

Meeting Minutes

Meeting of the California Water Commission

Wednesday, February 19, 2014

State of California, Resources Building

1416 Ninth Street, First Floor Auditorium

Sacramento, California 95814

Beginning at 9:30 a.m.

1. Call to Order

The meeting was called to order at 9:32 a.m.

2. Roll Call

Sue Sims called roll. Joe Byrne, Joe Del Bosque, Kim Delfino, Lu Hintz, Adán Ortega, and David Orth were present, constituting a quorum. Danny Curtin and Andy Ball arrived shortly after roll was called. Anthony Saracino was absent.

3. Approval of January 2014 Meeting Minutes

A motion was made and seconded to approve the January 15, 2014 meeting minutes. A vote was taken and the motion passed unanimously.

5. Briefing by DWR Director Mark Cowin on Current Water Management Activities and Issues

(This item was taken out of order.) Department of Water Resources (DWR) Director Mark Cowin briefed the Commission on key current water management issues including drought, the California Water Action Plan, the Bay Delta Conservation Plan (BDCP), and groundwater management. Director Cowin noted that the current drought is extraordinary, but challenging conditions provide great opportunity. The severity of the drought caught some in California by surprise, and has underscored California's dependence on a few large storms each winter which typically refill reservoirs and recharge aquifers. So far this winter, California's usual storms have been absent. Governor Brown issued a drought proclamation in January which included specific drought response actions. Mr. Cowin said he is happy with how state government has responded and how state agencies have been working well together.

At the end of January, DWR reduced the 2014 allocation to State Water Project (SWP) contractors to zero%. DWR also petitioned the State Water Resources Control Board (State Board) to temporarily reduce outflow requirements in the Delta and allow more flexibility to open the Delta Cross Channel gates. DWR's goal is to preserve enough water upstream for basic salinity control in the Delta throughout the summer. DWR must also consider what will be necessary to provide for

basic health and safety later this year. Mr. Cowin said the cooperation between state and federal agencies has been extraordinary and has allowed agencies to continue compliance with the Endangered Species Act. The interagency drought task force is keeping state agencies and officials abreast of local emergency situations. The California Department of Public Health is tracking small communities in danger of facing water shortages and offering services to those communities.

One of DWR's main focuses in the fall and winter of 2013 was preparation for the California Water Action Plan. Mr. Cowin stated that the Action Plan does not contain any unexpected new policies, but is articulated boldly and is a product of interagency collaboration. If all the actions from the plan were implemented, California would be better prepared for its next drought, but the plan contains high aspirations which will require additional financial resources. Mr. Cowin said the plan is also a good backdrop for drought response. There will be future droughts in California, but the state can be better prepared by implementing the strategies in the plan. Governor Brown's budget prioritizes water activities and investments around the actions in the Water Action Plan. The plan reflects the evolution in policies for sustainable management, but it also reflects the lack of evolution in terms of financing water management. Mr. Cowin noted that one of the responsibilities of the Commission is to advise the director of DWR, and asked for practical advice on how to sustainably finance projects across local, state, and federal governments.

DWR is also continuing to advance the BDCP. The public review draft has been out for several months, 12 public meetings were held, and public outreach and education will continue. Mr. Cowin said the focus moving forward will be better defining the obligations of the participating parties, cost and risk allocation among those participants, and water supply assurances. Those issues are complex and intermingled.

Groundwater management was highlighted in the California Water Action Plan. The Brown Administration is positioning itself to lead a stakeholder process to gain input on the potential policy and content of a groundwater management bill. Mr. Cowin noted that changes to groundwater management should not be approached as merely a response to drought because California will continue to rely on groundwater despite the type of water conditions in any given year. The basic framework for improvements to groundwater management contained in the California Water Action Plan is a starting point. The state should continue California's policy of allowing groundwater management to be carried out at the local level, but should provide tools to assist sustainable local groundwater management. A state backstop for communities that cannot or will not improve groundwater management should also be part of California's policy, according to Mr. Cowin.

Commissioner Delfino asked when the draft implementing agreement for the BDCP will be released. She also asked if progress has been made with the participating parties in securing additional financial assistance for the work on BDCP to continue. Mr. Cowin said the three issues

he addressed - the obligations of the parties, financing, and assurances - are the fundamental elements of the implementing agreement. He noted that federal agencies will continue to work on the agreement next week. There is a 60-day public comment period requirement for the draft implementing agreement and requests for extension of the BDCP public comment period are being considered. Tens of millions of dollars have been invested in planning for the BDCP, but water agencies must know that planning will eventually end. As the issues that will define the implementing agreement are resolved, potential future obstacles to a final decision and permit must be identified. There is currently funding to sustain the planning process into the summer. Additional funding will be needed to continue beyond the summer. Some larger water districts are currently considering additional funding for the BDCP planning process. Mr. Cowin believes funding will be secured to complete the planning process and move the project forward.

Commissioner Ball noted that it seems as though California is reacting to drought, but we have known that our current water management is not sustainable. California has experienced more severe droughts in the past and if the current drought is not an intermittent drought, more water storage alone is not going to be a long term answer. The price we pay for water is low and Californians will have to adjust to paying more, particularly in cities. One high cost solution is desalination. Mr. Ball asked for Mr. Cowin's views on the inequities between the cost of agricultural and urban water, and the potential role of desalination. Mr. Cowin said there is not a single solution for California's water management. There are implementation issues with desalination, but it may have a role. California must take advantage of all available opportunities for water management. There are many opportunities for water reclamation and stormwater management that can provide water supply at a lower cost and with fewer hurdles than desalination. Mr. Cowin said it is clear that many urban water users will need to pay to invest in water supply technology. What rising water costs will mean for California agriculture will be a key question in the coming years. Mr. Cowin said California needs to determine how water projects will be financed in the future.

Commissioner Del Bosque said water costs are having a large impact on farmers this year. The increased market costs for water are not sustainable for agriculture and will have economic repercussions in the San Joaquin Valley. President Obama discussed climate change during his trip to the San Joaquin Valley and pledged to dedicate \$1 billion to addressing climate change. Mr. Del Bosque asked for Mr. Cowin's view on the subject and how it may help with California's drought. Mr. Cowin said he was surprised by the President's emphasis on climate change. California's current situation must be responded to, regardless of whether it is the result of longer term climate change. If California can develop a reliable water supply given the known uncertainty of the climate, it will be prepared for the effects of longer term climate change. Mr. Del Bosque asked how the zero % SWP allocation will impact DWR's finances. Mr. Cowin said the SWP water supply contracts ensure that DWR recovers costs regardless of the amount delivered, but DWR is concerned for agencies that may not be able to adapt to the allocation. DWR will monitor the

situation and do what it can to assist struggling water agencies. DWR was able to release some funding, and there are contractual provisions to defer costs. There may be an impact to the financial condition of the SWP if the drought continues for several more years. Mr. Del Bosque noted that the Central Valley Project operations and maintenance costs are paid when water is delivered and asked if the same is true of the SWP. Mr. Cowin said the SWP passes on fixed costs regardless of the amount delivered. Mr. Del Bosque asked how the drought has impacted power generation. Mr. Cowin said there has been a large decline in hydropower, which will mean reliance on other energy sources, which will increase greenhouse gas emissions.

Commissioner Ortega said there are surprises that come with water management. As groundwater basins are drawn lower, higher concentrations of constituents are found, and the costs to treat water to comply with some emerging standards will be high. Mr. Ortega asked if the alignment achieved through the Water Action Plan could allow for more strategic implementation of regulations. Mr. Cowin said one of the themes of the Water Action Plan is improving the alignment of regulations in a more strategic way. The cooperation fostered in developing the plan can be sustained as the plan is implemented. Mr. Ortega said that the SWP contractors desire flexibility in the SWP, but do not have flexibility within their individual systems. It is difficult to move water that is saved by conservation. Mr. Ortega also noted that water is often undervalued.

Commissioner Orth agreed that the drought has brought opportunities for change. Groundwater is not managed in many areas of the state, and there has been a large agricultural shift to groundwater. Mr. Orth asked if DWR has resources to assist unmanaged areas in managing their groundwater. Mr. Cowin said DWR can be better organized to help provide such services, but lacks the capability to be responsible for that management. The additional authority and resources needed by state agencies should be kept in mind as legislation is advanced. Mr. Cowin expects Senator Steinberg's drought legislation to contain resources for groundwater activities. How those resources can be used toward the broader policy objective of groundwater management must be considered.

4. Executive Officer's Report

Sue Sims provided the Executive Officer's report. Ms. Sims attended a meeting of the Sites Joint Powers Authority Board of Directors in January. The Board was interested in the Commission's work and the status of the regulations and guidelines for quantifying public benefits. The 2013 annual review of the State Water Project was finalized and submitted to the Legislature. Commission staff is working with the Association of California Water Agencies (ACWA) and Delta Stewardship Council (DSC) on a survey to identify near term water storage projects and other actions to improve local and regional water supply reliability. The online survey is being beta-tested this week. Staff hopes to distribute the survey starting next week. Ms. Sims also noted that the Commission was provided with a summary and comparison of bond proposals that have been introduced in the Senate and Assembly. The document was prepared by Commission staff.

6. Update on DWR's Tribal Consultation Program

Anecita Agustinez, DWR's Tribal Policy Advisor, discussed DWR's tribal consultation policy and activities. Ms. Agustinez provides policy advice and recommendations on tribal communities to the Director and Chief Deputy Director of DWR. She is a tribal citizen of Diné (Navajo) Nation. One of her main tasks has been to develop a tribal consultation policy for DWR. The current drought has caused challenges providing water and protecting natural resources. With 114 federally recognized tribes, California has the second largest Native American population in the United States. There are seven tribes in the process of being reinstated as federally recognized tribes. The Native American Heritage Commission creates lists of non-federally recognized tribes in the state. The different classifications can be one challenge in tribal consultation. There are also many tribal issues that are unique to California.

The basis of tribal consultation is government to government consultation. Tribal consultation policy should be sensitive to state policies and should create a bridge to tribal governments. There is a historical divide between the state and tribal governments, but the current drought crisis is bringing them closer together. DWR does not yet have a final tribal consultation policy, but the department's work in this area falls under Executive Order B-10-11, which established the position of Governor's Tribal Advisor, currently held by Cynthia Gomez. The Executive Order mandates that every State agency develop a tribal consultation policy. DWR also falls under the California Natural Resources Agency's tribal consultation policy, which allows DWR to do consultation. Since October 2013, DWR has conducted introductory and emergency consultation with tribal governments. Key consultation occurred pertaining to the Lake Perris Dam remediation project in Riverside County. Eleven tribes that may be impacted were contacted. Five tribes were interested in consultation and deferred to the three tribes who are working with DWR. Cultural resources are a key issue; in many cases, low reservoir levels due to drought are revealing Native American ancestral remains. DWR is developing policy and procedure to deal with those remains. Some projects, such as the one at Lake Perris, involve both state and federal agencies. In such cases, there are also federal requirements for tribal consultation.

Many of California's Native American tribes have concerns with the BDCP. DWR worked with both federal and state partners to conduct the first tribal consultation on BDCP. Every tribe in California was invited and roughly 40 tribes were represented. In addition to the public meetings that were held on BDCP, there are three tribal consultations scheduled for late April and early May. Those meetings will be specific to the BDCP and DWR's cultural resources work.

The California Water Plan update has a strong commitment to tribal concerns and began incorporating tribal engagement in 2005. A new tribal advisory committee will be recruited for the 2018 update to the California Water Plan. DWR also needs other tribal advisory committees to advise the department on other activities, especially cultural resources.

There is currently a draft tribal engagement policy circulating within DWR. When finalized, the policy will be a procedural guideline for all of DWR with the goal of making information transparent and including tribal interests in departmental activities. The Drought Management Team is developing a tribal communication plan to engage tribes in drought activities. Three of California's tribes have declared states of emergency due to drought.

Mr. Byrne noted that he has worked with the Native American Heritage Commission and recognizes there are complicated issues with tribes and water rights. It is a positive step to have someone working closely with tribes on behalf of DWR.

7. **State Budget Update**

Duard MacFarland, Chief of the DWR Budget Office, provided an overview of Governor Brown's proposed budget for Fiscal Year 2014-2015. The Governor's budget proposal that was released in January included \$3.8 billion to support DWR. The budget contains \$1.9 billion for the State Water Project, \$956 million for electric power, \$744 million for general obligation bonds, \$105 million for reimbursement and special funds, and \$55 million for general funds.

The Senate and Assembly budget subcommittee hearings are set for mid-March. Mr. MacFarland identified four areas that may be potential issues with the legislature. One is the request of General Fund dollars for continued implementation of California Statewide Groundwater Elevation Monitoring (CASGEM) and the implementation of online reporting system for groundwater levels. The second issue is greenhouse gas emissions reduction through water and energy efficiency programs, which would come from cap and trade funds. DWR is getting \$20 million over two years, half of which will go to the SWP for upgrades and the other portion will go toward efficiency in disadvantaged communities (DACs) through DWR's grant program. A third issue is funding for the Integrated Regional Water Management (IRWM) grant program for the third and final round of grants. Funding for the third round of grants was requested last year and denied, but DWR is now in a better position to distribute the funding. The final issue is a request for 23 new positions for the workplace safety program DWR is developing. DWR is currently in the spring finance letter process. That process will be another opportunity for DWR to communicate additional departmental requests to the legislature.

Mr. Curtin asked if the funds for electric power are for the purchase of power. Mr. MacFarland explained that around 2001, private power companies were unable to purchase power, and the governor appointed DWR to purchase power for those companies; that program is now coming to an end. The bond that allowed the state to purchase power is now being paid back.

Ms. Delfino asked why the Legislature previously denied IRWM funding and if changes have been made to the request. Mr. MacFarland said no changes are being made because the previous denial was a timing issue. The Legislative Analyst's Office felt that DWR was not ready for the next

phase of grants and held back the funding. Ms. Delfino asked if the CASGEM funding will go only to wells that are already being monitored, or if new wells will be monitored. She also asked if DWR is monitoring particular areas where subsidence around SWP infrastructure is a concern. Mr. MacFarland offered to provide those details later. It is his understanding that the funding will continue the work that is already occurring as well as the implementation of an online system.

Commissioner Ball asked what happened to warrant 23 new positions, where those positions will be located, and what the total cost will be. Mr. MacFarland said the positions will be located throughout the state at various facilities and offered to get back to the Commission about the total cost of the positions. The desire for the positions was prompted by a desire for a more comprehensive safety program at all DWR facilities. Mr. Ball asked if the safety personnel will only be located at facilities where projects are occurring. Mr. MacFarland said the positions will be located in regional offices and facilities throughout the state, even if there are no current projects at a given facility.

Mr. Byrne asked if the SWP contractors will pay the \$1.9 billion for the SWP. Mr. MacFarland said that amount is paid by the water contractors.

8. Legislative Update

Kasey Schimke, DWR Assistant Director for Legislative Affairs, updated the Commission on legislative proposals and issues pertaining to DWR and the Commission. February 21 is the deadline for the introduction of legislation for the current session. Some of the water bills currently in the Legislature are 'spot bills,' which make technical, non-substantive changes or state legislative intent. The recently introduced Assembly Bill (AB) 1671 would require affirmative action from the legislature to construct BDCP facilities. There was similar legislation in 2009 that did not proceed. AB 148 relates to Salton Sea restoration; it makes technical changes to the previous AB 71 (Perez). AB 1249 relates to nitrate contamination and would require Integrated Regional Water Management (IRWM) plans whose boundaries touch high-risk nitrate areas to include how they will address the nitrate problem. AB 1731 also relates to IRWM; it declares 10 % of any IRWM funding must go to projects that benefit DACs. This legislation would apply to the funding DWR is requesting, and potentially any future funding DWR might receive.

Mr. Schimke discussed the various legislative proposals to make changes to the water bond. The four main bond proposals are AB 1331 (Rendon), AB 1445 (Logue), SB 848 (Wolk), and SB 927 (Cannella). There is one additional spot bill that declares legislative intent to make changes to the current bond. Mr. Schimke pointed out several additional bills not included on the table he provided to the Commission. Senator Pavley introduced SB 1036, which relates to identifying the energy content of water use in urban areas, and SB 1049, which seems to explicitly declare that projects that decrease the energy content of water use would be eligible projects under the IRWM program. Mr. Schimke discussed the water storage section of the bond proposals, which

specifically relate to the Commission's authority. SB 927, AB 1445, and the existing bond include continuous appropriation. SB 848 (Wolk) states that funds would be available to the Commission, and implies that funds would need to be appropriated by the legislature for use. AB 1331 (Rendon) appropriates \$300 million per year in five fiscal years, so it seems to be a continuous appropriation of \$300 million per year. AB 1331 also says the Legislature can supplement that amount with additional appropriations in any given year.

Mr. Byrne asked about AB 1636 (Brown) which would prevent entities from requiring residents to water lawns. Mr. Schimke said there was similar legislation in 2009 which addressed homeowners association requirements pertaining to outdoor watering. The bill seems to be a common sense piece of legislation, particularly given the current drought conditions and the fact that outdoor landscaping accounts for a majority of water use in the state.

Mr. Ortega noted that there seems to be a lot of focus on DACs and asked about the source of figures used for how much investment in infrastructure is needed. He asked if DWR is providing data to the legislature in determining the figures. More funding may actually be necessary. Mr. Schimke said he does not know that there is a central source for the information. The Department of Finance can identify DACs. For DWR, there are challenges in identifying communities with a critical drinking water supply need. Not all DACs have the same need. The funding amount required for larger infrastructure is probably pieced together from local information on planning needs combined with economic data. Mr. Ortega pointed out that if the data is extrapolated from one area, it may not represent the entire state accurately. Many communities could achieve the greatest water savings from fixing old systems. The total amount needed to update old systems has not truly been quantified. Mr. Schimke said one of the areas that may be funded through cap and trade is addressing water system leakage, which will be a step in the right direction. The IRWM program commits 10 % of funding to DACs, however, that likely falls short of the need due the regional focus of IWRM.

Mr. Hintz asked what the deadline is for making changes to legislation authorizing the proposed water bond before it goes to voters in November 2014. Mr. Schimke said those dates generally come from the Secretary of State and are based on the time needed to get information to local county registrars. The date can be pushed later, but that requires additional funding to expedite the process. The deadline for legislation may coincide with the budget timeline (i.e. the end of June), but that is speculation.

9. Briefing on Area of Origin Issues

Spencer Kenner, DWR Assistant Chief Counsel, provided a briefing on area of origin issues, as well as an overview of two recent cases. Area of origin is a complex area of law focused on water rights and contract rights. Beginning in the 1930s, a set of statutes were passed which are collectively known as the Area of Origin Statute, which reassure water users in the geographic

area in which water originates that they will not be deprived of water. There are three primary area of origin laws: The County of Origin Law of 1931, the Watershed Protection Statute of 1933, and the Delta Protection Act of 1959, all of which are still in effect and still in dispute. These laws were primarily instituted for northern Californian water users who were afraid of losing their water to the south. Area of origin legislation was enacted in the early years of the State Water Project (SWP) and Central Valley Project (CVP) to alleviate fears that local water supplies would be depleted. These concerns are still relevant today, particularly given the current drought. One critical piece of the Area of Origin Statute is confusing and has produced many interpretations. There are two fundamental competing claims. One claim is that simply being in the geographic area of origin entitles a water user to the natural flow. The competing claim is that there needs to be some sort of affirmative action before a user is entitled to that water. This claim, which DWR supports, means a user must have a water right or a permit to be entitled to natural flow in the area of origin. In 1986 there were a series of decisions from Justice Ronald Robie pertaining to area of origin. The language used by Justice Robie gave rise to the two recent area of origin cases. It suggests that the SWP and CVP cannot reduce water contractors' allotments unless there is something that trumps the Area of Origin Statute, which is unclear and gave rise to confusion.

The Tehama-Colusa canal case was filed in federal court, but Justice Wanger based his decision on California state law. The plaintiff (Tehama-Colusa Canal Authority) asserted that CVP contractors cannot have their allotment of water reduced so water can be supplied outside the area of origin. It was argued that the Tehama-Colusa Canal Authority had a right to water simply by being in its area of origin. The 9th Circuit Court of Appeals affirmed that the Canal Authority was not entitled to a preference even though they are in the area of origin; the Canal Authority is subject to the shortage provision of their contract because they do not have any additional right specified. The case has now been appealed to the U.S. Supreme Court. In another case, Butte County, Solano County Water Agency, Napa County, and Yuba City sued DWR on the same grounds, asserting that due to their location they are entitled to a 100% SWP allotment even in times of drought. DWR said they needed to establish either a water right or a contract right and they are still subject to the shortage provision of the SWP contract. Eventually, the plaintiffs and DWR reached a settlement which was recently finalized. The terms are fairly complicated, but the settlement does not increase the Table A allotment to the plaintiffs. Instead the settlement accelerates the delivery of their water during certain times of year when they request it. The plaintiffs are also entitled to any identifiable extra flow. The settlement will keep some water in northern California. There are critical dry year considerations written into the settlement which limit programs under the settlement agreement if the SWP allocation is below 20%.

Mr. Del Bosque asked if area of origin laws have any bearing on water transfers. Mr. Kenner said that any additional water provided under the settlement cannot be transferred. The settlement does not permit the plaintiffs to profit from any additional water they receive.

Mr. Curtin asked Mr. Kenner to reiterate the distinction between the decisions made by Justice Robie and Justice Wanger. Mr. Kenner said that the language Justice Robie used left room for interpretation by indicating that there may be a right to water simply by being in the area of origin, even without any additional action or contract rights. Justice Wanger said that there must be affirmative steps taken for a water user in the area of origin to have additional rights.

10. Briefing and Overview of DWR's Water Transfers Program

Maureen Sergent from DWR's State Water Project Analysis Office, Maureen King from DWR's Office of Legal Counsel, and Tom Filler from DWR's Water Transfers Office briefed the Commission on water transfers. The Commission has been interested in how voluntary transfers impact water management. Ms. Sergent noted that people may mean different things when using the term water transfer. She defined a water transfer as a transaction between a willing seller and a willing buyer where the seller uses measures to make water available downstream for the buyer. The most common types of actions taken to make water available for transfers are crop idling, groundwater substitution, and reservoir reoperation. One of the biggest issues in evaluating a transfer is ensuring that it is a responsible transfer. Responsible transfers must not injure another legal user of the water, unreasonably impact fish and wildlife or other instream uses, or unreasonably affect the economy in the water's place of origin.

In order to determine how much is available for transfer, 'real water' must be determined. The seller must have a documented, transferrable right to the water during the period of the transfer. In dry years there are additional challenges because water may be unavailable. In determining real water, each type of transfer is evaluated differently. In crop idling, real water is not determined by the amount of water diverted, because some water will return to the supply. It is common to use the evapotranspiration of applied water to determine what is transferrable in crop idling. Some crops are not accepted for transfer because the variability in evapotranspiration is broad. The historic pattern of crops is considered. It is also important for the land that is idled to remain idle and free of excess vegetation. For groundwater substitution transfers, the impacts of additional pumping and the timing of changes in streamflow must be considered. Reservoir reoperation transfers require historic records. They are unique in that the impact to downstream users occurs the year following the transfer. The process aims to ensure that the two parties in the transfer absorb the transfer's impacts. Less common types of transfers include conservation transfers, crop shifting, and instream dedication.

Transfers also require facilities for conveyance, which is why DWR is typically involved in these activities. Owners of public facilities are required to provide conveyance capacity if it is available. DWR's ability to convey transfers is constrained by its capacity. There is a limited transfer window of July through September. Due to current drought conditions, DWR has a lot of capacity, but there are other constraints on the ability to pump and transfer water. Ms. Sergent noted that other activities are sometimes called transfers, but those include intra-project transfers which do

not make new water available, and inter-project exchanges which allow a more efficient use of what is available rather than generating additional water.

Ms. King said the cardinal principle of water transfers is the no injury rule, which states a proposed transfer may not cause injury to other legal water users. A key aspect is that a seller cannot transfer more water than they are legally entitled. The real water evaluation is based on a net addition of water downstream that is made available by the transferor's saving in consumptive use. A real water determination requires a baseline against which water savings may be measured. The amount of water transferred cannot exceed the demonstrated reduction in consumptive use. DWR's legal role in water transfers is limited because its role is generally limited to conveyance. DWR's contractual mechanism for transfers is a conveyance agreement. Section 1810 of the Water Code requires DWR to make unused capacity available for transfers if DWR is able to determine that the transfer will not injure other legal users or cause environmental or economic harm. DWR must make written findings for each determination for each transfer. Certain temporary transfers are exempt from the California Environmental Quality Act (CEQA), but they are not exempt from the requirement for Section 1810 determinations. CEQA applies to long-term water transfers and short-term transfers of pre-1914 water rights. Pre-1914 water rights are typically not subject to the jurisdiction of the State Board, but both pre- and post-1914 water rights transfers are subject to DWR's Section 1810 determinations.

Mr. Filler provided an overview of the actions DWR is taking to help facilitate water transfers as directed in Executive Order B-21-13, the California Water Action Plan, and Governor Brown's drought proclamation. DWR meets with buyers and sellers and other state and federal agencies to help coordinate the facilitation of transfers. There is an ongoing effort to streamline the water transfers process. DWR is improving contracting procedures, fast-tracking transfers with appropriate documentation, improving coordination, updating web information, and developing a clearinghouse approach for transfer proposals. DWR is making short-term improvements by developing an at-a-glance process and schedule for water transfers. The process and schedule was revised to provide additional opportunity for transfer applications due to the current dry conditions. DWR has not received any formal transfer proposals this year. DWR is taking actions to expedite certain transfers in 2014 by expediting proposals similar to transfers approved in 2013, accepting wells previously approved by DWR from 2009 to 2013, and not changing the streamflow depletion factor for groundwater substitution transfers.

DWR's planned long-term management improvements are similar to the short-term improvements. DWR will continue outreach with stakeholders, provide detailed information to the public, and improve efficiencies in internal review processes, contracting processes, and water transfer operations and verification methods. DWR will develop and periodically update technical guidance and will continue to develop tools and analytical capabilities to better determine transfer capacity, evaluate system water management, and improve transfer

management. A key aspect of long-term management is guidance restructuring. DWR is creating policy guidance and technical guidance documents.

Mr. Byrne asked if there are additional instances when DWR must make Section 1810 findings, such as between SWP contractors. Ms. Sergent said the analysis is different for an exchange between contractors. DWR only does a real water analysis if its infrastructure will be used for moving water or if a proposed transfer may impact the SWP water rights. Ms. King elaborated that Section 1810 only comes into effect if a transferor is requesting conveyance capacity.

Mr. Ortega asked if DWR's review truly verifies conservation. Ms. Sergent said it does. For example, a transfer from the Browns Valley Irrigation District reservoir provided water through an unlined ditch which provided water to riparian vegetation. The irrigation district replaced the ditch with a pipe and calculated how much water was consumed by the vegetation, and thus how much water was saved by installing the pipe. They were then entitled to transfer that quantity. Mr. Ortega said that many regions have conserved water, but that has not translated into flexibility. If that water were truly saved it could be moved to areas with less water. Ms. Sergent said that some conservation measures do provide additional real water for the water supply. Mr. Ortega said that is a key message because it is often suggested that urban users could take water from agriculture, but agriculture demonstrates efficiencies.

Ms. Delfino noted a comment by Ms. Sergent stating that idled land for water transfers must be free of vegetation and asked about legislation that allows for upland bird habitat to be maintained in crop idling transfers under certain circumstances. Ms. Sergent said the issue of excess vegetation causes confusion. Only vegetation that consumes water that is being proposed for transfer is considered excess vegetation. There is no problem with leaving vegetation on an idled field if it is native vegetation or earlier cover crop. Mr. Filler added that DWR has been asked to clarify the language surrounding excess vegetation in its technical guidance.

Mr. Curtin asked if DWR charges to convey transfers. Ms. Sergent said that SWP contractors do not pay a facility fee for transfers, but all others are charged for use of SWP facilities.

11. Update on Public Comments Received on Staff Draft Regulations and Guidelines for the Quantification and Management of Public Benefits of Water Storage Projects

Ms. Sims provided a brief overview of public comments received during the informal public review of the Staff Draft Regulations and Guidelines for Public Benefits of Water Storage Projects. The Commission received five sets of formal comments. Staff and the consultants will provide a more detailed review of comments and make some recommendations at the Commission's March meeting. The comments received generally fall into eight categories: 1) requests for additional clarity and detail on the decision-making process, 2) suggestions for changes to the priorities provided by the Department of Fish and Wildlife and State Board, 3) requests that additional

information be requested from applicants, 4) questions regarding the distinction between eligible public benefits and nonpublic benefits, 5) comments regarding how the regulations relate to existing laws, 6) requests for clarifications regarding specific economic assumptions, 7) questions about how to quantify and include system-wide benefits, and 8) requests for changes in wording.

12. Update on Commission's March 3, 2014 Drought Workshop on Small Water Systems

The Commission will host a workshop on drought impacts to small urban and rural water systems in San Diego on Monday, March 3. Commission staff is finalizing the agenda and it will be posted on the website. Representatives from DWR's drought task force, the federal NIDIS drought program, the California Rural Water Association, the California Association of Mutual Water Companies, the California Water Plan EJ/DAC Caucus, and individual small water systems have been invited. Staff is also looking for opportunities to include Tribal interests.

13. Consideration of Items for Next California Water Commission Meeting

Items for the next meeting will include a more in-depth discussion of the public comments on the staff draft Regulations and Guidelines for Quantifying the Public Benefits of Water Storage Projects, approval of DWR's State Water Project Encroachment Regulations, and update on Salton Sea issues and activities.

Mr. Byrne asked if there was also going to be an item on water quality, and Mr. Ortega offered to help Ms. Sims develop that item.

Mr. Byrne adjourned the meeting at 12:14pm.