

DRAFT

MEETING SUMMARY

Stakeholder Advisory Committee (SAC)

Water Storage Investment Program (WSIP)

California Water Commission (Commission)

April 1, 2015

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Introduction

Meeting materials can be downloaded from

https://cwc.ca.gov/Pages/2015/04_April/040115SACAgenda.aspx

The SAC held its first meeting on April 1, 2015. The SAC is comprised of organizations throughout the State having experience in CALFED surface storage; groundwater storage and contamination prevention; conjunctive use and reservoir reoperation; local and regional surface storage; ecosystem improvements; water quality; flood control; emergency response; recreation; business and agriculture; tribal; and environmental justice/disadvantaged communities. Of 30 invited organizations, 21 SAC members or their alternates attended (see attendees list in Appendix A)

Meeting Summary

Opening

Dave Ceppos, Associate Director, Sacramento State, Center for Collaborative Policy (CCP), began the meeting. Commissioner Daniel Curtin and Commission Acting Executive Officer Rachel Ballanti welcomed SAC members and the public. Commissioner Curtin informed SAC members that they had a unique opportunity to advise the Commission on developing regulations for the WSIP and to identify topics where there can be common perspectives of a wide range of interested stakeholders.

Introductions and Review of Agenda

Following opening comments, everyone introduced himself or herself and Mr. Ceppos reviewed the agenda for the meeting.

Review of SAC Charter and Bagley-Keene Act

A copy of the draft Charter can be downloaded from

https://cwc.ca.gov/Pages/2015/04_April/040115SACAgenda.aspx

The Commission, Project Staff, and CCP developed the draft SAC Charter. Mr. Ceppos reviewed key elements of the charter.

Regarding SAC Member communications, discussion centered on SAC member compliance requirements under the Bagley-Keene Act, particularly with regard to discussion and deliberation of topics outside of SAC meetings. The draft Charter states that SAC Members must agree to refrain from deliberating with one another on issues within the scope of the SAC outside of publically noticed meetings. The act defines a meeting outside of the SAC as a gathering of a majority or quorum of the State body. This includes serial meetings that involve multiple small meetings of SAC members such that said members ultimately have spoken with a majority or quorum of members in a sequential manner.

Maureen King (CWC Legal Counsel) indicated that: Members of the SAC must avoid communication about SAC business among a quorum of its members outside of noticed public meetings, A SAC quorum is expected to be roughly 50% of the SAC membership. To avoid possible conversation chains that might involve a quorum, the Attorney General recommends that SAC members limit themselves to communications outside of a meeting to just one other person. Once a quorum of members has contacted each other on a single topic, a serial meeting in violation of the Bagley-Keene Act will have occurred. This would include linear serial meetings occurring when A contacts B and B then contacts C, as well as meetings where a single intermediary contacts a quorum of the SAC individually. The serial communication prohibition applies to all forms of communication, including electronic, print, and oral. Staff however, may brief one SAC member at a time so long as staff does not share communications from other SAC members at this time. With the large number of SAC members, it will be easy for serial meetings to unintentionally occur, as individual members may be unaware of previous conversations. We therefore recommend that SAC members reserve their conversations with each other on SAC matters to noticed SAC meetings.

Although each meeting may not constitute a majority or quorum, collectively they add up to a majority or quorum. SAC Members expressed concerns about inadvertently committing a Bagley-Keene Act violation if they communicate with their stakeholders (e.g. via a listserv or similar) which may include other SAC members. Commission Legal Counsel Maureen King clarified that SAC members may send information to their stakeholders about the SAC and can engage with other SAC members but should not engage with such discussions that lead to a majority or quorum being engaged. These public communications cannot be a means to converse with one another outside of the SAC nor a means to coordinate and confirm the perspectives of fellow SAC Members.

Ms. King provided SAC members with two documents outlining the group's requirements under the Bagley-Keene Act. The first was a PowerPoint developed by Ms. King titled *Bagley-Keene Open Meeting Act Training for State Bodies*. The second was *A Handy Guide to The Bagley-Keene Open Meeting Act 2004* prepared by the California Attorney General's office. These guides help identify what is permissible and what is not.

Mr. Ceppos also covered the “Good faith” clause in the Charter and described that this section encourages SAC members and project staff to disclose, at the earliest time possible, any actions that could affect the SAC. Two people disclosed information at this meeting.

- *Dave Ceppos, Facilitator.* Mr. Ceppos has recently worked as a neutral facilitator for the DWR North-of-the-Delta Offstream Storage Program, and the Sites Reservoir Joint Powers Authority (JPA). In this role, he facilitated meetings for the JPA, and between JPA representatives, environmental advocacy groups, and State and federal agencies.
- *Gary Mulcahy, representative for the Environmental Justice Coalition for Water (EJCW).* Mr. Mulcahy informed the SAC that he is also representing a non-federally recognized tribe and disclosed that the tribe is opposed to the expansion of the Shasta Dam.

SAC members asked CCP to update the SAC membership charter with member and alternates’ names. In addition, they requested that Project Staff and CCP clarify the Charter to reflect what constitutes a Bagley-Keene Act violation.

Action Item: Project staff will update the SAC membership charter to include members and alternates’ names.

Action Item: CCP and Commission staff will clarify in the Charter what constitutes Bagley-Keene Act violation for the SAC and what is therefore allowable in terms of member interaction. Once the Commission finalized the membership, CCP will update the Charter to reflect what the official quorum is.

WSIP Overview

Ms. Ballanti and Jennifer Marr (Commission staff) described the WSIP and gave a brief overview of the history and current milestones the Commission must achieve as per Proposition 1.

Project Timeline

Proposition 1 allows the Commission to begin funding selected projects no sooner than December 16, 2016. Currently, the Commission intends to send out its Project Solicitation Package (PSP) by March 17, 2017 and fully commit the \$2.7 billion before January 2022. To meet this deadline, the Commission intends to develop its WSIP program regulations by October 2015. Following this timeline, provides the Office of Administrative Law (OAL) enough time for the regulatory process. The OAL review can take at minimum 45 days (typical public review), but may also take up to 1 year if there are significant changes to the proposed regulations.

More specifically:

- By March 2015, the Commission will initiate a stakeholder and public engagement process to implement the WSIP openly, transparently, and equitably. The Commission will work with a broad array of stakeholders to develop the regulations and guidelines that will shape the WSIP.
- By December 15, 2016, the Commission will develop and adopt by regulations, through the Administrative Procedures Act, methods for the quantification and management of the public benefits of water storage projects, which shall include:
 - Priorities and relative environmental value of ecosystem benefits provided by the California Department of Fish and Wildlife (DFW); and

- Priorities and relative environmental value of water quality benefits provided by the State Water Resources Control Board (SWRCB).
- By March 2017, the Commission will release draft project solicitation and evaluation guidelines for the WSIP and conduct meetings to consider public comments before finalizing the guidelines.
- After March 2017 and before January 2022, the Commission will select projects through a competitive public process that ranks proposed projects based on expected return of public investment.

Project Goals Objectives and Principles

Ms. Marr introduced the Staff Draft of the Program Goals, Objectives, and Principles (https://cwc.ca.gov/Pages/2015/04_April/040115SACAgenda.aspx). She described that it introduces Proposition 1 and the \$2.7 billion water bond for storage projects. It also provides a background of water storage in California and identifies how water storage is part of the State’s water management solution.

The Staff Draft of the Program Goals, Objectives, and Principles also outlines key principles applicable to how the Commission will implement WSIP. Commission staff took the principles from statute, policy, and the Commission’s Strategic Plan, which expresses the values of the Commission.

Project Staff asked the SAC to review and provide comments on the Staff Draft of the Program Goals, Objectives, and Principles. One SAC member during the meeting noted that the principle “The Commission will consult with Native American tribal governments and consider the Human Right to Water requirements in its decision-making,” should also reference Assembly Bill 52.

Action Item: CCP will send SAC members a Word version of the Staff Draft of the Program Goals, Objectives, and Principles for their review. CCP would like SAC members to send feedback to CCP by 5:00pm on April 22, 2015.

Action Item: With regard to the principle, “The Commission will consult with Native American tribal governments, and consider the Human Right to Water requirements in its decision-making,” project staff will consider referencing Assembly Bill 52.

Communication and Engagement

Public and stakeholder engagement is critical to developing the WSIP program. Interested parties can provide this critical feedback by attending a Commission meeting, responding to the Water Project Scoping Survey, participating in a working session or stakeholder meeting and helping to distribute Commission information.

Communication and Engagement Timeline

The Communications and Engagement (C&E) timeline indicates dates for each SAC meeting, commission meeting and workshop, and public meeting. SAC meetings will be the first Wednesday of every month, Commission meetings are the third Wednesday of every month and public meetings will occur in April and July/August.

Project staff offered to create a larger version of the C&E timeline for SAC members by the next meeting.

Action Item: CCP will create 11x17 version of the C&E timeline for SAC members.

Scoping Survey Results

The scoping survey was the Commission's first step in the WSIP outreach process. The purpose of the survey was to gauge the level of interest from potential storage project applicants, and their understanding of the legislation and process for funding these projects. The Commission released the survey on February 24, 2015.

As of March 11, 2015, there were 162 responses to the scoping survey. 147 responses were valid responses (Commission staff eliminated 15 responses that were test answers or duplicates). The types of responding agencies included public agencies (79%), public utilities (2%), Tribal (2%), nonprofit organizations (14%), and mutual water companies (3%). Project types included CALFED Surface Storage (2%), Local/Regional Surface Storage (38%), Groundwater Storage and Remediation (50%), and System Reoperation or Conjunctive Use (10%). Commission staff estimate that many of the projects would be ineligible because they were looking for planning funding, research etc.

In terms of timeline, most respondents indicated their projects would have complete feasibility studies and environmental documentation within 5 years. This data indicates that most current projects are following the timelines of the legislation and the Commission.

According to legislation, all eligible projects must have ecosystem improvements as a public benefit. Yet, only 57% (n=112) of respondents to the scoping survey listed ecosystem benefits. Thus, the other 43% of respondents would be ineligible for funding under WSIP. Moreover, the legislation requires that projects must provide measurable improvements to the Delta ecosystem or to tributaries to the Delta. Only 23% respondents (n=34) indicated their projects had such improvements. Projects are ineligible if they do not include ecosystem improvements to the Delta or Delta tributaries. Those that do can also have ecosystem benefits outside the Delta.

Some SAC members expressed concern about the requirement of providing measurable improvements to the Delta ecosystem or to tributaries to the Delta. SAC members stressed that tributaries would need definition. WSIP project staff is currently working on definitions to help provide this clarity. Project staff will present proposed definitions to the Commission for approval.

67% (n=99) of respondents provided approximate cost information for their proposed projects. The total approximate cost for all projects was \$12,749 million of which the State's maximum possible cost share would be \$6,375 million. CALFED Surface Storage projects accounted for 54% of the total cost at \$7,016 million.

Based on preliminary results of the scoping survey, it is clear that potential applicants need additional education on the Water Bond and on eligibility for WSIP. Project staff is looking to assist applicants throughout the process.

Public questions/comments

Q: Does the SAC/Commission have flexibility to add water quality to the list of public benefits?

A: The statute includes water quality improvements as public benefits.

Q: Does the statute consider reduced reliance on the Delta considered as public benefit?

A: The statute does not define reducing reliance on the Delta to be a public benefit. However, the Commission included improved regional self-reliance as a program goal in the program Goals, Objectives, and Principles document, so the Commission will consider projects that reduce reliance of the Delta.

Q: How does information from public meetings get to the SAC?

A: Through meeting summaries, each meeting informs the next meeting.

One member of the public suggested that Survey respondents would benefit from having one another's information. Project staff committed to consider this but could not confirm this was feasible or appropriate.

Action Item: Project staff will analyze and present Scoping Survey information based on the type of project and anticipated ecosystem benefits per such project type.

Action Item: Project staff will develop a map of approximate project locations based on the survey results.

Action Item: CCP will print and provide 3-hole punch copies of the California Water Action Plan for SAC Member binders.

Action Item: Project staff will provide SAC members the information from the Scoping Survey so SAC members can perform their own review of the outcomes.

Action Item: Project staff will determine Tribal eligibility for WSIP funding, specifically if tribes can join Joint Powers Authorities and if tribal governments that also run casinos are "for-profit" organizations.

WSIP Statute, Regulations, Guidelines & Project Solicitation Package

Ms. Marr presented SAC members with a draft of a Statutes and Regulations matrix. The matrix identifies the statutes that provide directives for the WSIP program, including specific sections of Chapter 8 of Proposition 1. These statutes outline the types of regulations and guidelines required for the program, which then identify content for the PSP.

SAC Member Questions/Comments

Q: Is the Project Staff/Commission considering long-term operating costs in the context of actual cost of a project?

A: The Commission is discussing these issues and the SAC will provide ideas on what will be fundable.

Q: Will the WSIP/Commission have any say around the \$1.3 billion drought funding?

A: No.

Q: In lieu of a JPA, would Federal projects be eligible applicants?

A: See action item below. There is a possibility that a Federal agency could be a sponsor or partner on a project and Project Staff need to review this consideration.

Public question

Q: Does section 79751 (a) mean that all the old CALFED projects rise to the top of the list of eligible projects.

A: No because it is a competitive process. The list of CALFED storage projects that were included in the CALFED Record of Decision are the projects that the WSIP can consider with all other storage proposals. Applicants can propose any other storage projects considered by CALFED process participants; however, they do not fall into the legislation's CALFED project category.

Action Item: Project staff will determine if a federal government applicant is eligible for WSIP funding.

WSIP Project Eligibility

Types of eligible storage projects include

- Surface storage
 - CALFED
 - Regional
 - Local
- Groundwater storage
- Groundwater contamination prevention or remediation with storage benefits
- Conjunctive use
- Reservoir reoperation

Of the projects identified in the Scoping Survey (n=79), only 27 (18%) had ecosystem *and* Delta benefits, which all projects are required to have.

Discussion was raised by some SAC Members about whether local projects are presumed to be part of or not part of the “state water system” (§79750 (b)) and “water systems in the state” (§79751 (d)) and whether these projects would be concluded to provide benefits to the system, thereby being eligible for public funds. The eligibility of these projects may depend on how the Commission defines the state water system.

Action Item: Project Staff will develop working definitions of “the state water system” (§79750 (b)) and “water systems in the state” (§79751 (d)).

WSIP Public Benefits

Water storage projects funded by the WSIP must provide the following public benefits:

- Ecosystem improvements
- Water quality improvements
- Flood control benefits
- Emergency response
- Recreational purposes.

The following summarizes SAC discussions about each benefits category.

Ecosystem Improvements

Jenny Marr asked SAC members to identify *other benefits* that contribute to the restoration of aquatic ecosystems and native fish and wildlife. She also asked members to discuss what should not be included as a benefit.

Several SAC members discussed how to consider net ecosystem benefits rather than gross benefits, various approaches, and calculation methods. SAC members suggested that they would like to discuss and analyze ecosystem benefits further.

One SAC member suggested that Project Staff consider using Federal and even other State definitions of ecosystem improvement. The SAC discussed using Federal and State definitions but did not agree on the suitability of those definitions. Other suggestions including looking at flood legislation (Senate Bill 5) for other benefits, and not funding projects looking to pay for existing improvements due to compliance obligations.

Action Item: Project staff will review Federal and State definitions of ecosystem improvements to see if there are precedents that facilitate ecosystem benefits definitions under the WSIP.

Action Item: Project Staff will review SB 5 for other examples of legislative definitions of ecosystem benefits.

Water Quality Improvements

Jenny Marr asked SAC members to identify which water quality improvements provide “significant public trust resources” in the Delta and other river systems.

SAC member suggested that the following water quality improvements provide “significant public trust resources” in the Delta and other river systems:

- Increased water flow to the Delta provides a public benefit because it dilutes salinity.
- Improvements in water temperature.
- Dilution of pollutants and toxins.
- Making any water quality improvements to the water for disadvantaged communities.
- Any water projects focusing on providing benefits to communities without water.

One SAC member also suggested that any water quality improvements in the Delta create benefits to other parts of the system.

SAC members inquired whether Project Staff was or considered using the Commission’s 2013 guidelines on how water quality provides public trust resources. Project Staff considered these guidelines but, in general, are not constrained by old documents.

There was a discussion about water as a public trust resource. Dialogue centered on reviewing how public trust doctrines address water. SAC members indicated it would be worth discussing how the SWRCB defines a public trust resource.

Action Item: Project staff will provide the 2010 Water Resources Control Board Public Trust Resource Definition to SAC.

Flood Control Benefits

For this public benefit, Jenny Marr asked SAC members to identify what should be included and not included in flood control benefits.

SAC member suggestions for flood control benefits included:

- Developing transient storage in flood plains.
- Developing setback levees and, expanding or creating flood bypasses.
- Developing real time flood storage to store excess water more efficiently.
- Managing urban/local flood conditions beyond simply managing conveyance.
- Establishing better water system management.
- Creating more storage capacity.
- Reconfiguring existing infrastructure to improve water storage.
- Slowing water down from the Sierra Nevada.
- Creating ground water banks.
- Using healthy headwaters and forestlands to help control floods.
- Projects that capture water during storm water events, especially during a drought, and divert it into new facilities to recharge ground water basins later.

Action Item: CCP will send SAC members a Word file of the Proposition 1 eligibility requirements and public benefit worksheet.

Emergency Response

SAC members indicated that the definition of this public benefit was clear.

Recreational Purposes

SAC members discussed recreational purposes for the WSIP. Suggestions included the following:

- Those identified by the Central Valley Improvement Act (CVPIA), which maximizes supplies to fisheries, and public access to public refuges.
- Only recreational purposes near a body of water because these are most associated with aquatic ecosystems and water.
- Recreation in truly public spaces.
- Recreation only occurring next to water storage facilities.
- Recreational purposes that are incidental to the activity rather than a commodity.

Additionally SAC members discussed the need for determining whether the WSIP would consider recreation such as golf as a public recreation benefits. Golf courses can use water and could be private or public. What would the basis to include or not include recreation like this as a public benefit? SAC members suggested more discussion.

Other SAC comments on recreation benefits included:

- Advocating for Project Staff and the Commission to consider projects that add to surface flows in recreation areas.

Quantifying Public Benefits

Chapter 8 of Proposition 1 requires the WSIP to evaluate whether a project is cost effective and can achieve the benefits listed above. The Commission must use a competitive process to projects based on the expected return on public investment as measured by the magnitude of the public benefits. Projects must provide measurable improvements to the Delta ecosystem or its tributaries and must have completed feasibility studies. Projects without such improvements are not eligible for funding. The Commission must develop methods to quantify and manage proposed projects for public benefits.

Project staff is reviewing different valuation methods and working with experts to establish baselines for each public benefit. They have historically used a previous document prepared for the Commission by DWR titled *“Tools and Metrics for Valuation of Public Benefits”* which is available on the Commission’s website. This document is a good resource for past consideration of quantification methods but the Project Team is not using it exclusively to inform decisions on these methods. SAC members suggested Project Staff review methodologies used in other storage projects throughout the U.S.

SAC member questions

Q: How will decision makers consider a project that applies to multiple chapters of the proposition? If a project, does not fare well in Chapter 8, will there be integration and crossover so that applicants do not submit multiple applications?

A: There is no crossover. A project that is eligible for multiple chapters must satisfy each chapter’s application process.

Q: Where will the technical capacity come from for the Commission to make decisions about applicants?

A: There will be a technical review group including Commission and DWR staff, the DFW, Water Board, Delta Stewardship Council, and consultants. The technical group will review applications in the future. An independent review panel will also review applications before the Commission makes

final decisions. Applicants must justify the benefits their projects provide and show how their projects are the most cost effective. Project staff will develop unit values in terms of water supply.

Action Item: CCP will provide SAC members a link to the CWC document titled *“Tools and Metrics for Valuation of Public Benefits”*.

SAC Next Steps

At the next SAC meeting, members will advise on how the Commission can best quantify and value public benefits.

The following are additional action items that Project Staff and CCP will do to help support the SAC in its endeavors.

Action Item: Project staff will assess the feasibility to move the May SAC meeting date so that it does not overlap with the spring conference of the Association of California Water Agencies

Action Item: CCP will update table tent cards to include SAC member names and agency/organization.

Action Item: CCP will print table tent cards and nametags for alternates.

Action Item: CCP will print table tent cards and nametags for all CWC members.

Action Item: Project staff/CCP will provide SAC members with a member roster that includes contact information.

Appendix A: Meeting Attendees

Special Guests

Commissioner Daniel Curtin
Commissioner David Orth
Commissioner Andrew Ball

SAC Members/Alternates

Steve Rothert – American Rivers
Adam Walukiewicz – Association of California Water Agencies
Tony Zampielo – Association of Ground Water Agencies
Mike Hardesty – California Central Valley Flood Control Association
Danny Merkley – California Farm Bureau
Danielle Blacet – California Municipal Utilities Association
Jennifer Clary (alternate) – California Chamber of Commerce
Marguerite Patil – Contra Costa Water District
Matt Machado – County Engineers Association, Flood Control, and Water Resources Committee
David Forkel – Delta Wetlands Project
Mark Smith – Ducks Unlimited
Gary Mulcahy – Environmental Justice Coalition for Water
Julia McIver – Environmental Water Caucus
Mario Santoyo – Friant Water Authority
Chris Petersen – Groundwater Resource Association
Randall Neudeck – Metropolitan Water District of Southern California
John Kingsbury – Mountain Counties Water Resources Association
Greg Thomas (alternate) – Natural Heritage Institute
Doug Obegi – Natural Resources Defense Council
Thad Bettner – Sites Joint Powers Authority
Bo Mazetti – Southern California Tribal Chairs Association
Susan Tatayon (alternate) – The Nature Conservancy

Project Staff

Rachel Ballanti, Acting Executive Officer – California Water Commission
Ajay Goyal, Principal Engineer – Department of Water Resources
Jennifer Marr, Project Manager – California Water Commission
Brianna Shoemaker, AGPA – California Water Commission
Maureen King, Legal Counsel – California Water Commission

Center for Collaborative Policy Staff

Juliana Birkhoff, Senior Mediator
Dave Ceppos, Associate Director
Nicole Scanlan, Assistant Facilitator