

Meeting Minutes

Meeting of the California Water Commission Wednesday, September 16, 2015

State of California, Resources Building
1416 Ninth Street, First Floor Auditorium in the morning
901 P Street, Oceanside Room in the afternoon
Sacramento, CA 95814
Beginning at 9:30 a.m.

1. Call to Order

The meeting was called to order at 9:32 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.

3. Approval of August 2015 Meeting Minutes

A motion was made to approve the August 19, 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. The Department of Water Resources (DWR) is moving forward with hiring an Information Officer whose primary responsibility will be to handle media, communications, and outreach for the Commission. Additionally, the Office of the Chief Counsel has begun interviewing candidates for a full-time attorney for the Commission. Staff is coordinating with the Delta Stewardship Council as they draft high-level principles regarding water conveyance, storage, and system operations that may impact Water Storage Investment Program (WSIP) applicants.

WSIP Project Manager Jenny Marr presented the first draft of the regulations at the WSIP Stakeholder Advisory Committee (SAC) meeting on September 2. In October, the Commission will hold a SAC meeting in Sacramento, and public information meetings in Clovis, Yuba City, and Lafayette.

5. Commission Member Reports

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.

6. Public Testimony

There were no public comments at this time.

7. Update on State Water Project Critical Issues

Carl Torgersen, DWR Deputy Director for the State Water Project (SWP), provided an update on key activities of the SWP including operations and maintenance, and administrative issues. The SWP is one of the largest water and power systems in the world, and is managed, maintained, and operated by DWR. Mr. Torgersen discussed recruitment and retention, an issue the Commission has followed closely. He noted that some of the bargaining units are under contract negotiations. Two units have reached a tentative agreement. Unit 12 (trades and crafts) is still in the bargaining process, and other units' contracts do not expire until the end of the fiscal year. Recruitment and retention in bargaining unit 12 improved after an increase in compensation.

Seismic remediation is currently underway at Perris Dam, with an estimated completion date of September 2017. The work will strengthen and protect the dam against seismic activity. One of the SWP's goals is to assess risk and predict failure. Their Asset Management Program is a comprehensive investment plan focused on preventative refurbishment of SWP facilities. After the 2012 fire at the Ronald Robie Thermalito Pump-Generating Plant (Thermalito), DWR began to make repairs to the damaged systems and upgrades to mechanical and electrical systems. DWR is making steady progress on those repairs and they estimate that the new plant will be operational in December 2018.

In 2009, an accident at the Hyatt River Valve Outlet resulted in a complete shutdown of the valves. DWR agreed not to operate the valves until they were completely refurbished. As the drought has continued, it is imperative that the River Valves be operational. DWR completed an accelerated program to refurbish the valves in August 2014 and they are now being used for cold water management.

DWR is making progress to renew the Federal Energy Regulatory Commission (FERC) license to operate Oroville hydroelectric facilities. As part of the relicensing, DWR is coordinating with State Parks officials to extend Lake Oroville's Bidwell Canyon boat launch ramp. The FERC licenses for the southern SWP hydropower facilities are due to expire in January 2022, and DWR is beginning the renewal process. Additionally, DWR was able to obtain a conduit exemption for the Alamo and the Mojave Siphon Powerplants.

Mr. Torgersen stated that biological opinion compliance has become an extremely complicated issue, in part because of recruitment and retention of environmental scientists. Mr. Torgersen next discussed renewable energy. DWR has developed a plan for at least 50% of the SWP load to be served by renewable energy. The SWP also has opportunities to help stabilize California's electrical grid during periods of renewable energy intermittency.

Commissioner Quintero asked how much power will be provided once Thermalito is operational. Mr. Torgersen responded that it will supply approximately 5% of the total needs for the SWP. He added that Thermalito is especially important because it allows for pump-generation.

Commissioner Curtin asked if there are any contracts in place for using wind and solar power facilities outside of California. Mr. Torgersen responded that it is currently cost prohibitive to import renewable power from out of state. He added that the SWP is not currently constructing or operating solar farms. Mr. Curtin then asked if the SWP has adequate staff to meet needs. Mr. Torgersen stated that in the past there were some vacancies in the field divisions for mechanics

and electrical operators, but they are working to avoid excessive vacancies. DWR must remain vigilant about the long term sustainability of the SWP.

Commissioner Byrne asked how SWP staff salaries compare to other employers. Mr. Torgersen answered that the pay for some positions is significantly lower than the market average. Recent pay raises have narrowed the disparities.

Mr. Torgersen agreed to brief the Commission again after bargaining negotiations are complete. He also suggested working with the Commission on a regular basis to ensure the physical, personnel and resource sustainability of the SWP.

8. Legislative Update

Kasey Schimke, DWR Assistant Director for Legislative Affairs, provided a list of current legislation relevant to the Commission and DWR. The list included legislation on the drought, groundwater, water management, and other water-related issues. Mr. Schimke highlighted the recently passed Assembly Bill (AB) 747, by Assemblymember Susan Eggman, which clarifies that the prohibition on local governments from issuing discretionary permits in a community that has not made adequate progress to reach 200 year flood protection requirements, only applies to permits that would result in new building construction, or construction that would increase allowed occupancy of an existing building. He also mentioned Senate Bill (SB) 83 which makes all well completion reports available to the public. Current law prohibits the release of these reports.

Commissioner Daniels asked how those reports will be made available to the public. Mr. Schimke responded that there are a significant number of documents, many of which are paper copies that need to be scanned, existing electronic versions that need to be redacted, and handwritten items that will need to be manually entered. Staff is currently working to create a searchable database that will allow a user to look up a specific item within this fiscal year.

Commissioner Orth stated that he is interested in a future report on implementation of the law. Commissioners Del Bosque and Byrne asked if the information will be available for individual wells or basins, and how the information will impact the California Statewide Groundwater Elevation Monitoring (CASGEM) program. Mr. Schimke responded that staff will provide this information at a later date, but that at this time they do not know what information will be accessible.

Mr. Schimke then discussed bills that are awaiting action from the Governor. The deadline for action is approximately October 11th. Several of the bills awaiting action pertain to groundwater. AB 617 and SB 226 would make minor changes to the Sustainable Groundwater Management Act. Mr. Schimke also summarized legislation that did not pass, including SB 554, which would have removed a member of the California Water Commission from office if a court found that the Commission member knowingly participated in any decision in which they had a disqualifying financial interest.

9. Sustainable Groundwater Management Act Implementation: Summary of Comments on Basin Boundary Emergency Regulation

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. DWR will seek adoption of the regulations by the Commission at their October meeting.

In the month of September, the team held public meetings on the regulations in Sacramento, Bakersfield, and Santa Ana, and has been collecting feedback from the public and stakeholders. They received 38 comments over their 49-day public comment period, all of which are posted online at the DWR website. Most of the comments were on Article 4 (which describes how to request or protest a modification) and Articles 5 and 6 (which 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). DWR broke the comments down by section in order to identify common themes.

Several comments stated that the definitions and use of basin, sub-basin, and aquifer were too vague. DWR plans to add definitions for those terms to the regulation. Many also felt that the existing Bulletin 118 basin characterizations were not definitive, so the SGMA team is going to clarify those items in the regulations. There was also feedback regarding the timing, local objectives, and DWR's role in the process of consolidating boundary modification requests. In the revised regulation DWR recommend that, where practical, requesting agencies should combine all boundary modification requests that affect the same basin or sub-basin into one submittal. However, modification requests within a basin or sub-basin are not required to be submitted in a single package.

Comments on the protest provisions stated that the required information and documentation expected from the protesting entity was excessive, and the short timeframe was not enough time to gather that supporting documentation. DWR's recommendation is to change the language so that protestors would be required to provide "similar" scientific and technical information, as opposed to the "same level" that was referred to in previous versions. A common theme throughout many comments was that the local support requirements are unnecessarily burdensome. DWR recommends increasing the local notification requirements for all requests and lowering the local consensus required for basin subdivision from 100% to 75% of local agencies in affected basins.

The public comments surrounding grounds for denial were mixed. DWR plans to revise the regulation to clarify that requests will be evaluated in their entirety. Many commenters felt that the requirement that the requesting agency demonstrate a history of sustainable management of groundwater levels was prohibitive. DWR plans to revise this ground for denial to require that the requesting agency provide historical information for DWR to evaluate whether there is a history of sustainable management. DWR will also add a condition for denial if there is an objection from a select group of agencies.

Mr. Springhorn concluded by briefly discussing the foundations that DWR is using in their fiscal cost analysis. He discussed who will incur various types of costs, but gave the caveat that the submission of modification requests is voluntary, and that the figures will vary based on number and types of requests. If the proposed regulations are adopted by the Commission in October, DWR will start accepting boundary modification requests on January 1, 2016.

Commissioner Orth asked if local agencies submitting boundary modification requests will be required to demonstrate stakeholder support. Mr. Springhorn responded that Chapter 3 of SGMA

requires consultation with local agencies and public water systems, but does not specifically require stakeholder input. However, other portions of SGMA require stakeholder involvement. The regulation includes the protest provision and additional notification requests to ensure a role for stakeholders. Mr. Orth also stated that many basins may not be able to demonstrate a “history of sustainable management” and encouraged DWR to clarify that agencies should be required to demonstrate a commitment to sustainable groundwater management, not that they have achieved it. Mr. Springhorn agreed that requiring a commitment to future sustainability is consistent with SGMA.

Commissioner Del Bosque asked how SGMA plans to treat the boundaries of stacked aquifers. Mr. Springhorn responded that there is some uncertainty in Bulletin 118. Ideally each aquifer will be managed as part of a whole, rather than being compartmentalized vertically.

Commissioner Herrera expressed support for local agency coordination and asked for an example of what the DWR meant by “where practical” when referring to combining requests. Mr. Springhorn responded that it could describe parties that submit different requests but share the same goal, or parties that make different requests that are similar enough to each other to be treated as one. Commissioners Herrera and Daniels both stated that dropping the local support requirement from 100% to 75% was not necessary.

Commissioner Curtin stated that it may be challenging for the Commission to integrate WSIP funding decisions with SGMA and asked staff for suggestions. Mr. Springhorn responded that the intent of SGMA is to consider water as an integrated resource and agreed that DWR should work with Commission staff to integrate SGMA with the WSIP. Commissioner Orth added that integration of the WSIP and sustainable groundwater management are integral.

Commissioner Quintero asked how involved the counties currently are in the boundary-making decision process. Ms. Springhorn responded that the counties act as an advisory group to all SGMA activities.

Jennifer Clary, California Program Manager of Clean Water Fund provided public comment. Clean Water Fund is comprised of 45 Non-Governmental Organizations, 13 of which co-signed a recent letter on basin boundaries. She stated that SGMA’s focus on local agencies appears to overshadow input from stakeholder groups and underrepresented organizations. Clean Water Fund feels that there needs to be an open process with fully accessible data, and that for the sake of fairness a 30-day protest period should be at least as long as the 60-day review period. Ms. Clary also stated that Commission oversight should be integrated into the basin boundary revision process. Mr. Springhorn responded that while stakeholder involvement is not required by statute, SGMA staff feels that stakeholder input is an important part of the process. DWR plans to be transparent with all information received, and the Commission will receive all information in their oversight role.

Commissioner Herrera asked how and where notifications will be posted. Mr. Springhorn responded that notifications will be posted on the DWR website and sent out via email.

Kyle Jones, Policy Advocate for Sierra Club California, stated that the standard email notification process may not be enough for small water districts, and that DWR may want to also consider non-electronic methods of communication, such as newspaper publications. He also stated that

for local agency support for basin subdivision, it may be helpful to factor in both the percentage of local agencies and the percentage of water produced to capture both large and small users. Mr. Springhorn responded that DWR does plan to publish notifications in newspapers and local agency websites.

10. Presentation on UC Water Initiative

Dr. Graham Fogg, UC Davis Campus Lead, provided a briefing on the work of the UC Water Security and Sustainability Research Initiative (UC Water), which is a collaborative project that is focused on strategic research to build the knowledge base for better water resources management. The initiative is a multi-campus research project, with each campus (UC Davis, UC Merced, UC Santa Cruz, and UC Berkeley) specializing in a different aspect of research based on their strengths. The program is focused on headwater management, groundwater management, the water-energy nexus, and intelligent water systems. Their goal is to improve our understanding of the way water flows through the natural environment, and how it is extracted, conveyed and stored in built and natural infrastructure.

There are three major stores of water: surface reservoirs, snow, and groundwater. The team is working to investigate how they are connected and interact with one another, and are developing new knowledge and information to inform decision-making. The current study sites are focused on the Sierra Nevada foothills, the San Francisco Bay Area, and in the Central Valley extending to Mono and Tuolumne Counties. Sustainable water management depends on a more thorough understanding of the interaction between surface water and groundwater. The headwaters are also fundamental to water security.

UC Water is studying floodplain recharge and the standard spreading basin approach to recharge. Project participants at UC Davis are studying the use of winter fallow irrigation to recharge groundwater. Figuring out how to best recharge groundwater requires accounting systems, data, and models. UC Water is researching the water-energy-food nexus. Dr. Fogg noted that groundwater overdraft creates closed hydrologic basins. Closed hydrologic basins, such as Mono Lake and the Salton Sea, are prime candidates for innovations in desalination.

UC Water plans to combine several research projects to create a fully integrated water storage accounting system for the American River Basin. The team is also working on new ways to track groundwater storage levels. They developed a new method that allows them to translate groundwater levels to storage data on a real-time basis. The technique offers immediate feedback on cause and effect. It will help project managers by providing information that will help them instantly see if their efforts are creating a benefit.

Commissioner Del Bosque asked Dr. Fogg how he felt the SGMA team was doing in their work bridging the gap between surface and groundwater. Dr. Fogg replied that SGMA's scope involves groundwater and surface water within groundwater districts. However, in the longer term, more districts will need to either recharge their groundwater or cut back on pumping. Recharging groundwater is a long-term effort that will take decades. In addition to SGMA, there must be a statewide water accounting system that allows a user to recharge groundwater and follow its progress. California requires recharge on a massive new scale. Ultimately GSAs will need to consider where their water comes from and how to make the best use of it.

Commissioner Curtin commented that due to climate change and diminished snowpack, the task of managing water is going to become increasingly complex. The Commission could benefit from knowing where the best recharge locations are projected to be. Dr. Fogg added that research into floodplain recharge opportunities may be important.

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

Jenny Marr, WSIP Project Manager, provided an update on the activities of the WSIP project team and the status of its various workgroups. The team presented the first draft of the regulations at the Stakeholder Advisory Committee (SAC) meeting on September 2. Comments on those regulations are still being received and incorporated into the draft, and the regulations will be discussed in depth at the Commission meeting on September 17.

The regulations workgroup is also drafting an informative digest and initial statement of reasons and will present those items at the October 21 Commission meeting. At a later date, staff will also present a draft of detailed application instructions. The engineering and economics work group is currently refining their common assumptions and recommendations for assessing with and without project conditions. The minimum requirements are listed in the regulations, and have been presented to the SAC. The economics team is also developing recommended unit values of water. Use of the recommendations will not be a requirement for project applicants; their purpose is to provide technical assistance to those who need it. The ecosystem and water quality work group is finalizing the priorities and relative values for the draft regulations. The newest version of the document will be presented to the Commission in October.

Commissioner Quintero asked how the economics team determined their economic values for water. Ms. Marr replied that they are using dollar value per acre-foot based on the end use of that water.

Commissioner Curtin asked how priorities and relative environmental values suggested by the Department of Fish and Wildlife (DFW) and State Water Resources Control Board (State Board) are being incorporated into the WSIP team's project evaluation standards. Commission Legal Counsel Maureen King responded that they must be in the regulations per the statute. The priorities themselves are not a list of everything a project must do, but if a project includes one or more of those priorities, that would be reflected in their relative environmental values. Ms. Marr added that each project will have a relative environmental value for ecosystem improvements and water quality improvements; the measurement will be based on how many priorities an applicant can support and the magnitude of those benefits. Relative environmental value is not an eligibility component, it is an evaluation criteria.

12. Update on Stakeholder Process for Water Storage Investment Program

Ms. Marr presented updates from the Communications and Engagement team. The SAC met on September 2. At that meeting, the WSIP team presented the first draft of the regulations. The SAC also discussed the definitions of conjunctive use and groundwater storage projects. After the meeting, the team received some written feedback and line-item comments. Those items have all been posted to the Commission's website.

In October, there will be a SAC meeting in Sacramento and Commission meeting in Yuba City. At the SAC meeting, staff will walk through the regulations, and the State Board and DFW will

present their priorities and relative environmental values. The Commission will also hold public information meetings in Lafayette, Clovis, and Yuba City.

On November 18, staff will present the draft regulations for consideration by the Commission. If approved, they will then be submitted to the Office of Administrative Law (OAL) and a 45-day public comment period will begin. The formal rulemaking process is expected to take approximately one year. If at any point the Commission requests changes to the regulations after they have been submitted, another public comment period is required.

13. Water Storage Investment Program Issue Working Session: Definitions of Groundwater Storage and Conjunctive Use Projects, Environmental Mitigation and Compliance Obligations, Without-Project Conditions, Funding Mechanisms, Upcoming Rulemaking Process, Review Content of Draft Regulations

Tracie Billington, Chief of DWR's Financial Assistance Branch, gave a presentation on funding mechanisms. The funding process may influence some project proponents' decision-making processes.

The entire \$2.7 billion in WSIP funds have already been appropriated by the Legislature. This does not mean that the cash is on hand; cash will be generated from bond sale revenues or commercial paper. Bond sales require cash flow projections for the next 6, 12, 18, and 24 months. Commercial paper sales require monthly cash flow projections for the next 12 months. Cash flow projections can be difficult for grant programs.

Cash flow projections can limit availability of funds. If a projection is low, it will result in a shortage of funds; if overestimated, the funds will be subjected to increased interest costs. Bond sales and commercial paper proceeds may also limit the availability of funds. If the proceeds are less than what is needed, the Department of Finance and the Treasurer's Office will determine the allocation. There are also unpredictable factors that must be kept in mind that are out of the control of the agency administering the funds, such as the 2008 Bond Freeze.

Payment options include advance payment or payment in arrears. Payment in arrears is the standard payment method for the state of California. The State Contracting Manual states that advance payments are permitted only when specifically authorized by statute and should be made only when necessary. Chapter 8 does not provide express authority for advance payments.

Government Code §6504 allows for advances to Joint Powers Authorities (JPAs). A separate Natural Resources Agency requirement does not allow state-to-state transfers. Therefore, advance payments could not be made to JPAs with a state agency member. As outlined in Chapter 8, JPAs for CALFED storage projects must include DWR as an ex-officio member. This makes advance payments to CALFED JPAs appear to be very difficult. Commissioner Orth requested an in-depth legal analysis on the issue, and the Commission members concurred.

Ms. Billington briefly discussed reimbursable costs, which are currently being defined as capital costs associated with construction of storage facilities that will provide public benefits. A WSIP-specific version of this definition is still being developed. Grant funds cannot reimburse for costs incurred prior to the effective date of Proposition 1 (November 4, 2014). DWR's policy is to reimburse costs incurred after the applicant enters into a binding agreement. Costs incurred after

the effective date of Proposition 1 and before the execution of an agreement may count towards the mandated cost share.

Marguerite Patil, representing Contra Costa Water District, made a public comment, stating that some projects have made expenditures prior to November 2014 on items such as environmental documentation or feasibility studies. If previously incurred costs are not reimbursed, the local cost share will effectively be increased. Commissioner Byrne stated that if past costs can be included in total project costs (as opposed to public benefit costs), then that may be a way to offer reimbursement. Commissioner Curtin said that the distinction will only matter in cases where the Commission chooses to award 50% of total project costs.

Jim Watson, General Manager of the Sites Joint Powers Authority, noted that staff has categorized the purchase of water supplies as a non-reimbursable cost; this seems to contradict the fact that securing emergency water supplies is an eligible emergency response benefit. Ms. Billington responded that emergency response is one of the items that the team intends to include in their discussions as they finesse the definitions.

Ms. Clary asked if the state will be responsible for funding the overage if projects exceed their budget. Ms. Billington answered that the state's cost will be capped; no funding will be granted to cover the excess costs for projects that go over budget.

Ms. Billington discussed the financial documentation that will be required throughout the application and funding process. Commissioner Orth asked when the applicant is expected to provide their financial plan. Ms. Billington stated that the contracting stage is most appropriate, when the applicant has their preliminary agreements in place.

The Commission members did not reach a decision on whether it is possible to reimburse for expenditures predating November 4, 2014 as part of the total project cost-share.

Ms. Marr presented the most recent staff draft definitions of groundwater storage and conjunctive use projects. An exception in Water Code §79756 (a) gives the Commission discretion to award more than 50% of the total project cost for conjunctive use and reservoir reoperation projects. Because of this exception, these project types must be clearly and distinctly defined. In the original proposed definition, conjunctive use was a broader category encompassing most groundwater projects, while groundwater storage referred only to banking operations. After feedback from the public and stakeholders, staff developed two options:

- Option 1: Conjunctive use is focused on a water supply goal while groundwater storage is associated with basin-specific goals.
- Option 2: Conjunctive use will be limited to conjunctively using existing surface water facilities and resources to the maximum extent practicable, while groundwater storage will be the broader category, referring to any engineered projects that capture, infiltrate, inject or recharge water supplies either for banking, or to avoid or address undesirable results.

Staff recommended Option 2, and stated feedback from the public and stakeholders has been supportive.

Commissioners Curtin and Orth asked how a project will be categorized if it falls under both categories. After discussion, they agreed that it will be easier to differentiate once the scope of projects becomes clearer and the subject can be discussed at a later date.

The Commission directed staff to proceed with option 2 in the draft regulations.

Ms. Marr presented summary papers on environmental mitigation and compliance obligations and without-project conditions. The use of public funds for environmental mitigation and compliance obligations is addressed in three chapters of Proposition 1. Chapter 4 limits funding expended for acquisition of water to projects that will provide fisheries and ecosystem improvements that exceed existing mitigation and compliance obligations at the time of funding. Chapter 8 prohibits the use of bond funds to pay for mitigation and compliance, except for those costs associated with providing the public benefits described in the chapter, without reference to temporal constraints. These differences suggest that the Legislature may have intended to create a different rule in Chapter 8. The interpretation that the Commission makes will affect the without-project conditions. Staff proposed two options:

- Option 1, the staff recommendation, proposes that project benefits be determined by analyzing the differences between the with-project future condition and the without-project future condition. The Commission should have the discretion to determine what public benefits best achieve the intent of Chapter 8 and priorities of the State, and determine to what degree the public benefits of a project and any mitigation and compliance obligations associated with providing those public benefits should be supported by public funding.
- Option 2 proposes that the Commission develop a rule within the regulation that funds shall not be used to pay for existing environmental compliance or mitigation requirements. Existing requirements would be defined as those mitigation or compliance obligations in place at the time the funding is granted.

In the event that an applicant has mitigation and compliance obligations as a result of their previous actions, any fulfillment of that obligation will not be funded as a public benefit. What is less clear is how to approach a situation where the provision of public benefits has the peripheral effect of achieving an unrelated existing obligation. Also unclear is how DWR's existing compliance obligations impact benefits provided by projects sponsored by JPAs with DWR as an ex officio member. The technical team and Commission will need to discuss these on a case-by-case basis. Commissioner Daniels recommended that there be a clear statement of intention in the regulation that notwithstanding any direction to evaluate certain scenarios on a case-by-case basis, the Commission intends only to fund public benefits that are newly created, regardless of whether there was an option for a case-by-case determination. Commissioner Byrne agreed with this statement, although expressed concern as to how to word it. Commissioner Herrera agreed.

Staff proposed developing a potential third option to develop a policy position providing parameters for funding environmental compliance and mitigation and clarifying the Commission's intent. The Commission and staff would need to develop specific scenarios declaring what may and may not be funded.

Steve Rothert, California Director of American Rivers, made a public comment, urging the Commission to resist paying for existing compliance obligations. He supported creating a

distinction between an applicant's obligations and third party obligations fulfilled as an unintended consequence of an intended action.

Mr. Watson stated that including too many rules may prohibit a proponent from moving forward, or may limit a project. Commissioner Curtin responded that additional rules may not necessarily limit a project; they may just limit the portion that could be funded.

Adam Walukiewicz, Regulatory Advocate for the Association of California Water Agencies (ACWA), stated that ACWA supports Option 1. They feel that discretion is important because it allows the Commission to focus on funding the greatest magnitude of public benefits and speaks to the intent of Chapter 8. He stated that if constraining language is written into the regulations, it will hinder the Commission's authority and may have unintended consequences for both the Commission and the project proponents. Commissioner Del Bosque concurred.

Commissioner Curtin stated that the spirit of the statute was that bond funding should not be used for compliance or mitigation. He stated that if the Commission acts without any prescribed constraints, they may be perceived as favoring one project over another. Commissioner Daniels stated that either a third option with some limitations or some guidelines that can provide parameters may be helpful. Commissioner Byrne stated that due to the complex nature of the topic, the Commission may benefit from public feedback on the subject.

Ms. Patil stated that she was supportive of staff's recommendation. In a real-world scenario, a project manager would not have any control over whether or not benefits their project provided to the Delta also helped with third-party compliance. Commission discretion is advantageous from a practical standpoint.

Kyle Jones, Policy Advocate for Sierra Club California, added that existing compliance obligations should be included in without-project conditions.

Staff agreed to develop a third option clarifying that projects are not eligible to receive funding for their own pre-existing compliance obligations, and that applicants will not be penalized for providing unintended third party benefits.

Ms. Marr's final presentation was on the formal rulemaking process. The process will follow the rulemaking procedures in the Administrative Procedure Act (APA). The APA requirements are designed to provide notice to the regulated community and a meaningful opportunity for public participation. Through its SAC meetings and interactions with the public, staff has been working to engage the public prior to the formal rulemaking.

When the approved draft regulations are sent to OAL, the draft regulations package will consist of the proposed regulation text, initial statement of reasons, STD 399 Economic and Fiscal Impact Statement, a Notice of Proposed Regulatory Action (notice), and informative digest. Once the notice is published by OAL, the Commission has one year to complete the formal rulemaking. Following the notice, there will be at least one 45-day public comment period. The Commission may schedule a hearing no later than 15 days after the close of the public comment period. They may make sufficiently related changes to the initial proposal so long as those changes are followed by another public comment period. During this phase, staff is required to respond to every comment.

Staff is also developing application instructions and a technical guidance document that will not be part of the regulations package.

Staff's goals are to interpret and make specific the language of Chapter 8 of Proposition 1, minimize the need to substantially revise adopted regulations if a second solicitation is needed, and comply with APA standards. There are six APA standards with which the regulations should comply: authority, reference, consistency, clarity, nonduplication, and necessity.

Chairman Byrne adjourned the meeting at 3:17 p.m.

Meeting Minutes

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.