

Meeting Minutes - DRAFT

Meeting of the California Water Commission

Thursday, September 17, 2015

State of California, Resources Building

1416 Ninth Street, Room 1131

Sacramento, CA 95814

Beginning at 8:30 a.m.

1. Call to Order

The meeting was called to order at 8:31 a.m.

2. Roll Call

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

Public Testimony

This item was taken out of order.

Juliet Christian-Smith, Climate Scientist with the Union of Concerned Scientists (UCS), presented a report called *Measuring What Matters*, which presents measurable objectives for achieving groundwater sustainability in California. The report is a collaborative document that contains input from UCS, the Department of Water Resources (DWR), the State Water Resources Control Board (State Board), the California Water Foundation (CWF), and stakeholders.

Commissioner Curtin asked if UCS had any data regarding ideal recharge basin potential. Ms. Christian-Smith responded that the CWF will be releasing a report soon. She directed the Commission to a report from UC Davis on on-farm flood flow capture to recharge groundwater. For basins that have been mapped, there are good opportunities for on-farm recharge.

3. Water Storage Investment Program Issue Working Session: Upcoming Rulemaking Process, Review Content of Draft Regulations

Water Storage Investment Program (WSIP) Project Manager Jenny Marr presented the initial staff draft of regulations for the WSIP. Ms. Marr discussed articles with the Commission: Article 1 is a list of definitions, Article 2 contains the guidelines, and Article 3 focuses on quantification and management of public benefits.

The WSIP project team presented a draft for the WSIP regulations at the September 2, 2015 Stakeholder Advisory Committee (SAC) meeting. There was conflicting feedback about how prescriptive the SAC members perceived the regulations to be. The technical team feels that portions of the regulations can be flexible, but some portions must be prescriptive to ensure application uniformity. Ms. Marr noted that information on funding mechanisms is not in the regulations; it will be in the funding agreements and contracts.

Article 1 lists the definitions. Some of the definitions are still being reviewed and developed. Feedback on definitions has been a substantial portion of stakeholder feedback on the draft regulations. There is ongoing discussion about the definition of “beneficial uses of the Delta.” The State Board is assisting the technical team to develop this definition. There is also a debate about adding biological and ecosystem objectives to the definition of ecosystem improvements and whether project proponents or staff would be tasked with determining those objectives.

Commissioner Orth suggested adding definitions of the Sacramento River watershed and San Joaquin River watershed to clarify the definition of tributaries to the Delta. Commissioner Byrne stated that there should be increased flexibility in the definition of local and regional surface storage projects. Ms. Marr responded that she would clarify those items.

Ms. Marr presented Article 2, Guidelines. Under the advice of the Office of Administrative Law (OAL), WSIP staff incorporated the guidelines into the regulations. The general provisions under Section 6001 contain information on confidentiality, eligible applicant qualifications, and eligible project types. The confidentiality section informs applicants that once an application is submitted it is public information. Some SAC members expressed concerns about sensitive information that will be contained in applications. Staff believes that certain information, such as the design of existing facilities will remain confidential.

Commissioner Orth asked where the applicant will include their financial plan so the Commission can understand how they will finance non-public benefits. Ms. Marr responded that the applicant is required to demonstrate financial feasibility early in the process by providing their 75 percent non-public cost share commitments and explanation of how they will obtain the remaining 25 percent. She offered to make requirements for demonstrating financial feasibility more explicit.

Ms. Marr discussed the application and selection process. The application process includes a pre-application followed by a full application. First there will be a basic completeness and eligibility review, and then there will be a detailed technical review. After the technical review will be an independent peer review. Finally, staff will present the applications to the Commission and there will be opportunities for public input. The Commission will then make their findings based on all reviews and input.

The pre-application phase will last approximately 2 months. Staff will assess the pre-application and identify any red flags, communicate those findings to the applicants, and keep the Commission apprised of their progress. The full application process will begin thereafter, and applicants will have 6 months to complete applications. Staff anticipates the application period will begin in early 2017 and end in late fall 2017.

Commissioner Byrne asked how applicants will be expected to assess the magnitude of public benefits in the pre-application. Ms. Marr stated that during the pre-application phase, the applicant will provide a narrative description of the public benefits provided by the project.

Jennifer Clary, California Program Manager of Clean Water Fund, requested that the WSIP staff be clearer when referring to Commission members, Commission staff, other department staff, and the various review teams when making potentially ambiguous references in the regulations.

Marguerite Patil, representing Contra Costa Water District, stated that a public concept paper is a good way for applicants to see each other's projects early in the process and seek out opportunities for collaboration. She suggested making concept papers requirements for funding. She stated that it would be helpful for the public to have these concept papers as soon as possible. Ms. Clary pointed out that requiring the concept paper would make it difficult for some projects to apply for funding. Ms. Marr responded that project applicants can be strongly encouraged to submit their concept papers, but the team cannot mandate a firm requirement. Commissioners Daniels and Orth agreed.

Jim Watson, General Manager of the Sites Joint Powers Authority, suggested using an incentive approach that offers applicants the opportunity to be reviewed first in exchange for submitting their concept paper early. Commissioner Byrne stated that the Commission may not have the legal authority to require concept papers.

Commissioner Del Bosque asked if there will there be any consideration or help for disadvantaged communities. Ms. Marr replied that several chapters of the statute refer to funding for disadvantaged communities. Ms. Clary added that the State Board has the most technical assistance funding and may be able to help the Commission.

Ms. Marr continued her explanation of the application process. She explained that after the pre-application has been completed, applicants will submit a detailed full application. During this phase, the applicant will provide their feasibility studies, permits, documentation of long-term objectives, schedules and cost, how the project addresses the priorities of the California Department of Fish and Wildlife (CDFW) and the State Board, and documentation that demonstrates technical, financial, and managerial capacity. The application must be complete; if the eligibility and completeness review team finds that something is missing, the applicant will have 14 days to provide the missing or incomplete items.

Ms. Marr noted that staff modified some language to more closely mirror the language used by the Sustainable Groundwater Management Act (SGMA). They added language stating that projects in medium and high priority basins must be compliant with regulations adopted pursuant to SGMA. Commissioner Orth noted that by the end of 2017, only one requirement under SGMA will have gone into effect, the requirement that Groundwater Sustainability Agencies (GSAs) have been formed. Mr. Orth suggested that projects in medium and high priority basins must have a current groundwater management plan and be compliant with applicable SGMA requirements.

Ms. Marr next discussed the technical review. Ms. Christian-Smith asked if the technical team will take long-term hydrological changes into consideration. Ms. Marr responded that requirements for hydrology are located in the quantification of public benefits section of the regulations.

Ms. Patil stated that it would be helpful for project proponents to know what documentation will be required to demonstrate 75 percent non-public cost share and the financial capacity of funding partners.

Adam Walukiewicz, Regulatory Advocate for the Association of California Water Agencies (ACWA), asked if a project that directly affects groundwater levels or quality is considered the same as a groundwater storage project. Ms. Marr responded staff considers any project that affects groundwater levels or quality a groundwater storage project.

Mr. Marr discussed the independent peer review, stating that the function of the independent peer reviewers will be to check the technical review work. They will provide unbiased and scientific feedback, but will not be involved in decision-making. There was concern from some SAC members that finding unbiased reviewers will be difficult given the small pool of experts and specificity of the projects. Ms. Marr responded that in the event of a conflict of interest, the conflict will be fully disclosed upfront. She added that the State Board has used the University of California (UC) system as a source for reviewers, and the same process could work for the WSIP.

Commissioner Byrne supported the idea of hiring UC scientists. Ms. Christian-Smith suggested seeking assistance from the Public Policy Institute's Water Policy Center. Ms. Marr stated that the technical review team will include staff from the Commission, DWR, CDFW, State Board, and others as deemed necessary.

After the initial funding decisions, the information will be posted and a 14-day public comment period will begin. Commissioner Curtin asked how the Commission can fairly review everyone's project if applications are not submitted at the same time. Ms. Marr stated that the decision process will be iterative and conducted in an open forum, so the Commission will be able to review and make changes until the funding decisions are announced. She added that the Commission will receive all the review packages at one time.

Commissioners Orth and Byrne stated that it may be advisable to include a rebuttal period after the public comment period, in the event that there is a strong reaction to any of the funding decisions. Commissioner Daniels said that it may be helpful to provide guidance for commenters providing feedback on the initial funding decision. Commissioner Del Bosque stated that the independent peer reviewers should avoid comparing the merits of projects.

Ms. Clary was concerned that the 14-day response period was not enough time to review all the applications and draft a thorough response. Ms. Marr replied that the applications and review packages will be made public once the Commission begins its review, so the application packages will be public knowledge long before the 14-day comment period on the initial funding decisions. Ms. Clary also stated that the variety of projects is so vast that it is easy to overlook smaller projects. She suggested dedicating part of the allocations for smaller projects.

Commissioner Daniels concurred that a 14-day comment period may not be long enough. Ms. Marr responded that there will be ample time for the Commission to request additional information from applicants and consider public input during the decision-making process. The 14-day comment period is specific to the initial funding decisions. Commissioner Quintero stated that some of the difficult questions may not be answered until the Commission begins reviewing all of the applications. Commissioner Herrera suggested increasing the comment period to 30 days.

Ms. Marr discussed funding commitments. There are multiple steps to the process, and the Commission will make initial conditional funding commitments. At this time, the Commission may also choose to enter into a separate funding agreement to provide funds for the applicant to finalize permits. These decisions will be based on the public benefits, the applicant's draft environmental documentation, and their feasibility studies. However, the funds will not be granted immediately; the applicant must first fulfill any obligations that the Commission deems

necessary before any funding is disbursed. The applicant must provide several items including audited financial statements, final environmental documentation, contracts with agencies administering public benefits, and completed permits.

Several members of the public noted that they found the sections addressing funding commitments confusing and unclear. Staff agreed to make revise this section for clarity.

Article 3 of the draft regulations is complicated, as it addresses the quantification and management of public benefits. There is an ongoing discussion on how detailed the regulations must be in describing the requirements for quantification without being overly prescriptive.

Commissioner Orth noted that the guidance the study area for without-project future conditions includes specific language that refers to the Delta and other watersheds of the Central Valley Project or State Water Project. Ms. Marr replied that since statutorily required to provide improvements the Delta or its tributaries, applicants must include this in the study area. If a project is large enough to impact the operation of statewide facilities or facilities in other watersheds, those must also be included in the analysis. Ms. Marr offered to clarify this section.

Commissioner Byrne asked how applicants will determine the monetary value of their public benefits. Ms. Marr replied that the technical appendix will provide data sets and tools that will assist applicants. The WSIP team acknowledges that different sizes of projects will require different levels of analysis. Staff will try to articulate suggested levels of analysis for different types of projects. Roger Mann, economic consultant to the Commission, added that staff is developing unit values of water that applicants can use in their analyses.

Commissioner Quintero noted that the quantification of public benefits will rely partially on the priorities and relative environmental values of the State Board and CDFW. Ms. Marr responded that the team has separated quantification of benefits from the priorities and relative environmental values in the evaluation criteria. A project proponent may have benefits that are not achieving one of the priorities. Commissioner Curtin stated that he was concerned that proponents of smaller projects may find the complex language challenging. A smaller project may provide significant benefits, but their proponents might not have an understanding of how to articulate them. Ms. Marr responded that the team had worked to create language that is either applicable to proponents of all project types or allows applicants to explain why a requirement is not applicable. Commissioner Orth stated that the Commission should consider funding smaller projects, but must not lose sight of the goal to fund projects that maximize public benefits.

During the public comment period, Kyle Jones, Policy Advocate for Sierra Club California, stated that climate change should be a consideration in without-project conditions and applicants should not be able to opt out the sensitivity analysis. Hydrology solely based on historical data may not be accurate because it does not take climate change into consideration. Ms. Marr responded that the WSIP team had lengthy discussions on the topic with the technical team and DWR's climate change team. Their decision was that it would take years to put forth a hydrologic data set that is adjusted for climate change. She added that there is so much variability in climate change projections that adding additional assumptions increases uncertainty. Staff believes that the sensitivity analysis will provide information on how benefits and project operations may change based on climate change. The technical appendix will provide models, examples, and publicly available resources regarding climate change.

Danielle Blacet, Director for Water at the California Municipal Utilities Association, stated that it may be helpful for staff to create a flow chart that can provide some direction for smaller project proponents that may need guidance.

Mr. Watson noted that there are three multiple sensitivity analyses and stated that if each analysis requires different information, then more analyses will cost more money. He stated that it was not clear what the reasons were behind the analysis requirements, or why there are variations. Ms. Marr responded that several of the requirements are qualitative and simply require proponents to consider how climate change impacts will affect their projects. Quantitative analysis will only be required where appropriate. Proponents will determine which analysis is most appropriate. Most of these analyses will have already been provided in the California Environmental Quality Act (CEQA) analysis.

Ms. Clary stated that for smaller projects that offer benefits such as reductions or changes in timing of Delta diversions, DWR staff may already have the data that the technical team is requesting. Ms. Marr responded that while DWR has staff that specializes in the Delta, they will not be able to assist individual applicants because it would create a conflict of interest.

Commissioner Byrne stated that applicants need assistance maximizing the public benefits of their projects. Commissioner Quintero stated that there is assistance available outside of DWR for groundwater projects. He encouraged groundwater project proponents to seek these experts out and use them.

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

The next meeting will be held on Wednesday, October 21, in Yuba City. The Commission will consider adoption of the Sustainable Groundwater Management Act Basin Boundary Emergency Regulations. The Commission will also review the updated draft of the regulations and hear updates on the program and administrative activities and stakeholder process for the WSIP.

Chairman Byrne adjourned the meeting at 10:57 a.m.