft guidelines to the Commission for review at the next meeting. Following that meeting, the regulations and guidelines could be put out for public comment.

7. Action Item: Briefing on Federal Water Resources Development Act of 2013 Legislation and Consideration of Letter from Commission to Congress

Dave Gutierrez discussed DWR's federal advocacy program. The program is being restructured, and they are in the process of hiring a lobbyist to pursue federal advocacy for flood control funding. The program objectives are to (1) support and influence federal legislation, and specifically the Water Resources Development Act (WRDA); (2) inform the administration and influence the president's budget; (3) stay in sync with the Army Corps of Engineers (Corps); and (4) inform congressional representatives about priorities and projects.

WRDA legislation has passed the Senate. The House will consider their WRDA bill sometime this fall. Mr. Gutierrez highlighted some key sections in WRDA that DWR supports. Section 2011 addresses the issue of regional crediting. California is ahead of the federal government in completing projects in advance of federal funding. DWR is working to get credits for these projects that can be moved to other projects in the state. Levee vegetation is also a key issue. While vegetation may not be good for a levee, it is not the highest funding priority. There are more efficient ways to drive down risk such as addressing structural issues. Section 2020 directs the Corps to study this issue and give regional consideration. Other issues include authorization of a non-project implementation pilot program. Federal funding is a cumbersome process. Section 2025 proposes a pilot project to figure out efficiencies that would allow local agencies to do more work. Many details need to be worked out still. Title 6 of the WRDA authorizes the National Levee Safety Program, which DWR is supporting. Title 9 reauthorizes the National Dam Safety Program,

a successful and established program. Title 10 talks about authorizing pilot projects. This program would look for efficiencies in funding future programs.

The Commission then reviewed a draft letter prepared by staff in support of WRDA. Ms. Delfino expressed concern about a broad statement of support of the Senate WRDA bill. Sections 2032 and 2033 have caused concern with tight regulatory deadlines limiting public and agency input. She suggested modifying the letter to address those issues.

Mr. Gutierrez stated that DWR is highlighting the points that they like, rather than highlighting the points that they do not like. Mr. Curtin suggested speaking with Senator Boxer's office to get more information regarding these two sections and ensure the Commission's comments would be helpful. The Commission directed staff to check on the revised language and send the letter.

8. Update on 20x2020 Water Conservation Program

Manucher Alemi, Chief of DWR's Water Use and Efficiency Office, provided an update on DWR's 20x2020 Water Conservation Program. The legislation, passed in 2009, requires urban water suppliers to reduce their per capita water use 20% by the year 2020. Approximately 94% of Californians are served by urban water suppliers. Agencies who submitted Urban Water Management Plans (UWMPs) provide water to 90% of the State's population. 88% of the State's retail Urban Water Suppliers and 98% of the wholesale urban water suppliers submitted UWMPs. DWR is currently reviewing those plans. If water suppliers do not submit a plan, they are not eligible for any state grants or loans. Mr. Alemi described the content of the UWMPs including service area, population, water supplies, water demand, demand management measures, and water shortage contingency planning. The statewide average baseline urban water use was 196 gallons per capita per day (GPCD). In order to comply with the goal, the GPCD must be reduced to 157. However, the average reported target was 164 GPCD. If all suppliers meet their targets, there will be a statewide demand reduction of about 1.4 million acre feet per year. Common demand management measure implemented by water suppliers to meet their targets include residential plumbing retrofits, metering, high- efficiency washing machine rebates, school education programs, and conservation pricing.

The 20x2020 legislation also required state agencies to reduce their water use, and DWR to develop criteria to reduce water use. DWR recommends state agencies use a third party database track water use. DWR worked with DGS and other agencies to develop a management memo that will be incorporated in the State Administrative Manual. This applies to all State operated facilities under the Governor's authority.

9. Update on State Water Action Plan

Ms. Sims stated that there is a growing consensus that there needs to be another process that prioritizes the State's actions for dealing with water supply, climate change, and ecosystem. There

are a number of efforts currently underway to prioritize near-term actions. One of those efforts is being led by an Association of California Water Agencies (ACWA) working group. DWR and Commission staff have been involved in that process.

To build on that process, DWR and other state agencies are going to come together to use those processes to prioritize near-term actions in a State Water Action Plan (SWAP). There will be a role for the California Water Commission in gathering public input.

Ms. Sims then introduced Paul Massera, Project Manager for the California Water Plan, to talk about how work on the California Water Plan (CWP) would inform the State Water Action Plan.

Mr. Massera stated that the CWP and SWAP are not one in the same. The CWP is very broad, whereas the SWAP is more specific and short term oriented. It is an opportunity to select the recommendations that were put forth in the CWP and move them forward in an actionable plan. DWR plans on leveraging the CWP stakeholder outreach infrastructure to vet the SWAP. In the Draft CWP Update 2013, Chapter 8 includes 200 recommendations for action, which can serve as a foundation for this discussion. The SWAP is an opportunity to align the dozens of state plans that exist in various agencies. A public draft will be shared at the CWP Plenary meeting at the end of September. It should be finalized early next year.

10. Consideration of Items for Next California Water Commission Meeting

The Commission will hold a joint meeting with the California State Board of Food and Agriculture on September 10. Items for the Commission's regular meeting on September 18 may include the SWP issues, governance, updates on Thermalito and other facilities, FERC licensing, and a revised staff draft of public benefits regulations and guidelines.

11. Public Comments

Greg Zlotnick addressed the public benefit regulations and asked if the guidelines would have an opportunity for public comment. He voiced concerns about certain terms used in the regulations. In Section five he asked about "quantification of physical change" and in subsection two he asked about "quantify the physical change.... and show annual pattern of benefit."

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