

MEETING SUMMARY

Stakeholder Advisory Committee (SAC)

Water Storage Investment Program (WSIP)

California Water Commission (Commission)

June 3, 2015

Table of Contents

Introduction	1
Meeting Summary	2
Opening	2
Human Right to Water	2
Update on Definitions	3
Public Trust Doctrine and Public Trust Resources	3
Tributaries to the Delta	3
Application Review Process Flow Chart	5
Public Comment	6
California Department of Fish and Wildlife Priorities and Relative Values	6
Public Comment	7
State Water Resource Control Board Priorities and Relative Values	8
Public Comment	8
Applying Priorities and Relative Value to Evaluation	9
Public Comment	9
Closing	9
Appendix A: Meeting Attendees	11

Introduction

Meeting documents referenced in this summary can be downloaded from

https://cwc.ca.gov/Pages/2015/06_June/060315SACAgenda.aspx

The SAC held its third meeting on June 3, 2015. Twenty-five SAC members or their alternates attended (see attendees list in Appendix A). The SAC is comprised of organizations throughout the State with experience in: CALFED Bay Delta 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.

The objectives of the meeting were:

- Discuss and provide input on definitions.
- Learn about the Human Right to Water policy and program implications.
- Review draft application evaluation process flow chart.
- Learn and comment on California Department of Fish and Wildlife (CDFW) and State Water Resource Control Board (SWRCB) board priorities and values.
- Suggest ways to apply priorities and values in evaluation process.

Meeting Summary

Opening

Dave Ceppos, Associate Director, Sacramento State, Center for Collaborative Policy (CCP), called the meeting to order, welcomed SAC members and the public, and introduced Commissioner David Orth. Commissioner Orth thanked SAC members for their commitment to helping the Commission develop the WSIP. He explained that the feedback provided by the SAC helps the Commission and staff define the guidelines and regulations for the program. Commissioner Orth then introduced the new Executive Officer for the Commission, Paula Landis.

Ms. Landis indicated that she was excited to be part of developing the WSIP, a program with an opportunity to make a difference in water storage in California. She conveyed that Commission and DWR Project Staff are committed to solicit and use input from stakeholders when developing the program. Ms. Landis also reported that the SAC has tribal representation from all parts of the state with the addition of Ms. Glenda Nelson from the Central California Tribal Chairs Association.

Following Ms. Landis' comments, Mr. Ceppos reviewed the agenda and described the processes for the day (i.e. process for public comment). Upon closing, Mr. Ceppos introduced Debbie Davis-Franco from the Governor's Office of Planning and Research (OPR).

Human Right to Water

Debbie Davis-Franco, Governor's Office of Planning and Research

Refer to document: [Proposition 1 Human Right to Water Implementation Guidance](#)

Ms. Davis-Franco explained that the Human Right to Water legislation requires state agencies to consider the human right to water and determine how it applies to their programs. She indicated that the Commission's decision on the human right to water must be transparent and clear, and include adequate public participation from the communities most impacted by Commission conclusions. She specified that the Commission must consider the following questions:

- Will the human right to water affect the points awarded to Water Storage Program (WSIP) applicants?
- Can the Commission's funding be applied to benefits derived from the human right to water?

Ms. Davis-Franco explained that the challenge would be to determine whether the human right to water would fit within the prescribed public benefits in Proposition 1.

SAC Discussion, Comments, and Questions

- SAC members expressed interest in knowing the Governor's position on how the human right to water should affect the scoring of WSIP applicants and whether the Commission can use Chapter 8 funding for public benefits associated with the human right to water. Ms. Davis-Franco explained that the Governor has no official position and that State agencies must determine how the human right to water applies to their programs.
- One SAC member drew attention to the lack of non-Federally recognized tribal representation on the SAC. Project Staff will review tribal representation on the SAC.
- SAC members asked about the timeline for State agencies to incorporate the human right to water into their programs. Ms. Davis-Franco explained that there is no specific timeline for the incorporation of the human right to water into programs but added that it must coincide with the adoption of program regulations. Ms. Landis explained that there is no specific timeline in

order to allow programs to incorporate the human right to water, regardless of when they set their program regulations.

Action Item: Project Staff will review tribal representation on the SAC.

Update on Definitions

Public Trust Doctrine and Public Trust Resources

Nathan Weaver, Attorney, SWRCB

Refer to document: [Public Trust Resources Memo](#)

Mr. Weaver explained that the SWRCB legal counsel reviewed the definitions of “public trust resources” and is confident that that legislature intended to refer to the Public Trust Doctrine. He noted that they extensively reviewed whether providing water for the purposes of satisfying the human right to water is a “public trust resource” within the meaning of Water Code section 79753. Based on this review, SWRCB legal counsel has determined that the “public trust resources” described Water Code, section 79753, subdivision (a) (2) refer to uses protected by the Public Trust Doctrine, which does not include water supply for human consumption as a protected use. Mr. Weaver detailed various California court reviews of the Public Trust Doctrine. He noted that these decisions have dealt with the Doctrine’s scope and requirements but have not identified the uses included in the Human Right to Water policy as being within the public trust. He further added that neither the Human Right to Water policy, nor Proposition 1, make an attempt to alter the Public Trust Doctrine and neither refers to it. As a result, it is the opinion of SWRCB that benefits derived from the Human Right to Water policy cannot be included under the WSIP.

SAC Discussion, Comments, and Questions

- There was discussion about the Human Right to Water policy. One member indicated that human right to water includes more than drinking water. He indicated that the legislation also includes cooking and sanitation uses. The SAC member also inquired as to whether water used for recreational activities, such as swimming and bathing, should be considered. Mr. Weaver indicated that the SWRCB could review the availability of clean water at recreation sites. He reiterated the SWRCB’s commitment to working with stakeholders on human right to water issues.
- DWR’s Tribal Coordinator, Anecita Agustinez reminded participants that State agencies are required to honor beneficial use Memorandums of Understandings with Tribes.

Tributaries to the Delta

Dave Ceppos, Facilitator, CCP

Paula Landis, Executive Officer, Commission

Refer to document: [Tributaries of the Delta Definition](#)

Mr. Ceppos summarized the tributary definition developed by Commission Staff. He explained that Project Staff must specify the watersheds within the Delta and the tributaries to the Delta for purposes of section 79752 of Proposition 1. Project Staff has determined that there is currently no common definition for Delta tributaries. However, Water Code section 85060 defines the “Delta watershed” to mean the Sacramento River Hydrologic Region and the San Joaquin River Hydrologic Region. As a result, Project Staff proposed the following definition of “tributaries to the Delta” for the purposes of the WSIP:

Waterways that are “tributaries to the Delta” include all river systems that make up the Sacramento River watershed and the San Joaquin River watershed (i.e., the natural/topographic hydrologic basins).

Mr. Ceppos pointed out that this definition does not limit the region in which projects may be located; rather, it defines a region in which some level of ecosystem improvements must be provided to ensure project eligibility.

In developing this definition, Project Staff considered for key regions in the State. They concluded that areas upstream of dams should be included in the definition of “tributaries to the Delta” but that the following hydrologic basins would not:

- Tulare Lake Basin
- Trinity River

For more information on the background for these decisions, please refer to document: [Tributaries of the Delta Definition](#).

Ms. Landis clarified that the basins excluded within the definition apply only to their status as tributaries of the Delta and does not exclude projects within these areas. Projects within these areas providing measurable benefits to the Delta or its tributaries may still apply.

SAC Discussion, Comments, and Questions

- SAC members expressed no opposition to not defining the Tulare Lake Basin as a tributary to the Delta.
- Several SAC members expressed support for defining Trinity River as a tributary to the Delta due to the conveyance structures that deliver significant flow into the Sacramento River system. Ms. Landis explained that staff did not define Trinity River as a tributary because it is only hydrologically connected to the Sacramento River Watershed through Central Valley Project (CVP) infrastructure. Several members expressed concern over the Trinity River’s definition as not a tributary because of a lack of natural connection. They pointed out that Trinity River water is diverted to the Sacramento River, which flows to the Delta and upon which Delta flows and ecosystem conditions rely on.
- One member asked how projects in non-tributary basins could still be eligible for funding. Ms. Landis reiterated that projects providing measurable improvements to the Delta are eligible. Ajay Goyal, Principal Engineer with DWR, added that not all project ecosystem benefits must go to the Delta.
- Some SAC members inquired as to why Project Staff chose to define tributaries to the Delta by hydrological connection only. Ms. Landis explained that Project Staff conducted extensive background research to develop the definition for “tributaries to the Delta”. Mr. Goyal added that any project which provides ecosystem benefits to the tributaries will be eligible for funding. Commissioner Orth indicated that the Commission could allocate funding to any project which provides measurable benefits to the Delta as defined by statute. He reiterated that the tributary proposed definition is not intended to exclude projects but to define where there must be a measurable benefit to the Delta.
- There was additional discussion to clarify that a project can be judged as beneficial because it is in a hydrologic region that is tributary to the Delta, and/or because it provides measurable benefits to the Delta even if it is in a hydrologic region that is not connected to the Delta.

Application Review Process Flow Chart

Joe Yun, DWR

Refer to document: [Draft Application Evaluation Process Flow Chart](#)

Mr. Yun presented SAC members with a draft of the Application Evaluation Process Flow Chart. He informed SAC members that as a draft, it is a changeable process that will likely evolve over time. The application evaluation process involves key stages including:

- **Pre-application process:** Project applicants will submit a pre-application to the Commission for review. The pre-application will ask project applicants to provide basic information to the Project Staff to allow them to provide feedback to the various proposals. Project Staff will provide an assessment of the projects submitted during the pre-application to the Commission and the public.
- **Application Submittal:** Process still being determined.
- **Eligibility and Completeness:** Once projects submit their final applications, Project Staff will review for eligibility and completeness of applications. Sufficiently completed eligible applications will be forwarded to the Technical Review Stage. Incomplete projects or those with eligibility issues will be given a brief period to address the insufficiencies by the applicant.
- **Technical Review:** In the technical review, proposals will be assessed on the following:
 - Technical feasibility;
 - Verification of physical benefits (public and non) and whether they benefit the Delta or a tributary;
 - Economic analysis;
 - Environmental documentation/permits;
 - Restore ecological health and improve water management for beneficial uses of the Delta (79755(a)(5)(B));
 - Project tasks, budget, and schedule;
 - Success measures and assurances;
 - Program priorities and relative values.
- **Independent Peer Review:** after the technical review, an independent panel reviews all information. The panel will then release its findings to the Commission.
- **Commission Findings and Initial Funding Decisions:** The Commission will review the information provided by the Technical and Independent Reviews to make its initial commitments.
- **Post Initial Commitment Activities:** The Commission will give selected projects an initial “soft” commitment contingent on a variety of factors (listed on the flow chart). They will not make final commitments to funding until projects have submitted all final requirements, including completed environmental documentation and permits.

SAC Discussion, Comments, and Questions

- Some SAC members expressed support for having more than one application period. Mr. Yun explained that the application review process has been designed with the intent to only have one proposal solicitation package (PSP). He noted that there is a short timeline within which the Commission can allocate funding and having multiple PSPs would make the application review process more complex.
- Some SAC members conveyed support for more public input in the review process. Mr. Yun indicated that the public would have access to all information submitted during the pre-application process. He noted that Project staff will highlight public feedback opportunities on the application review process flow chart.

- Some SAC members stated strong support for agencies to coordinate funding applications from the different chapters of Proposition 1 so projects could be integrative. Mr. Yun explained that agencies charged with allocating Proposition 1 funding are on different timelines, which makes coordination challenging. He added that Proposition 1 contains funding limits for some programs that restricts the state from funding 100 percent of the projects. SAC members were encouraged to offer suggestions about how to coordinate with other agencies charged with allocating Proposition 1 funding.
- There was also discussion about the required documents and analysis for the application.
 - One member asked about the minimum required environmental documentation. Mr. Yun specified that Section 79757 of Proposition 1 requires that applicants have their draft environmental documentation out for public review and have a 75 percent commitment for funding on the non-public benefits.
 - One member asked for an explanation of the operational model used in the economic analysis. Mr. Yun explained that DWR would develop recommended economic analysis methodology and economic unit values. Projects can use this or other values (with justification).
 - Another member drew attention to the amount of complexity in the review process created by not requiring the use of common methodology. The member added that the Application Evaluation Process Flow Chart is not clear about the assumptions for the independent review (i.e. how long they will have to review and make comparisons across projects). Mr. Yun reiterated that this is a draft of the process and will allow staff to determine whether the process is doable within the timeline set forth by the Commission.

Action Item: SAC members may provide Project Staff with suggestions about how to coordinate with other agencies charged with allocating Proposition 1 funding at the July SAC meeting.

Public Comment

- A member of the public recommended the Commission include the Suisun Marsh as a tributary because water from the Marsh is part of the Delta ecosystem due to tidal exchange.
- Another member of the public encouraged the Commission to review any changes in the water system that may alter the way that other agencies (i.e. U.S. Bureau of Reclamation) may need to operate their systems. The restrictions and requirements of these other agencies must be considered when developing new storage projects. She also called for the application review process to include a qualitative section because comparing projects may be difficult and there will be a variety of good projects providing a variety of good benefits.

California Department of Fish and Wildlife Priorities and Relative Values

Scott Cantrell, CDFW

Refer to documents: [Draft CDFW Ecosystem Priorities](#) and [PowerPoint Presentation](#)

Mr. Cantrell presented SAC members with CDFW's draft ecosystem priorities and relative values. The document outlines priorities for the Central Valley and Bay-Delta. CDFW developed the priorities to support the Commission as it evaluates and selects water storage projects under the WSIP. The priorities include:

1. Promote the recovery of endangered, threatened, and other at-risk native fish species and native fish assemblages through water project operations.

2. Restore physical processes and flow regimes to improve native habitats and natural communities to promote the recovery of endangered, threatened, and other at-risk native species.
3. Enhance commercial and recreational opportunities.
4. Reduce the negative impacts of non-native species on native species and natural communities
5. Prevent or reduce negative impacts from in-river structures on anadromous fishes.
6. Increase quality and quantity of aquatic and riparian habitat and managed and unmanaged wetlands.

Mr. Cantrell presented several options for how projects could meet these priorities. Following this, Mr. Cantrell reviewed CDFW's relative environmental values. He explained that relative environmental values would be assessed for ecosystem benefits based on:

1. The number of ecosystem and water quality priorities addressed.
2. Consistency with existing conservation/recovery plans.
3. Environment water use efficiency.
4. Measurable rather than descriptive benefits.
5. Proximity to existing resources.
6. Expected magnitude of the measurable benefits
7. Clear performance measures.
8. Certainty of achieving the benefits.
9. Immediacy of benefits provided. Benefits achieved sooner are preferable to benefits achieved later.
10. Duration or permanence of benefits.
11. Climate change adaptability and resilience.

Mr. Cantrell asked SAC members to consider the following questions about CDFW priorities and relative environmental values:

- Are the ecosystem priorities clearly expressed?
- Are the priorities at the appropriate level of detail?
- Are there any priorities you think we have missed?

SAC Discussion, Comments, and Questions

- There was discussion about CDFW's role within the WSIP program. One member cited concern that the priorities presented by Mr. Cantrell may not relate to water storage and highlighted that the Commission is only required to consult CDFW. Mr. Cantrell explained the Commission is required by Proposition 1 to consult with CDFW and the SWRCB about priorities and relative environmental values. WSIP project applicants will be required to show how they address these priorities and values.
- Some SAC members suggested that CDFW's priorities are too narrow for current projects to accomplish.
- There was a recommendation to CDFW to determine if existing projects can meet the priorities outlined by CDFW.
- Some SAC members were in favor of CDFW including a priority for recreation; others were not.

Public Comment

- One member of the public drew attention to Proposition 1's requirement that CDFW is to provide information on relative environmental values related to ecosystem benefits, and not CDFW priorities.

- Another member of the public indicated that projects will have both measurable positive and negative impacts and as a result, there will be tradeoffs that should be considered in the application review.
- Members of the public recommended CDFW explain why they are prioritizing recreational activities and species.

State Water Resource Control Board Priorities and Relative Values

Gail Linck, SWCRB

Nathan Weaver, SWCRB

Refer to document: Draft State Water Board Water Quality Priorities

Ms. Linck presented SWCRB's water quality priorities related to water storage. She indicated that SWCRB has eight water quality priorities related to impaired water that can be affected by water storage. These include

- Water temperature
- Dissolved oxygen conditions
- Nutrient conditions
- Mercury conditions
- Salinity
- Groundwater protection
- Delta tributary stream flows
- Water demand on the Delta.

Ms. Linck asked SAC members whether SWCRB should consider any additional priorities.

SAC Discussion, Comments, and Questions

- SAC members stated concern over using the California Statewide Groundwater Elevation Monitoring (CASGEM) system to define medium and high priority basins because it might be revised and because they are based on human use of water rather than ecosystem benefits. Ms. Linck indicated that SWCRB would indicate that the number of basins listed as high or medium priority in CASGEM might change.
- One member expressed concern that Priority 8, as written, still reflects a priority for increasing local water supplies south of the Delta. Ms. Linck explained that this was not the intent and indicated they will consider how to further broaden the language.

Public Comment

- One member of the public commented that the potential acts taken to address priorities do not necessarily tie to the relative environmental value. He recommended that CDFW and SWCRB tie these together rather than just leave at a broad objective.

Action item: SAC members may provide feedback on the questions regarding presented priorities and relative environmental values of CDFW and SWCRB to CCP by June 19. CCP will forward these to their respective agencies.

Action Item: CCP to provide SAC members with copies of CDFW and State Board's priorities.

Applying Priorities and Relative Value to Evaluation

Mr. Ceppos facilitated a discussion with the SAC to develop a range of ideas or a common approach to apply the CDFW and SWRCB priorities and values to the evaluation process. He explained that the purpose of the discussion was to identify common themes and perspectives within the SAC. Commissioner Orth encouraged SAC members to develop ideas and approaches for Commission staff to consider.

SAC Discussion, Comments, and Questions

The discussion centered on four basic themes:

- Many SAC members stated support that the Commission will need to have a discretion in their ultimate decision-making/delegation of project funding, balanced with some (to-be-determined) metrics that the Commission would also use to illustrate a balanced approach and rationale for their decisions
- Confidence and reliability are a good litmus test. Look for projects that can show the highest confidence and certainty in the commitments and delivery of benefits, in concert with a strong adaptive management plan that describes how changing circumstances will be dealt with to still deliver said commitments and benefits.
- General discussion seemed to support that project proponents should be encouraged to seek partnerships that might enhance the project by aggregating and increasing the net benefits of their integrated projects. Such partnerships should likely be the responsibility of the project proponents to pursue, rather than for the Commission to “broker” said relationships. Such partnerships should probably be fostered and acted on well in advance of the “pre-application” stage (as described in the application flow chart presentation) because by the time applicants get to that stage, it will be too late for environmental compliance and other steps to be completed that will present defensible information about aggregated benefits.
- There was general discussion about whether increased public outreach/input steps are best carried out during the pre-application stage or the technical review stage
- A majority of SAC members generally supported the following process recommendations:
 - Develop a scoring/ranking system to provide information to the Commission on how well projects have met the priorities and values
 - Infuse public input throughout the process to help better value the priorities.
- One member asked Project Staff why they requested the SAC to identify how the priorities and values should be used in the application evaluation process, if Project Staff is not ranking projects. Mr. Goyal stated that it was because the Project Staff wanted to provide the Commission with a wealth of technical data with which they could make their decisions.

Public Comment

- One member of the public suggested that the context of a project could help with integration, and that the Commission could suggest integration during the soft commitment portion of the selection process. The speaker emphasized however, that individual projects still have to be beneficial on their own merits.

Closing

Commissioner Orth thanked SAC members for devoting their time to helping develop the WSIP. He noted that the day’s discussions would be helpful to the Commission in its upcoming decisions. He added that the Commission would work to identify the boundaries of its discretion.

Ms. Landis thanked SAC members for the valuable input and indicated she looked forward to continue working with them.

Mr. Ceppos adjourned the meeting.

Appendix A: Meeting Attendees

Special Guest(s)

Commissioner David Orth

SAC Members/Alternates

Lauren Noland-Hajik – Agricultural Presidents’ Council
Steve Rothert – American Rivers
Adam Walukiewicz – Association of California Water Agencies
Mike Hardesty – California Central Valley Flood Control Association
Valerie Nera – California Chamber of Commerce
Danny Merkley – California Farm Bureau
Patrick Harbison (Alternate) – California Municipal Utilities Association
Nathan Rangel – California Outdoors
Sarge Green (Alternate) – California Partnership for the San Joaquin Valley
Art Engle (Alternate) – Central California Tribal Chairs Association
Miriam Gordon – Clean Water Action
Marguerite Patil – Contra Costa Water District

Karen Keene (Alternate) – 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
Ronald Stork (Alternate) – Environmental Water Caucus
Steve Ottemoeller (Alternate) – Friant Water Authority
Chris Petersen – Groundwater Resource Association
John Kingsbury – Mountain Counties Water Resources Association
Jerry Meral – Natural Heritage Institute
Sandi Matsumoto – The Nature Conservancy
Garth Sundberg – Northern California Tribal Chairs Association
David Guy – Northern California Water Association
Dave Puglia – Western Growers

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