

Meeting Minutes

Meeting of the California Water Commission

Wednesday, April 16, 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 9:31am

2. **Roll Call**

Executive Officer Sue Sims called roll. Commission members Andy Ball, Joe Byrne, Joe Del Bosque, Kim Delfino, and Lu Hintz were present, constituting a quorum. Commission Member Anthony Saracino participated by phone. Members Danny Curtin, Adán Ortega, and David Orth were absent.

3. **Approval of March 2014 Meeting Minutes**

A motion was made to approve the March 19, 2014 meeting minutes. A vote was taken and the motion passed unanimously.

4. **Executive Officer's Report**

Sue Sims provided the Executive Officer's Report. Ms. Sims first noted that the live audience will not be able to see PowerPoint presentations due to technical issues. Presentations can be seen on the webcast and all information is posted on the Commission website. The Commission's May meeting will be the second of two small systems workshops. The meeting's focus will be critical water issues in mountain and foothill communities in Northern California. The Mountain Counties Water Resources Association invited the Commission to discuss these issues at a joint meeting in Auburn. There will be a number of case studies as well as panel discussions.

About 50 agencies have provided initial responses to the Commission's water projects survey. Those responses will be used to begin developing an inventory of near-term water storage opportunities. Ms. Sims will participate in the Delta Stewardship Council (DSC) meeting next week, a symposium on forest management and water yield in May, and a water summit in Orange County in May. Chairman Byrne added that he spoke at a recent DSC meeting on implementation of the Delta Plan. At that meeting, Mr. Byrne gave a brief presentation on the water projects survey and discussed the Commission's work.

5. **Public Comments**

There were no public comments.

6. Action Item: Approval of State Water Project Encroachment Permit Regulations

This item was postponed.

7. Update on Drought Issues and 2014 Expedited Drought Funding through DWR's IRWM Implementation Grant Program

Dave Gutierrez, Deputy Director of DWR's Drought Emergency Operations Center, provided an overview of current hydrologic conditions. Mr. Gutierrez said that, although there was some significant precipitation in February, much of the state is still in a serious drought. It appears that 2014 will be the third driest water year on record. Reservoir conditions are also below historical averages. Mr. Byrne pointed out that Castaic Lake and Pyramid Lake are fuller than the other reservoirs. Mr. Gutierrez said those lakes are mainly an emergency supply and are not a good reflection of current water storage conditions. Prior to February, Lake Oroville was at one of the lowest levels since its construction. Lake Oroville is still extremely low in comparison to the historical average. The current snow water equivalent in the Sierras is 15-30% of average. Recent warm weather conditions have caused a rapid decrease in snowpack, most of which did not make it to reservoirs as water supply.

Tracie Billington, Chief of DWR's Financial Assistance Branch, briefed the Commission on DWR's Integrated Regional Water Management (IRWM) grant program and current drought funding through the program. Item 6 of the Governor's Drought Proclamation directed DWR and the State Water Resources Control Board (State Board) to accelerate and repurpose unspent bond funds, which has been done. The recent drought legislation (Senate Bills 103 and 104) appropriated \$687.4 million primarily from prior bonds, General funds, and cap and trade revenues. Of that, \$581.5 million went to DWR, \$472.5 million of which was allocated to the IRWM program for expedited drought funding.

Commissioner Del Bosque asked about the distinction between the amounts of \$687 million and \$581 million which were appropriated. Ms. Billington said \$581 million was appropriated to DWR; the remainder was appropriated to other agencies. Mr. Byrne pointed out that \$200 million will be expedited through the IRWM process. Ms. Billington explained that the total \$472.5 million for IRWM was included in the January budget and has now been appropriated early. All the requirements of the IRWM program are still necessary, and there will be two rounds of solicitation, including the current round for drought response projects.

IRWM funding was authorized by Proposition 84 in 2006 and \$900 million was allocated to 11 hydrologic region-based funding areas. There was also \$100 million for interregional funding which has been fully allocated. The funding supported a variety of actions for IRWM, groundwater, and disadvantaged communities. The IRWM program awarded \$30 million in planning grants to 33 Regional Water Management Groups (RWMGs). That grant program is

coming to a conclusion and updated plans are being developed. DWR also awarded \$358.3 million in implementation grants to 31 RWMGs. The new Grant Program Guidelines and the Proposal Solicitation Package (PSP) for the 2014 IRWM Drought Solicitation were released for public review earlier this month; DWR will host public workshops on these documents in May. Changes to the guidelines were few, and focused on new IRWM requirements developed since 2012. The human right to water policy is now reflected in the guidelines and the PSP. Compliance with agricultural water management plans is now included as a grant eligibility requirement in the guidelines; DWR is in the process of determining compliance for submitted plans. DWR will soon be able to assess grant eligibility based on the California Statewide Groundwater Elevation Monitoring Program (CASGEM) and this is included in the guidelines as well. Mr. Byrne asked when CASGEM determinations will be released. Ms. Billington said they should be complete in time for the review of funding applications. Most changes were focused on streamlining the process in the PSP.

To be eligible, projects must be one of the drought project types listed in SB 104. The PSP allows for reimbursement of costs retroactively to when the drought was declared. The application process and schedule have been expedited. DWR is proposing a 30 day application period and a 60 day review process. This would reduce what is a normally 8 to 14 month process into a 3 month period. Other examples of changes to the PSP include updated and consolidated eligibility criteria, an attachment discussing drought impacts, and simplified and consolidated project justification and work summary. The project justification requests a short summary of the proposed work. If the applicant is granted an award, they will be required to submit additional documentation. Public comments on the guidelines and PSP are due May 15, applications should be due in July, and DWR expects to announce the awards by September.

Mr. Del Bosque asked if there is a designated amount for helping farm worker families. Ms. Billington said such funding is not part of the IRWM program, but there is funding for these benefits in separate sections of the drought legislation.

Mr. Byrne asked if the applicants are member agencies of IRWM groups or the IRWM groups themselves. Ms. Billington said it depends on the governance structure of each group. The regions each decide who will apply for IRWM grants. Cooperation and collaboration is one of the concerns with the expedited 30 day application period. DWR determines which projects are eligible for funding. Mr. Byrne asked if it seems there will be many applications. Ms. Billington said there are a variety of projects and agencies are trying to determine how to respond to the solicitation.

Commissioner Saracino asked if sufficient staff and time are available to evaluate projects under the expedited schedule. Ms. Billington said the reviews may not be as detailed. With less information there could be a higher risk as to whether or not the benefits will actually occur but every effort will be made to ensure they do.

Commissioner Delfino asked how much of the state is covered by IRWM groups. Ms. Billington said about 80% of state is covered by an IRWM plan, which covers about 99% of the population. Ms. Delfino also asked if the severity of drought impacts will be considered in funding decisions. Ms. Billington said DWR cannot award more than the remaining funds for each funding region, but more of available funds may be awarded if a region has disproportionately severe impacts.

Mr. Del Bosque asked if the planned workshops will provide assistance for disadvantaged communities (DACs) who want to apply for grants. Ms. Billington said the upcoming workshops are only for public comments. There will be workshops in June for application preparation. It may be a challenge for DACs to respond effectively to this solicitation due to the expedited schedule.

8. Presentation by the International Human Rights Law Clinic, UC Berkeley School of Law, on Human Right to Water Law and Implementation Issues

Allison Davenport, Instructor and Supervising Attorney with the International Human Rights Law Clinic at the University California, Berkeley, School of Law, discussed California's human right to water law. The International Human Rights Law Clinic produced a report on implementation of the human right to water law, AB 685. California is the first state to declare that clean water is a human right. AB 685 sets out policy objectives for state agencies. The legislation specifically names DWR, the State Board, and the California Department of Public Health (CDPH), but it applies to all relevant state agencies. The law specifies certain instances when consideration of the human right to water is required, but it does not limit when it could be implemented. The term 'consider' generally means agencies must take into account the factors in the legislation and avoid actions contrary to those factors. The law creates an ongoing duty for relevant state agencies to consider the human right to water.

There are many questions about what the human right to water actually means. The statute refers to safe, clean, affordable, and accessible water, but does not define those components. Those criteria are similar to the language of international human rights law. The term, 'quality' in international law includes the cumulative impact of water quality over time, takes into account people of different ages and health, and also references religious and cultural norms. International law also states that the quantity should be sufficient for basic human needs. Accessibility is understood as clean water being readily available without excessive burden of time or resources. There should be special measures in place to facilitate access for people with difficulty accessing clean water. Affordability is the final component, which encompasses direct and indirect costs of water. The cost of accessing clean water should not interfere with ability to access other basic essentials. There is some debate on what percentage of income should be used to calculate affordability standards, but it is generally between 3-5%. The law provides a framework for considering how the components are interconnected.

How state agencies should implement the law is one of the biggest outstanding questions. The International Human Rights Law Clinic's implementation framework is the result of collaboration among various agencies. The implementation framework includes phases and cross-cutting, guiding principles which are a way to ensure cohesion across state agencies. One of the guiding principles is public participation. Affected communities should have opportunities for input and reasonable access to information. The framework also incorporates the principle of nondiscrimination to make sure that the most vulnerable communities are accounted for in policies. Accountability and good governance practices are important so the public can understand which agencies are responsible for water and how they can interact with those agencies. The implementation framework is a template for state agencies to use. Ms. Davenport would like to see the Governor's office provide guidance to state agencies. The human right to water law is a complement to state and federal law, but does not mean much unless it is implemented properly.

Ms. Delfino asked if a guidance document from the Governor's office is expected. Ms. Davenport said she does not know if it is forthcoming, but it has been under consideration. There has been activity within different agencies. Some information from the International Human Rights Law Clinic's report is in the California Water Plan update. Much of the work done by agencies has yet to address the comprehensive, integrated approach embodied in the law.

Mr. Byrne asked if one of the next steps will be looking at communities without safe water to learn about potential solutions. Ms. Davenport said it is still early in the process so best practices have not been identified, but one of the big barriers is that the water governance structure is convoluted and confusing to consumers. The human right to water law is one way to guide state agencies to work together toward a solution.

Mr. Del Bosque said there is a gap in affordability and asked how that gap might be handled. Ms. Davenport said it is important to make decisions that account for all of the complex factors and include the affected communities. Mechanisms can be put in place to lessen negative impacts to vulnerable communities. Affordability will have to do with cooperation across agencies to coordinate funding to ensure that communities with the most need will get funding first.

Public comment on this item was provided after agenda item 10.

9. Presentation on California Water Plan Recommendations for Improved Participation and Engagement of Disadvantaged Communities and the Companion Report – Californians Without Safe Water and Sanitation

Kamyar Guivetchi, Chief of DWR's Integrated Water Management Branch, discussed the Water Plan's engagement of disadvantaged communities (DACs) and the *Californians Without Safe Water and Sanitation* report. There are many Californians today without safe drinking water or

adequate sanitation. The strategies and actions recommended in the California Water Plan Update 2013 were used to inform the Governor's Water Action Plan. The priorities of that plan are consistent with the focus of Update 2013. Safe water and sanitation impacts both public safety and economic stability. There are three key themes in Update 2013: double down on IRWM, improve government agency alignment, and invest in innovation and infrastructure. Investments in innovation and infrastructure will help overcome the problem of Californians without adequate water and sanitation. The Water Plan strategic plan addresses DACs and environmental justice (EJ) at multiple levels; Objective 13 addresses the issues directly. The Water Plan also contains 30 resource management strategies, many of which are needed to provide safe water and sanitation. The intended outcome of Objective 13 is to increase the voice and participation of small and disadvantaged communities in rural and urban areas, provide all communities access to safe water and sanitation, and address the most critical DAC public health threats. There are seven related actions and 24 sub-actions within Objective 13.

Mr. Guivetchi also provided an overview of the Water Plan companion report, *Californians Without Safe Water and Sanitation*. EJ was first addressed in the Water Plan Update 2005, which focused primarily on drinking water. A caucus was convened to work on EJ/DAC issues for Update 2013. Objective 13 and the companion report were developed largely through their input and review. The recommendations incorporate the policy goals of the human right to water bill as well as Action 7 in the Governor's Water Action Plan. A table in *Californians Without Safe Water and Sanitation* attempts to summarize how many Californians do not have safe water or sanitation. The striking thing is that there is not adequate data available, so the number of affected Californians is unknown. CDPH regulates water systems, so DWR was able to determine the number of systems, the population served, and an estimate of the population without safe water. There is less information about populations without adequate sanitation. There are small systems in both rural and urban areas. Many are small water and wastewater treatment systems embedded within urban centers. The report identifies challenges faced by small communities, including affordability and funding. Smaller systems have a smaller customer base so the per capita rate is a greater proportion of customers' household income. Customers must each pay for a larger share for improvement projects. One issue is that water quality standards have been raised, so many older drinking water and wastewater systems are no longer able to meet requirements and do not have the funding to make improvements. California Native American Tribes experience many of the same types of issues, but they are sovereign nations and have other factors which must be taken into consideration. EJ accomplishments from the past 10 years include the human right to water legislation, and new regulations, and new funding sources. Data gaps are a large portion of what remains to be done. More resources should be dedicated to quantifying affected populations and their water and sanitation needs. There are 14 recommendations in *Californians Without Safe Water and Sanitation*. Four of those recommendations came from Objective 13 of the Water Plan; others came from recent reports to the Governor, the Legislature, and other state agencies.

Ms. Delfino stated that there is a need to understand the scope of the problem, but another issue is the ability of these communities to access available funding; she asked what specific actions are being taken now to fix that issue. Mr. Guivetchi said one of those steps is the California Water Plan itself. By documenting the scale of the problem, it is intended to raise awareness amongst policy makers and regional water management groups. The IRWM grant program includes additional priority for projects that include DACs. Not all of the groups know where DACs are within their regional boundaries, what their needs are, and how those needs can be articulated in projects. The state should do more capacity building in DACs, which is in the recommendations for Objective 13. Consolidation is sometimes possible and the state should help promote those opportunities. When consolidation is not feasible, point of use technology should be promoted and advanced. Ms. Delfino asked if there are any specific plans for capacity building in DACs because the next steps must be taken in order to address the problem. Mr. Guivetchi said it is important for legislation that provides funding to be clear on how that funding can be used to help DACs. One of biggest issues for DACs is funding for operations and maintenance, but state funding can often only be used for capital investments. It would be a huge benefit if state programs were able to assist DACs with operations and maintenance.

Mr. Byrne asked if DWR is determining how IRWM groups can be organized to promote the inclusion of DACs. Mr. Guivetchi said DWR can use IRWM PSPs and guidelines to provide additional resources for DAC participation, but DWR does not have full discretion in allocating funds. Mr. Byrne said the structures of different regional water management groups impact accessibility. Mr. Guivetchi said California's regional water planning has followed a grassroots approach. DWR tries to demonstrate how the state would like the groups to operate. The guiding legislation does not allow DWR to prescribe a governance structure. DWR should continue to reinforce that the IRWM governance structure should be used to further state goals and drought response. Ms. Delfino pointed out that there is an opportunity for further funding with the administration engaged in discussions about the water bond. Mr. Guivetchi expressed hope that the recommendations of the Water Plan could be used in shaping the final water bond.

Colin Bailey, Executive Director of the Environmental Justice Coalition for Water (EJCW), discussed EJ and a documentary titled "Thirsty for Justice." EJCW is the statewide umbrella group for the EJ movement. EJCW pushed very hard for the passage of AB 685. The Water Plan's DAC and EJ caucus had success incorporating the human right to water. EJCW collaborated on a human right to water documentary for use as an educational and bridge building tool. The first showing will take place May 14, 2014 at the California Museum in Sacramento. Mr. Bailey suggested that the Commission could step forward to show solidarity with the EJ movement and provide financial support. Mr. Bailey added that EJCW has provoked a lot of the conversation around the IRWM program and DACs. He would like the Commission to take up the question of how to integrate DACs and tribes more equitably into the IRWM process.

10. Follow-up Discussion on the Staff Draft Regulations and Guidelines for the Quantification and Management of Public Benefits of Water Storage Projects

Ajay Goyal, Chief of DWR's Statewide Infrastructure Investigations Branch, reviewed staff recommendations for the composition of an expert project evaluation panel, in response to a request from previous discussions of the Staff Draft Regulations and Guidelines for the Quantification and Management of Public Benefits of Water Storage Projects. The proposed expert panel could be utilized to review highly technical documents, and its members will need to have knowledge relevant to the proposed projects as well as the various public benefits. At minimum, the panel will need experts on hydrologic, operational, biological, and economic issues. They must know how public benefits are quantified. Depending on potential projects, additional experts may be added on an as-needed basis. Experts will need to be able to evaluate how benefits will be provided, so the panel will need staff from agencies responsible for the monitoring of public benefits, including the California Department of Fish and Wildlife (CDFW), the State Board, and DWR. The panel should also include experts who understand feasibility assessment and project evaluation. A core group may be used evaluate all applications, and other experts will be brought in as needed. These people will most likely come from public agencies, academic institutions, and even the private sector. There must be conflict of interest disclosure for panel members.

Ms. Delfino asked if there are examples of how other agencies have dealt with conflict of interest issues in other situations. Mr. Goyal said staff can provide some examples in the future. Maureen King, staff counsel, added that some existing conflict of interest rules may be applicable depending on the mechanisms used to form the panel.

Mr. Byrne asked if the panel will be a consistent group or if experts will be brought in as necessary. Mr. Goyal said it may depend on how many applications are received. Staff would recommend that the same panel reviews all the applications. Ms. Delfino said even one application will be complicated and will require expert review. She also asked if Commission staff has discussed whether or not other state agencies would be interested in providing analysis or sitting on an expert panel. Mr. Goyal said that process has not begun yet. Ms. King pointed out that there is language in the staff draft regulations that addresses the conflict of interest issue generally.

Commissioner Ball asked why an expert panel is necessary. Mr. Goyal said the application documents will be long and complex, so it is best to invest in experts who will review the documents and ensure that public funding will be used in the correct manner. Mr. Ball pointed out that DWR has experts on staff, and said the Commission does not need to create additional bureaucracy. Mr. Goyal said different applications will analyze benefits differently, but they must all be analyzed the same way by the panel. The panel will have to weigh in on all the studies.

Mr. Ball believes an expert panel will be inefficient and unnecessary. Mr. Saracino said he tends to agree, but a panel will be needed to provide the necessary range of expertise. Commissioner Hintz said there is good reason to have an independent group because the Commission may be criticized for relying too heavily on DWR for input. Application reviews may also be rather time consuming; compensation may be necessary for the time that will be involved. Mr. Del Bosque suggested that the Commission utilize different groups of experts to hear different perspectives. Regarding the role of the panel, Mr. Del Bosque would rather the panel provide information so the Commission can make all determinations. Ms. Delfino added that the Commission should also consider the public's level of confidence in the process of expending funds. It is better to develop a process with integrity and independence. Mr. Byrne agreed and added that the Commission should make the process as efficient as possible. Mr. Saracino, through Ms. Sims, asked what the key dates will be in developing the regulations and guidelines. Mr. Goyal said staff plans to wait until a water bond is passed since details of the various bond proposals in the legislature are different. Ms. Sims said many foundational issues have been addressed, but there may be components that will require additional discussion and review when the bond is finalized. Staff can continue to work on the regulations and guidelines and bring them to the Commission once the proposed water bond has been approved. Mr. Ball agreed that much of the bond may change, particularly because some key people still need to weigh in on the content of the bond.

Additional Public Comment Regarding Agenda Item 8

Vern Goehring provided public comments on Agenda item 8 on behalf of Food and Water Watch. Food and Water Watch is a part of the Safe Water Alliance, which worked for the passage of the human right to water policy. Public participation and transparency are particularly important to implementation of the human right to water. It is necessary to accommodate the needs of DACs. State agencies should search for additional opportunities to implement the human right to water and should seek out organizational practices to integrate social and cultural considerations into decision making. DACs and their residents can be important resources in solving these issues. State agencies should invest in ongoing community partnerships. The human right to water should be built into state agency decision making.

11. Consideration of Items for Next California Water Commission Meeting

The small water systems workshop will constitute the majority of the next Commission meeting. Items for the meeting will include approval of the final State Water Project Encroachment Regulations, small water system case studies, and discussion of small water system issues. Information will be posted on the Commission's website when it is finalized.

Mr. Byrne adjourned the meeting at 11:35am.