

Meeting Minutes - DRAFT

Meeting of the California Water Commission

Wednesday, August 19, 2015

Metropolitan Water District

700 N. Alameda Street

Board Room (Morning) and Conference Room US2-145 (Afternoon)

Los Angeles, CA 90012

Beginning at 9:30 a.m.

1. Call to Order

The meeting was called to order at 9:34 a.m.

2. Roll Call

Executive Officer Paula Landis called roll. Commission members Andrew Ball, Paula Daniels, Maria Herrera, David Orth, and Armando Quintero were present, constituting a quorum. Commission members Daniel Curtin and Joe Del Bosque were absent, and Commission member Joe Byrne arrived late.

3. Approval of July 2015 Meeting Minutes

A motion was made to approve the July 15 and 16, 2015 meeting minutes. A vote was taken and the motion passed unanimously.

4. Executive Officer's Report

Paula Landis provided the Executive Officer's Report. She stated that the Office of Chief Counsel for the Department of Water Resources (DWR) has extended its advertisement for a full-time attorney for the Commission. DWR is also planning on advertising for an Information Officer whose primary responsibility will be to handle media, communications, and outreach for the Commission. She also announced that Commission staff is finalizing its scope of work for a new consultant contract, and making progress updating the regulations section of the Commission's website.

5. Welcome by Commission Members and Commission Member Reports

Commissioner Daniels, who lives in Los Angeles, stated that the task of water supply and management for an area as large as Los Angeles is a tremendous feat. She complimented the ingenuity and talent of the staff at the Metropolitan Water District (MWD) and thanked them on behalf of the Commission members and staff for their hospitality in hosting their August meeting.

Earlier that month, Commissioner Daniels met with Eric Averett, General Manager of the Rosedale-Rio Bravo Water Storage District, to talk about the operations of the Kern County Water Bank.

Commissioners Orth and Quintero participated in discussions with General Manager Jason Gianquinto and other members of Semitropic Water Storage District about their current and prospective water projects.

On August 10, Commissioner Orth met with members of the Fresno County Administrative Office and Board of Supervisors to discuss the Central Valley's multi-county efforts towards various water storage projects, including the Temperance Flat project. That same day, he joined Commissioner Curtin at the Commission's Public Information Meeting in Bakersfield where they answered questions about the Water Storage Investment Program (WSIP).

6. Public Testimony

Connor Everts, representing the Environmental Water Caucus, stated that the San Fernando Valley has potential for becoming a major hub for stormwater capture and water recycling programs. He complimented the work done by MWD to promote water conservation through rebate and incentive programs, and stated that there is still a lot of work to be done. Small communities lacking safe and clean drinking water must not be left behind by the large water districts; they depend on the Human Right to Water and should not need to rely on emergency programs for basic water needs.

7. Welcome and Presentation by Metropolitan Water District on Local Water Supply and Management

Jeffrey Kightlinger, General Manager of MWD, provided the Commission with an overview of local water supply conditions and management. MWD provides water services to a 5,200 square mile territory in Southern California, and is comprised of 26 member agencies that serve approximately one billion gallons of water to 19 million people every day. MWD's water sources are channeled from origin points as far as Lake Havasu, the Feather River Basin, and the Colorado River. In the 1990s, MWD began to implement regional methods for conservation, such as recycling and groundwater recovery. MWD has also increased their focus on above-ground water storage, increasing their capacity from 350,000 acre-feet in 1980 to 5 million acre-feet today. They also maintain a 6-month emergency drinking water supply.

In 2009, in order to counteract effects of the drought, MWD lowered their allocation to local districts as part of a rationing program, and required 10% mandatory cutbacks across Southern California water agencies. The most recent statistics for the Colorado River actually show improvement despite its being in the midst of a 15-year drought cycle.

Currently MWD is still heavily limiting their water allocations. They cut back water use by 27-30% in accordance with the statewide requirements mandated by Governor Brown and the State Water Resources Control Board. MWD has also increased their conservation budget to \$450 million, making it the largest conservation program in the nation. MWD also spends approximately \$1 million per year on outreach and education programs. More information on these programs can be found at www.bewaterwise.com.

Commissioner Daniels asked Mr. Kightlinger what plans MWD has to maximize stormwater capture and recharge. Mr. Kightlinger responded that Los Angeles and Orange County have taken great steps towards increasing indirect potable reuse and recycled water for non-essential purposes such as lawn maintenance in public spaces such as golf courses. They also intend to extend these practices to the Central and San Fernando Basins. MWD does capture stormwater in the San Gabriel Mountains, but there is always more work to be done to maximize stormwater capture.

During public comment following the presentation, Caryn Mandelbaum, Freshwater Program Director and Staff Attorney for Environment Now, stated that 90% of the state's adjudicated basins are in Southern California. Over 18 of the local water agencies in the Los Angeles area rely on groundwater. In addition to providing drinking water, groundwater basins serve many useful purposes, such as acting as seawater barriers, providing stormwater recharge, and providing wildlife habitat, all while being less susceptible to evaporation than above-ground storage. She encouraged the Commission to look to the successes of Los Angeles' efforts to maintain and improve groundwater storage and to seek out projects that emulate some of Southern California's groundwater methodologies.

8. Update on Implementation of the Sustainable Groundwater Management Act: Review Draft Basin Boundary Emergency Regulations, Update on Status of Groundwater Sustainability Plan Regulations

Steven Springhorn, one of DWR's Sustainable Groundwater Management Act (SGMA) implementation team leads, stated that the SGMA team is currently finalizing the Draft Basin Boundary Emergency Regulations. Adoption of the emergency regulations will be the first step in the implementation of SGMA. Comments from the public and stakeholders helped shape the current iteration of the draft regulation, and after it is released, it will be subject to another comment period which will include a series of public meetings. The draft process is expected to last from July to September 2015, and DWR will seek adoption of the regulations by the Commission in October or November. DWR is planning to submit further updates to the Commission at the September meeting. DWR will hold public meetings on the draft basin boundary regulations in September in Sacramento, Bakersfield, and Santa Ana. Information on dates and locations can be found on the DWR website. The public can also use the website to communicate with DWR and submit letters and comments.

Mr. Springhorn then provided an overview of the SGMA requirements and a full text version of the draft regulation. He reviewed each article and explained each section. The purpose of the regulations is to establish a process for local agencies to request changes to existing basin boundaries. Depending on the type of revision requested, requirements may include demonstrating how the proposed basin can be sustainably managed, technical information on boundaries and conditions in the proposed basin, consultation with interested parties in affected basins, and details on any other information DWR deems necessary to justify revision.

Articles 1 and 2 describe the intent of the regulation and provide key definitions. They state that all basins will begin with existing Bulletin 118 boundaries. If modifications are not requested by local agencies, the Groundwater Sustainability Agencies and Groundwater Sustainability Plans (GSA/GSP) will be formed in existing basins and the boundaries will carry through to the next Bulletin 118, scheduled for release in 2017.

Article 3 describes the type of modifications that may be requested. Modifications can be made for scientific or jurisdictional reasons. Scientific changes are based on hydrology. Jurisdictional modifications can include internal boundary modification, consolidation, or subdivision. Other uncategoryable modification requests can also be submitted and will be reviewed individually.

Article 4 describes how to request or protest a modification. There are opportunities for protest at any time in the process, but the content of the protest must be backed up with scientific or technical justification.

Articles 5 and 6 provide a list of the technical and supporting information required to request a modification, the methodologies and criteria for evaluation, and an explanation of the decision-making processes. During these processes, if any of the science cannot be justified or if any of the required components are missing, DWR may deny the request or send it back for revisions. For jurisdictional changes, there must be broad local agreement for basin boundary revisions. The level of local agency support required is based on the type of modification.

Article 7 provides procedures for the adoption of boundary modifications by DWR. After DWR review and public notification, the DWR's findings will be brought to the Commission for review in September 2016.

The final proposed regulations will be presented to the Commission for adoption in October and November, and DWR will start accepting boundary modification requests on January 1, 2016.

Commissioner Quintero asked if many comments have been received. Mr. Springhorn responded that three comments have been received and posted on DWR's basin boundary website, and they were mostly line-item comments that requested small changes or new language.

Commissioner Orth stated that in larger basins where numerous systems and agencies are intertwined, it may be asking a lot to expect them to respond to every boundary modification request that may affect them. Mr. Springhorn responded that for basin sub-divisions, all local agencies must submit a board resolution that would support that change. For internal changes that only affect specific areas, only those specific areas are expected to respond.

Mr. Orth also asked what the procedure will be if DWR receives boundary modification requests that are in conflict with each other. Mr. Springhorn replied that Article 4 states that requesting agencies are expected to take a leadership role and may need to coordinate with each other if their requests are in conflict. DWR can also intervene if the agencies cannot come to an agreement, using technical and scientific justification to support their decision. Commissioner Herrera supported the notion of interagency conflict resolution in lieu of DWR intervention.

Trevor Joseph, Supervising Engineering Geologist at DWR, provided an update on the progress of the GSP regulation development. Currently DWR is in the draft framework phase of their four-phase process (scoping, draft framework, draft emergency regulations, and adoption of emergency regulations). This phase is focused on outreach, and feedback is encouraged from the public and advisory groups. DWR will hold a series of public information meetings and webinars throughout 2015. A full calendar of DWR's scheduled meetings can be found at <http://water.ca.gov/groundwater/sgm/gsp.cfm>. DWR anticipates presenting the draft emergency regulations to the Commission in December 2015, with the goal of final submission to the Office of Administrative Law in June 2016. Each presentation will be followed by a public comment period.

Commissioner Herrera asked for more information on the advisory groups, and how they were selected. Mr. Joseph responded that there are approximately 12 advisory groups including: practitioners (local agency managers), NGOs, Tribal, Agriculture, Central Coast area, Northern California Water Association, Association of California Water Agencies, Rural County

Representatives of California & California State Association of Counties, San Luis Delta Mendota Water Authority, San Joaquin Tributaries Authority, Tulare Lake Region.

There have been several advisory group meetings to date, and DWR has received input from those meetings covering the following topics:

- Definitions of baselines and undesirable results
- Defining measureable objectives and interim milestones
- Land use and county involvement with regard to planning and general coordination
- Alternative GSP submittals
- Boundaries and how they are defined and how to address overlap or fringe areas
- Intra-Basin Coordination Agreements and inter-basin coordination for hydraulically connected basins

9. Update on Draft Critically Overdrafted Groundwater Basins List

Mary Scruggs, Supervising Engineering Geologist with DWR, provided this update. In accordance with SGMA, DWR is required to identify high and medium priority groundwater basins subject to critical overdraft. DWR is referring to these as “critically overdrafted basins.” Basins identified as critically overdrafted will be required to submit their GSPs by January 1, 2020, two years before other basin plans are due.

DWR originally identified 11 critically overdrafted basins in 1980. That same list of overdrafted basins was used in the 2003 version of Bulletin 118. The list had not been updated since. DWR is now in the process of updating this list, pursuant to the requirements dictated in Water Code Section 12924. The team determined their base period for evaluation would be from 1989-2009. The base period excludes the most recent drought. California Statewide Groundwater Elevation Monitoring (CASGEM) data was not used. DWR evaluated all basins (regardless of priority) using existing DWR data; however, data was limited and the team reevaluated their process. After reevaluating, they used the original list found in Bulletin 118 as a starting point. They reviewed reports and asked for information from local agencies in order to identify and add basins with “significant and unreasonable undesirable results.” These were basins that displayed evidence of overdraft with undesirable results, such as chronic lowering of groundwater levels, significant and unreasonable seawater intrusion, subsidence, or degraded water quality. As of August 6, 2015, 21 high and medium priority basins and sub-basins have been designated as critically overdrafted. This represents approximately 40 percent of the total high and medium priority basin area.

DWR will present its draft results at a public information meeting on August 25 and a webcast on August 26. A 30-day public comment period will begin after that public meeting wherein DWR will continue to receive and process information from local agencies. Revisions will be submitted as needed, and in October 2015, the list will be finalized and posted on DWR’s website with the goal of final publication in Bulletin 118 set for late 2016.

Commissioner Orth noted that many high and medium priority basins were not identified as critically overdrafted, and asked about the differences in criteria for CASGEM basin prioritization and the critically overdrafted basins list. Ms. Scruggs stated that the Water Code identified eight criteria for basin prioritization under CASGEM. These criteria were largely based on the importance of groundwater use in a basin; prioritization is not a reflection of how a basin is being managed. Ms. Scruggs pointed out that not all high-priority basins are critically overdrafted because the criteria for critical overdraft are based on management. She also noted that DWR

worked within the designated base period, which is why there are many basins impacted by the drought that are nevertheless omitted from the findings.

Commissioner Daniels asked how DWR defined the phrase “significant and unreasonable” when assigning impact levels to the basin descriptions. Ms. Scruggs answered that those were terms that were historically used in environmental impact reports and other publications, and in this case, there was no grey area. All of the basins in question were on the severe end of the spectrum and there was no doubt that they qualified as significant.

Commissioner Byrne asked what the significance was of identifying the critically overdrafted basins, and Ms. Scruggs responded that the statute legally requires that they be submitted and published in the updated Bulletin 118 in order for agencies to be able to submit their GSPs on time.

During public the comment period, Ms. Mandelbaum asked why DWR did not include the recent drought into the base period. Ms. Scruggs responded that they were following the directive laid out by the Water Code section 10721(w) stating, “...overdraft during a period of drought is not sufficient to establish a chronic lowering of groundwater levels if extractions and recharge are managed as necessary to ensure that reductions in groundwater levels or storage during a period of drought are offset by increases in groundwater levels or storage during other periods.”

10. Update on Program and Administrative Activities for Water Storage Investment Program

Jenny Marr, WSIP Project Manager, provided updates on administration and the status of various work groups on the WSIP project team. The final version of the *Program Goals, Objectives, and Principles* document has been posted to the Commission’s website and staff has finalized the scope of work for a new consultant contract. They hope to have a new consultant team in place by October or November. The regulations work group is circulating internal drafts of the regulations and application requirements. The first of these drafts will be presented at the Stakeholder Advisory Committee (SAC) meeting in September. They are also developing an informative digest and initial statement of reasons and a series of technical and informative guides for applicants who are preparing to submit projects.

In addition to assisting the regulations team, the engineering work group has been working on a proposal for integration studies. They recently finished refining physical common assumptions, which they presented to the SAC in August. They are also working on a draft technical guidance document for the application package.

The economics work group has been developing common assumptions for economic analysis, which they presented at the August SAC meeting. They are currently in the process of incorporating comments. They are also developing a technical guide for measuring unit values of water.

The ecosystem and water quality work group is finalizing definitions of priorities and relative values with the State Water Board and the Department of Fish and Wildlife.

11. Update on Stakeholder Process for Water Storage Investment Program and Consideration of Stakeholder Input

Ms. Marr presented updates from the Communications and Engagement team. Since the last Commission meeting, there was a state and federal coordination meeting, three public meetings, and a SAC meeting. Questions asked at the state and federal meeting were mostly focused on scheduling and logistics. At the public meetings, the questions covered multiple topics ranging from project eligibility and program goals to the decision-making and funding process. The content of the public meetings varied based on local interests. The SAC meeting was focused on draft common assumptions and economic analysis, existing compliance obligations, and the rulemaking process. The stakeholders also discussed regulations and definitions of conjunctive use and groundwater storage. After the meeting, the team received three written comments, which have been posted to the Commission's website.

Following a discussion of recreation benefits that took place during the July Commission meeting, the WSIP team asked the SAC members for their feedback and input. The majority of respondents answered that projects will not be focused on recreational benefits, although most may be able to claim them as peripheral benefits. Most members also felt that a monetized value per user-day was an appropriate way to measure recreation benefits, but there should also be a process for the Commission to consider underserved communities.

In September, there will be a Commission meeting and a SAC meeting in Sacramento. In October the Commission will hold public information meetings in Fresno, Yuba City, and Pleasant Hill.

Commissioner Daniels stated that she was pleased to hear that the team has been receiving feedback on the definitions of recreation benefits. Commissioner Herrera asked if the Human Right to Water was discussed in the August 5 meeting. Ms. Marr said that she could not recall but would look into it. She also said that the public has been interested and engaged at all of the meetings.

12. Water Storage Investment Program Issue Working Session: Project Selection and Review, Management and Monitoring Public Benefits

Responding to questions posed by the commission, Amy Chen, Program Director for the San Diego County Water Authority (SDCWA) discussed local water supply and storage issues. SDCWA consists of 24 member agencies and serves approximately 3.2 million residents. Since the 1990s, they have made great strides in mitigating the losses associated with the drought. Through an aggressive water storage investment portfolio including upgrades to their dams, reservoirs, and desalination facilities, they anticipate their dependence on water supplied from MWD to decrease from 95% to 50% by 2025. Ms. Chen stated that transparency and fiscal responsibility were integral contributors to their success, and she told the Commission that taxpayers will be willing to pay for water solutions as long as they feel that their voices are being heard and they know that their dollars are being spent on sound and integrated plans.

Commissioner Ball asked Ms. Chen to elaborate on the desalination facility she mentioned, asking what the cost per acre-foot would be on such a project. Ms. Chen responded that it was approximately \$2,000 per acre-foot. She acknowledged that this is an expensive solution, but emphasized that it is just one of many, and that SDCWA and the public wanted it included in their portfolio.

Draft Eligibility Criteria for Eligibility and Completeness Review and Draft Project Application Evaluation Criteria for Technical Analysis: Jenny Marr began the WSIP working session by describing the early stages of the application review process. The application review will begin with an eligibility and completeness assessment. During this phase, a case worker will determine if the application is complete and meets the required project eligibility criteria. They will also verify that all supporting documentation has been received and that the project provides measurable improvements to the Delta or its tributaries. If any pieces are missing, the case worker will return the application for revision.

Commissioner Byrne asked if mutual water companies are eligible applicants. Ms. Marr replied that mutual water companies are eligible under Chapter 4, but there are limitations in Chapter 8 of the bond that apply to the WSIP.

Commissioner Orth asked how detailed the applicant has to be when submitting their feasibility studies. Ms. Marr replied that they need to have a draft operations plan and at least some financial assurances in place. Most documentation for assurances will be submitted after the Commission makes a soft commitment.

Ms. Marr then presented a high-level draft document of all of the evaluation criteria that will be used in the technical review. The second review will be performed by the technical team after the applicant has passed the eligibility and completeness review. They will review for magnitude of public benefits, cost and cost share, return on investment, cost-effectiveness, improvements to the operation of the state water system, project feasibility, monitoring and management of public benefits, project integration, and quality of analysis.

Commissioner Byrne asked about how the large number of criteria will be used. Ms. Marr stated that not every criterion is a requirement, and projects will not necessarily be disqualified because they do not meet a specific criterion. Evaluations based on each criterion will be provided to the Commission, and the Commission can use this information to weight and rank projects.

Commissioner Orth noticed that criteria around sustainable community strategies and preservation of working agriculture and forested landscapes, which are highlighted in the general chapters of the bond, were not listed in the document. Ms. Marr responded that they may have been left out due to a lack of applicability, but the team can add that language if the Commission wishes.

Lauren Steely, Water Resources Planner at RMC Water and Environment, asked if the projects that were geographically distant from the Delta were ineligible for consideration. Ms. Marr responded that distance does not automatically disqualify a project. Projects can still be eligible as long as they can prove that they benefit the Delta or its tributaries, even if the benefit is indirect. The only caveat is that if the benefit comes from an action such as reducing demand, applicants will be expected to provide a contract or other supporting documentation that backs up that assertion.

Commissioner Daniels asked if the Human Right to Water (HRTW) was included in the listed criteria. Ms. Marr replied that it must be considered by applicants and it is stated in the *Goals, Objectives, and Principles* that it should be a goal for projects. It is not, however, required per

Chapter 8. Additionally, emergency response water is defined such that emergency water supply provided for the HTRW purposes could qualify as a public benefit.

Jim Watson, General Manager of the Sites Joint Powers Authority, asked how the regulations will be consistent with other elements of the Water Code, specifically with the Delta Reform Act. Commission Legal Counsel Maureen King responded that the co-equal goals that are mandated by statute. Ms. Marr added that the Commission is required to make a finding that the projects will further ecosystem restoration and water management for beneficial uses in the Delta. Mr. Watson also asked if the scoring system is designed to track impacts to water supply. Ms. Marr responded that it is not directly mentioned, but water supply reliability is already indirectly embedded in the criteria.

Integration Studies of Water Storage Projects: Integration opportunities have been defined as either synergistic (providing greater benefits by teaming up with other projects) or antagonistic (assuring that projects are not in competition for water sources or focusing on the same single benefit). A challenge in identifying these opportunities is that by the time these studies begin, many projects will already have begun the California Environmental Quality Act (CEQA) process and it may be too late to modify them. The best solution will be to leave it up to the applicants to make the determinations amongst themselves and provide their concept papers to the technical team in the pre-application phase. The concept papers will be presented to the Commission for discussion and will be available to the public.

Leah Orloff, Water Resources Manager for Contra Costa Water District, expressed concern that the process may be slowed down if the technical team is expected to perform the integration reviews in addition to their technical reviews. Adam Walukiewicz, Regulatory Advocate for the Association of California Water Agencies, stated that it seemed like the “statewide improvements” mentioned in the evaluation criteria had already been covered in the eligibility review. Ms. Marr responded that the evaluation criteria are more quantitative, whereas the integration studies speak more to the quality of those benefits.

Management and Monitoring of Public Benefits: At the most recent SAC meeting, the stakeholders were given a draft of the regulation language for the management and monitoring of public benefits.

Per the current working draft regulations text, applicants will need to submit the following:

- A preliminary draft operations plan or documentation describing how the proposed project will be operated to provide public benefits under a range of hydrologic conditions; and how operational decisions will be made if conditions fall outside the range of anticipated conditions
- A preliminary monitoring, assurances and reporting plan. The applicant must also identify all relevant reporting commitments and obtain appropriate notifications and permits.
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Stakeholder feedback was limited, with one person requesting third-party enforcement. However, there is no statutory authority present for third-party enforcement, so the team did not make any changes.

Mr. Watson asked how the Commission will be able to monitor benefits that are outside their scope, stating that even with interagency coordination, the task will be cumbersome. Ms. Marr replied that that topic is still being discussed, and Commission staff is relying on support from the

WSIP agency team (the Delta Stewardship Council, Department of Fish and Wildlife, the State Water Resources Control Board, and the Department of Water Resources) for input.

Returning to a previous topic, Randall Neudeck, Program Manager for MWD, discussed water management and storage in Southern California. Southern California intends to increase water supplies by increasing groundwater storage and stormwater capture. Storage is not enough; water must be captured during wet periods. According to a CH2MHill Study commissioned by MWD, each year over 6 million acre feet of flood flows are not captured and flow through the Delta. Increasing water to Southern California will not only benefit the Colorado River System, but the state water system as a whole. He encouraged the Commission to seek out innovative ways to maximize stormwater capture for the benefit of the whole state. Mr. Neudeck promised to provide a copy of the CH2MHill study to the Commission.

Working Papers: WSIP Common Assumptions – Economics and Physical Changes: Common assumptions are the minimum requirements that all projects need to meet. Staff has developed a draft list of these assumptions, which are accompanied by ample explanations, definitions, and examples for ease of use by the applicants. Response so far has been varied, with proponents of smaller projects feeling that the requirements were excessive and in some cases, prohibitive. In cases where some of the requirements are not applicable, the proponents may skip that requirement as long as they provide supporting documentation that explains why it is not applicable. There was also feedback that the language in the assumptions was too CALFED-specific. Staff believes that the language was adequately broad to apply to all project types. The Common Assumptions documents will be presented to the SAC in September.

As part of the economic assumptions, staff discussed whether to use 2015 dollars for analyses. Staff decided that the best practice would be to write the regulations in a way that does not tie the dollars to a specific year, because to do so may cause the need for revisions to the regulations if the Commission needs to do a second solicitation.

Responding to an audience question, Ms. Marr stated that project economics and socio-economic analysis would be covered by the CEQA analysis for a project and not in the common assumptions.

Topics for Issue Working Sessions: Ms. Marr reviewed several issues highlighted in the Issue Working Session schedule document. The first was the definition of eligible project types. At the August SAC meeting, the WSIP team presented their definitions of groundwater storage and conjunctive use projects to the stakeholders. SAC members generally concluded that the proposed definition of conjunctive use was acceptable. SAC members did suggest deleting the word “intentional” from the phrase “intentional groundwater recharge”, and staff agreed to make that change. There was some concern expressed about staff’s definition of groundwater storage projects; some members felt the definition was too narrow.

Ms. Marr explained that the definitions were the result of careful and deliberate collaborative effort on the part of many teams, with the definition of groundwater storage left intentionally narrow, while the definition of conjunctive use was broader and encompassed most groundwater projects. Ms. Marr shared a proposed definition of groundwater projects drafted by several stakeholders. The WSIP team is willing to use this broader definition of groundwater storage if the

Commission has no objections. It would be up to the project proponent to identify their project type, and it would be up to the Commission to determine cost share on a project-by-project basis.

Commissioner Orth and Ms. Landis stated that broadening the definition of groundwater storage would be acceptable only if the Commission were still allowed to make the final decision if there is any ambiguity. Without that discretion, there may be a risk of project type misclassification or inappropriate cost share calculation. The Commission discussed whether recharge for the purpose of avoiding subsidence and other undesirable results could be considered conjunctive use. After extensive discussion, the Commission directed staff to move tentatively move forward with the updated staff definition of groundwater storage projects.

Ms. Marr discussed interpretation of Water Code Section 79753(b) regarding the use of chapter 8 funds for compliance and mitigation requirements. At the August SAC meeting, the WSIP team presented an issue paper on the subject to the SAC members. Responses were strong and polarized, and staff is working on a revised version of the paper that takes into consideration some of their concerns. Ms. Marr explained that some, but not all, chapters of the statute make references to dates or timeframes before which compliance obligations cannot be funded. Chapter 8 does not make any such reference to dates or times in its exception for funding compliance and mitigation. Staff believes that because Chapter 8 does not provide a timeframe, it allows for a broader interpretation of that section. A broad interpretation allows the Commission to make determinations on a project-by-project basis.

There are two components to this issue: one is how broadly the Commission can legally interpret Water Code Section 79753(b), and the other is how to provide technical guidance on what project proponents can consider their without-project conditions. For project proponents to include existing compliance obligations in their without-project conditions, they need to know the responsible agency, the target the responsible agency is trying to meet, and the actions the responsible agency is taking to meet the target. Absent any of those components, project proponents are unable to model the ability of the system to achieve that compliance obligation. One challenge is that there are components that cannot be accurately calculated because the benefits will not be manifested for a long time, such as the percentage of species population change in the future based on a modification made in the present. Other compliance obligations may be equally difficult to model because they rely on factors with fluctuating predictability, such as weather and drought.

Under a stricter interpretation of section 79753(b), the Commission could not fund public benefits that would help meet an existing compliance obligation. The Commission could only consider and fund public benefits that go beyond existing compliance obligations. Ms. Marr suggested that the Commission not fund existing compliance obligations that are specific to the agency requesting funding, or where a specific agency has been identified as responsible for meeting the obligation.

Staff will be developing an issue paper that approaches the topic from a legal perspective. It will explore the subject of whether the language gives the Commission flexibility that they might not have had if making decisions based on other chapters in the bond.

13. Consideration of Items for the Next California Water Commission Meeting

The next meeting will be held on Wednesday and Thursday, September 16-17, in Sacramento. There will be legislative and SGMA updates, and updates on the program and administrative activities and stakeholder process for the WSIP. There will also be an issue working session featuring a discussion of the initial staff draft of regulations, overview of the rulemaking process, decision making tools, and funding contracts. There will also be a presentation by the UC Water Initiative and a briefing on State Water Project critical issues by SWP Deputy Director Carl Torgersen.

Chairman Byrne adjourned the meeting at 3:39 p.m.