



Meeting Minutes - DRAFT

Meeting of the California Water Commission

Wednesday, October 21, 2015

City Hall, Council Chambers (Morning Session)

1201 Civic Center Boulevard

Yuba City, CA 95993

Veterans Memorial Community Building (Afternoon Session)

1425 Veterans Memorial Circle

Yuba City, CA 95993

Beginning at 9:30 a.m.

1. Call to Order

The meeting was called to order at 9:36 a.m.

2. Roll Call

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

4. Executive Officer's Report

This item was taken out of order.

Paula Landis provided the Executive Officer's Report. At the September Commission meeting, there were questions as to how the Department of Water Resources (DWR) will publish well logs to comply with Senate Bill 83. As of October 2, 2015, new well completion reports can be submitted through OSWCR (Online Submittal of Well Completion Reports), a DWR platform that allows drillers to submit their well completion reports online, replacing the previous method of mailing in paper forms. There are 800,000 paper reports that still need to be made public, and DWR is working on redacting any confidential information before adding them to the OSWCR database.

DWR's Office of the Chief Counsel recently hired a full-time attorney for the Commission. Ms. Landis introduced Commission counsel Holly Stout. Ms. Stout has experience at the California Air Resources Board and at the Office of Administrative Law (OAL) and is a welcome addition to the Commission staff.

6. Public Testimony

This item was taken out of order.

Commissioner Byrne thanked the city of Yuba City for hosting the Commission. There were no public comments at this time.

3. Approval of September 2015 Meeting Minutes

This item was taken out of order.

Commissioner Daniels directed the Commission to page 10 of the September 16, 2015 draft minutes. She requested that the following sentence be added after the paragraph that concluded with "...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."

A motion was made to approve the minutes pending the changes. A vote was taken and the motion passed unanimously.

7. Sustainable Groundwater Management Act: Consider Adoption of Draft Basin Boundary Regulations

Dave Gutierrez, Executive Program Manager of the Sustainable Groundwater Management Act (SGMA) implementation efforts for DWR, addressed the Commission. By January 1, 2016, DWR must adopt Basin Boundary Emergency Regulations which establish a process for local agencies to request changes to existing basin boundaries. The regulations will include instructions to local agencies on how to submit information required for basin boundary revisions. This will 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. By June 1, 2016, DWR must adopt regulations for evaluating and implementing Groundwater Sustainability Plans (GSPs). DWR will provide an update on the formulation of the GSP regulations at the November 2015 Commission meeting.

Mr. Gutierrez then provided an overview and definitions of California groundwater basins and sub-basins as defined in Bulletin 118. The most recent update to Bulletin 118 was in 2003; this document is the source of basin boundaries. There are currently 515 documented alluvial basins in California. These basins can be modified through the future Basin Boundary modification process on a scientific or jurisdictional basis.

DWR's viewpoint is that groundwater is best managed at a local level. To that end, they conducted outreach throughout California and have provided numerous opportunities for feedback and interaction as they developed draft regulations. They spoke with regional and local governments and agencies, diverse stakeholder groups including tribal governments and non-governmental organizations, and members of the public in order to create a robust and transparent dialogue. The meetings began in January 2015 and continued through development of draft emergency regulations in September.

Steven Springhorn, one of DWR's SGMA implementation team leads, presented an overview of the proposed Basin Boundary Emergency Regulations. All basins will begin with existing Bulletin 118 boundaries. If modifications are not requested by local agencies, the Groundwater

Sustainability Agencies (GSAs) and GSPs will be formed in existing basins and the boundaries will carry through to the next Bulletin 118, scheduled for release in 2017.

Commissioner Byrne asked if modification of a single boundary will require a reprioritization of all the basins. Mr. Springhorn replied that it would, because all the basins are prioritized relative to each other. All boundary modifications approved by DWR will require Commission review before changes are made.

Local agencies can request boundary modifications for scientific or jurisdictional reasons. Scientific changes are based on hydrology or geology. Jurisdictional modifications can be categorized in three ways: internal, consolidation, or subdivision. The subdivision modification is the most complicated and requires a detailed technical justification along with 75% support from local agencies. The process will be transparent and noticed publically, and input from the public and stakeholders will be considered throughout.

Scientific modifications may be made even without local support. During this process, 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. There is also an opportunity for protest at any time in the process, but the content of the protest must be backed up with scientific or technical justification. The final step in the modification process is DWR review and public notification, followed by a final Commission review.

Once the regulations are adopted, DWR will submit them to OAL to be finalized. Basin revision requests can be submitted to DWR in January 2016. In September 2016, DWR will present the draft list of boundary modifications to the Commission for comments, and in early 2017, the final boundaries will be published following Commission review.

Commissioner Orth said that some GSAs will need to submit subsequent boundary modification requests after the initial round of modifications, and asked when those adjustments can be submitted. Mr. Springhorn responded that DWR is flexible with their submission and evaluation periods. After the first submissions are received, there may be an opportunity for revisions in 2018. Any time a modification request is approved by DWR, it will be presented to the Commission for discussion. Commissioner Quintero noted that in the future he would like to see some three-dimensional models of groundwater basins.

The Commission thanked Mr. Springhorn for DWR's work on SGMA implementation and Commissioner Byrne opened the floor for public comment.

Valerie Kincaid, representing the San Joaquin Tributaries Authority (SJTA), stated that SJTA appreciates DWR's outreach efforts and supports the adoption of the regulations.

David Bolland, Special Projects Manager for the Association of California Water Agencies (ACWA), stated that ACWA's comments have been heard and acknowledged by DWR and the Commission. They appreciate the efforts put forth by DWR and support adoption of the regulations.

Tom Peltier, geologist with the Groundwater Management Unit at the State Water Resources Control Board (State Water Board), stated that the draft regulations are appropriate and consistent with SGMA, and he encouraged the Commission to adopt them.

Jennifer Clary, California Program Manager of Clean Water Action, stated that Clean Water Action initially had some concerns about the amount of stakeholder input required by the regulations, but they appreciate staff's efforts to meet with them and include them in the conversation. She thanked the Commission and DWR for their efforts and supported adoption of the regulations.

Kyle Jones, Policy Advocate for Sierra Club California, stated that the Sierra Club supports adoption of the regulations.

John Woodling, Executive Director of the Sacramento Groundwater Authority, stated that he appreciates DWR's outreach efforts and interaction with the public and stakeholders. He encouraged DWR to take a similar approach with the GSP regulations process and supported adoption of the basin boundary regulations.

Commissioner Orth made a motion to approve the regulations. Commissioner Byrne suggested adding to the motion a caveat stating that the Executive Officer be given authority to make decisions on non-substantive changes during the OAL review. The Commission supported the additional language. A roll call vote was taken and the motion passed unanimously.

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

Jenny Marr, Water Storage Investment Program (WSIP) Project Manager, provided an update on the activities of the WSIP project team and the status of its various work groups. The WSIP team is currently interviewing candidates for a new technical support contract. They anticipate the contract to begin in early December 2015.

The draft regulations are still being developed and the team anticipates presenting a final draft version at the December Commission meeting. The team presented the latest draft of the regulations at the Stakeholder Advisory Committee (SAC) meeting on October 7. Comments on that draft are still being received and incorporated. The team is working with Ms. Stout on the initial statement of reasons. The engineering and economics work group also intends to publish a preliminary draft of the technical guidance appendix and application instructions by January 2016.

In December 2015, the Commission may vote to send the draft regulations to OAL and begin the formal rulemaking process. 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 it is filed with OAL, a 45-day formal comment period will begin. During this phase, staff is required to respond to every comment. The Commission may make small changes to the initial proposal so long as those changes are followed by another public comment period. Once the notice is published by OAL, the Commission has one year to complete the formal rulemaking.

The engineering and economics work group is continuing to develop recommended unit values of water. They are also conducting a literature search for examples of monetizing ecosystem benefits, and developing evaluation criteria and metrics.

The Agency team (the Delta Stewardship Council, California Department of Fish and Wildlife (CDFW), State Water Board, and DWR) has been primarily focused on developing the priorities and relative environmental values up to this point. The team is now compiling comments received on the priorities and relative environmental values. They have also been updating the management and monitoring section of the regulations and discussing how to best formulate the contracts for adaptive management of public benefits.

Commissioner Daniels suggested that staff provide a flowchart that depicts the decision-making process. She then asked if the Commission will have the opportunity for a second round of project solicitation and funding after the initial solicitation and decision making process. Ms. Marr replied that staff is developing an information map that will depict the decision making process from the Commission's perspective. She will present that item at the November Commission meeting. She stated that based on the scoping survey results, it appears that the \$2.7 billion available for funding will be exhausted in a single solicitation. However, if some of the projects that receive an initial funding commitment do not receive a final commitment, there may be an opportunity for a second solicitation. There are also other options for committing remaining funding after an initial solicitation. Chairman Byrne stated that previously the Commission had discussed having one solicitation; however, since all of the Commission decisions to this point have been informal, he suggested that the Commission may want to decide these issues in a more formal way. Ms. Daniels requested having a more formal conversation on rounds of funding at a future meeting.

Commissioner Herrera stated that there have been public comments in support of setting aside funding for smaller projects. She supported the notion and would like to see it discussed more formally at a future meeting. She also stated that she would like staff to consider providing technical assistance to smaller project proponents. Ms. Marr stated that staff would put these topics on the agenda for the November Commission meeting.

Ms. Stout stated that once the draft regulations have been noticed by OAL there is only a year to complete the formal rulemaking, and many of the topics being discussed should be in the regulations. She cautioned against making substantial changes or adding new topics after the initial 45 day public comment period, because they may be considered outside of the scope of the notice.

Mr. Jones, of the Sierra Club, requested that staff post a version of the draft regulations that show the tracked changes whenever a new version is published.

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

Ms. Marr presented updates on WSIP communications and engagement. At the October 7 SAC meeting, the WSIP team presented the most recent draft of the regulations. The SAC also discussed updated priorities and Relative Environmental Values (REVs). Some SAC members expressed concern over the resiliency of projects over the long term and adaptive management strategies. They also requested more information on the enforcement of public benefits, including what role the Commission will play and how they intend to ensure that projects deliver their promised benefits. October 7 was the final meeting of the SAC.

Commissioner Daniels asked if the Commission will be adopting the priorities and REVs of the State Water Board and CDFW and how the Commission will use them in the ranking of projects.

Ms. Marr replied that staff can add language to the regulations to clarify that the REV's and priorities come from the State Water Board and CDFW; however, they will go through the OAL process as part of the Commission's regulation. The priorities can be used by project proponents as objectives in their project formulation; the REV's will be part of the Commission's evaluation criteria. Commissioners Byrne and Daniels both stated that the priorities and REV's were valuable metrics by which to rank a project, and requested that the WSIP team begin to provide initial drafts evaluation criteria and the decision support tools.

Last week, the Commission held WSIP public information meetings in Lafayette and Clovis. At the Lafayette meeting, the questions were focused on definitions and the decision-making and funding process. At the Clovis meeting, there was a discussion about the definitions of public benefits; many participants disagreed with the statutory definitions and expressed frustration over the timeline.

There are no public meetings scheduled for the remainder of 2015. The Commission will meet in Sacramento on November 19 and December 16. There will be additional public meetings and technical workshops in 2016.

During the public comment period Adam Walukiewicz-Robin, Regulatory Advocate for the ACWA, stated that ACWA intends to submit formal written comments on the regulations. He also stated that ACWA appreciates the efforts made by the Commission and staff to engage the public and stakeholders in the process.

5. Welcome by Commission Members and Commission Member Reports

This item was taken out of order.

On October 14, Commissioner Orth spoke at the ACWA regulatory summit. He discussed the SGMA regulations and provided an overview of the WSIP. He noted that he attended the WSIP public information meeting in Clovis. He also joined State Water Board's Dorene D'Adamo in Visalia on October 16 where he discussed the WSIP in an ACWA panel discussion.

On September 17, Commissioner Herrera met with Juliet Christian-Smith, Climate Scientist with the Union of Concerned Scientists (UCS), to discuss their report *Measuring What Matters*, which presents measurable objectives for achieving groundwater sustainability in California. She also attended the WSIP public information meeting in Clovis.

On October 12, Commissioners Quintero and Ball participated in a tour of State Water Project facilities in Byron, California. Mr. Quintero also attended the WSIP public information meeting in Lafayette on October 12. Commissioner Ball added that currently the Banks Pumping Plant is not operating during the day and pumping at night is limited. Technical Apprentices are now staying with DWR at higher rates following pay increases the Commission advocated for previously.

Commissioner Daniels participated in a discussion with former Long Beach mayor Bob Foster about the Semitropic Water Storage District's prospective projects. She also spoke at a conference hosted by the RAND Corporation on September 30. On October 15, Ms. Daniels published a blog article called *Filling the Glass on Water Conservation* for the Huffington Post.

Commissioner Del Bosque spoke in Hanford at the California League of Cities where he discussed the drought and provided an overview of the WSIP.

Commissioner Byrne spoke at Temple Emanuel in Los Angeles to discuss water storage. He also participated at the Southern California Energy and Water Summit on September 30 where he was a panel speaker.

10. Water Storage Investment Program: Review Administrative Draft Regulations including Department of Fish and Wildlife's Draft Ecosystem Priorities and Relative Environmental Values and State Water Resources Control Board's Draft Water Quality Priorities and Relative Environmental Values

Scott Cantrell, Chief of CDFW's Water Branch, presented their draft ecosystem priorities and REVs. Proposition 1 requires that the Commission's regulations for the WSIP include priorities and REVs for ecosystem benefits as provided by CDFW and priorities and REVs for water quality benefits as provided by the State Water Board. CDFW and the State Water Board are also working together to develop definitions for terms that do not have common definitions.

CDFW's priorities can be broken down into two main categories: flow and water quality, and physical processes and habitat. The flow and water quality category is broken down into eight priorities.

Priorities 1, 2, and 3 are critical for spawning and in-river rearing. The objectives are to ensure cold water flows to increase survival of salmonid eggs and fry, enhance conditions for migration of juvenile salmonids, and maintain flows and ramping to prevent dewatering of redds and stranding of juvenile fish in side channel habitat. Priorities 4 and 5 are focused on water quality and temperature. These priorities include improvements to temperature, dissolved oxygen, nutrients, mercury, and salinity conditions. Higher flows will improve water quality conditions and lower water temperatures, which is beneficial to the fish and their habitat.

Priorities 6 and 7 are focused on enhancing attraction flows for migratory fish. CDFW's goal is to increase attraction flows during the upstream migration period to reduce straying of anadromous species into non-natal tributaries. Proper conditions including flow, temperature, and chemistry are necessary in order prevent a delayed or otherwise impeded migration. Priority 7 pertains to increasing Delta outflow and thereby increasing outflow quality and habitat for pelagic and estuarine fish. Priority 8 is to maintain groundwater and surface water interconnections to support instream benefits and groundwater dependent ecosystems.

The physical processes and habitat category is broken down into eight priorities. These priorities pertain to the physical, chemical, and biological characteristics of ecosystems in which species have evolved.

Priorities 1 through 3 are to enhance flow regimes to improve the quantity and quality of riparian and floodplain habitats for aquatic and terrestrial species, enhance floodplains by increasing the frequency, duration, and magnitude of inundation, and enhance the temporal and spatial distribution and diversity of habitats to support all life stages of fish and wildlife species.

Priorities 4 and 5 strive to prevent or reduce negative impacts from in-river structures on anadromous fishes by remediating unscreened or poorly screened diversions that entrain fish, and eliminate existing barriers to improve fish passage for spawning and rearing.

Priorities 6 and 7 focus on providing water to wetlands and riparian habitat for aquatic and terrestrial species, and developing and implementing non-native invasive species management plans to enhance habitat and increase the survival of native species. Priority 8 is to enhance habitat for native species that have commercial, recreational, scientific, and educational value.

Commissioner Orth asked if CDFW had considered how changing conditions would affect their priorities, and if project proponents could provide a certain amount of water for CDFW to manage to meet environmental objectives, rather than providing water for a specific purpose at a specific time. Mr. Cantrell responded that they had not given significant thought to this idea but it has potential to work. Mr. Orth suggested that CDFW incorporate a storage component into their priorities that would allow CDFW the flexibility to manage stored water to meet its priorities.

Commissioner Byrne agreed, stating that if applicants can dedicate quantities of water for management by CDFW, then CDFW can take responsibility to ensure that water is used to achieve their priorities. Mr. Cantrell added that there is already a synergistic relationship between the Central Valley Project and the State Water Project, which could allow this more flexible water management approach to work.

Commissioner Daniels asked for clarification on the proposal, stating it sounds like a mitigation bank. Commissioner Byrne responded that a specified amount of water would more likely be set aside for adaptive management by CDFW. The challenge will be in allowing adaptive management while ensuring the quantified benefits are achieved.

Commissioner Quintero agreed with Ms. Daniels that it was important to distinguish between water dedicated to environmental benefits from water used for environmental mitigation. Ms. Marr stated that project proponents are not prohibited from utilizing this approach in their application. The technical team intends the WSIP be scalable based on the size of the project and the technical capability of the proponent. It may be more difficult for a project to achieve a greater magnitude of public benefits if their analysis is based solely on a volume of water that may be dedicated to CDFW.

Mr. Cantrell offered to return to the Commission with to discuss this topic after further discussion among CDFW staff.

Commissioner Herrera asked how an applicant will determine how much water to dedicate and how CDFW will decide its purpose. Ms. Marr responded that applicants focus on fulfilling local storage needs first, and then consider how to maximize state investment by formulating their projects to meet program requirements and priorities. Project formulation generally includes stakeholder input along with guidance from CDFW.

Commissioner Del Bosque asked if a single unit of water can be assigned multiple benefits as it flows through the system. Ms. Marr replied that multiple benefits can be incorporated into the application, and the REV's encourage project proponents to meet multiple priorities.

Commissioner Byrne called for public comment. Mr. Jones, representing the Sierra Club, requested that CDFW's flow and water quality priority 8 be amended to say "maintain and/or restore groundwater and surface water interconnections" in order to establish a baseline that

prohibits deterioration. Commissioner Daniels supported this change and stated that it was consistent with the goals of State Water Board. Mr. Cantrell said he would make that change.

Ms. Clary, representing Clean Water Action, stated that if CDFW is tasked with managing a project proponent's water, the burden will no longer be on the proponent to provide specific benefits. She felt that applicants should take ownership of their projects in order to ensure full maximization of potential benefits.

Ms. Marr stated that there are potential applicants that are coordinating with CDFW, and the WSIP team encourages applicants to seek assistance from the technical team in order to maximize their benefits. Commission staff and the Agency team are in the process of developing contract language that will allow for adaptive management to provide public benefits.

Commissioner Herrera supported simplifying the process for project proponents, but stated that the Commission's focus must remain on investing in projects that offer the most public benefits. Commissioner Byrne stated that applicants may require additional guidance as the application process becomes more complex.

Jim Watson, General Manager of the Sites Joint Powers Authority, strongly supported the concept of dedicated supply, stating that water allocated for specific purposes would be put to best use when managed by experts in those fields.

Mr. Walukiewicz-Robin suggested that the conversation be expanded to include projects other than surface storage.

Gail Linck, Environmental Program Manager with the State Water Board, presented an update on draft water quality priorities for the WSIP. Since their presentation at the July Commission meeting, the State Water Board added a Human Right to Water priority.

Priorities 1 through 5 focus on improvement of conditions in water bodies that have been specified as impaired on California's Clean Water Act (CWA) 303(d) list. They mirror priorities 3 and 4 of CDFW's flow and water quality priorities.

Priority 6 emphasizes the protection, clean-up, or restoration of groundwater in DWR's California Statewide Groundwater Elevation Monitoring (CASGEM) high-priority and medium-priority basins. The word "restore" was added by the State Water Board since the last update.

Priorities 7 and 8 are to achieve Delta tributary stream flows that resemble natural hydrograph patterns or other flow regimes that will improve conditions for aquatic life and reduce the current or future water demand on the Delta watershed by developing local water supplies. Priority 9, which was added since the last update, is to provide water for basic human needs in disadvantaged or similarly situated communities.

Commissioner Daniels supported the use of State Water Board's priorities as criteria for scoring and decision-making, but stated that there is more work to be done to guide project proponents in incorporating these priorities into their applications. Ms. Marr responded that values will be assigned to the priorities through the REV's. The Commission will work together with the technical team to determine the REV of each project based on the priorities to which it contributes.

Ms. Herrera supported State Water Board's incorporation of Human Right to Water language in their priorities.

Mr. Cantrell next discussed CDFW's REV's for ecosystem improvement. The first REV is the number of ecosystem priorities addressed by a project. The more priorities are addressed, the higher an applicant can score. REV's 2 and 3 are focused on the magnitude and certainty of ecosystem improvements and the spatial and temporal scale of ecosystem improvements.

REV 4 is inclusion of an adaptive management and monitoring program that includes measurable objectives, performance measures, thresholds and triggers for managing ecosystem benefits. CDFW is seeking quantitative statements of the intended results of a project. REV 5 and 6 focus on immediacy and duration of ecosystem improvements. Immediacy pertains to how quickly a benefit can be attained, and duration pertains to how long the benefit will last. REV 7 is consistency with species recovery plans and strategies, initiatives, and conservation plans. REV 8 focuses on the location of ecosystem improvements and connectivity to areas already being protected or managed for conservation values. It is intended to promote connectivity between protected areas and ensure that nearby areas also being managed in a manner that will ensure maintenance of existing benefits. REV 9 focuses on efficient use of water to achieve multiple ecosystem benefits. The final REV is resilience of ecosystem improvements to the effects of climate change. It is intended to ensure that projects have a plan to deal with altered hydrology associated with climate change.

Ms. Linck then discussed the State Water Board's REV's for water quality improvement. The State Water Board has 11 REV's; REV's 1 through 9 mirror CDFW's ecosystem improvement REV's. REV 10 addresses the Human Right to Water and water quality improvements for basic human needs, such as drinking, cooking, and bathing, in disadvantaged or similarly situated communities. REV 11 is the extent to which undesirable results caused by groundwater extractions are addressed.

Commissioner Orth noted that State Water Board REV 11 should be explicit in stating that it is written in accordance with SGMA in order to avoid multiple definitions of undesirable results.

Commissioner Byrne asked if public benefits and the priorities and REV's will be evaluated as separate categories, and if incorporating the priorities and REV's will provide a higher score. Ms. Marr responded that staff is still developing evaluation methodology and determining how to present information to the Commission. Staff has created five categories of evaluation criteria. Within each category, there are subcategories. Public benefits is one of the five major categories and ecosystem improvements falls within that category. To evaluate ecosystem improvements, staff will begin by quantifying the magnitude of physical benefits provided; that benefit will be adjusted based on the REV's to provide an overall ecosystem improvement score. REV's will factor into the Commission's decision-making, but will not be part of the quantification of benefits. Staff will develop this topic and return to the Commission at a later date for future discussion.

Commissioner Del Bosque asked if Water Quality REV 11 could be considered an ecosystem improvement if groundwater extractions effect tributaries. Ms. Linck replied that in situations where surface and groundwater are connected groundwater there could be water quality and ecosystem benefits. Commissioner Orth stated that in SGMA surface and groundwater interaction are criteria that may lead to an undesirable result, specifically SGMA states "depletions of

interconnected surface water that have significant and unreasonable adverse effects on beneficial uses of the surface water.” Ms. Linck agreed.

Mr. Del Bosque asked how to categorize a water quality or ecosystem improvement that also has the effect of curtailing an undesirable result. Mr. Cantrell responded that it would satisfy priority 8 of CDFW’s flow and water quality priorities. He added that the priority was specifically written with SGMA in mind. Commissioner Orth suggested adding it to the REVs and Ms. Marr replied that staff may add the item in the future.

Ms. Clary asked how net environmental benefit will be considered within the context of REVs. Ms. Marr replied that when applicants evaluate changes in physical conditions between the with- and without-project conditions, they will identify changes that are benefits and changes that are impacts. The net improvement is the difference between the with- and without-project conditions less any impacts.

Commissioner Quintero noted that the Human Right to Water priorities and REVs do not include language pertaining to communities that have no water at all. He stated that applicants can increase their peripheral benefits if their projects affect those impacted areas. Commissioner Herrera agreed, and suggested asking applicants to state how many disadvantaged communities their projects will benefit. She added that if State Water Board provided a list of these communities, project proponents may be able to expand the scope of their projects to include them. Commissioner Daniels agreed with Commissioner Herrera. She also stated that within the scoring bins value is assigned within each bin and between the bins. She expressed concern over how the factors will be weighted and stated that REVs should be a dominant evaluation criteria. Ms. Marr responded that staff will involve the Commission in the development of the decision support tool so that these issues are addressed.

Ms. Clary suggested that the words “and affordable” be added to State Water Board’s priority 9. She also suggested adding drought-related language to the climate change REVs.

Ms. Marr then presented the most recent staff draft of regulations for the WSIP. Staff presented a draft to the Commission at their September meeting. Today’s draft incorporates revisions based on feedback from members of the Commission, the SAC and the public.

Page 1 of the regulations was not changed since the September meeting. On page 2, there was a comment to add a definition of CASGEM. The next version of the regulations will reflect a comment to change the word “reservoirs” to “supplies” in the definition of conjunctive use project.

The Commission received a written comment from the Groundwater Resources Association (GRA) requesting that they remove the distinction between groundwater storage and conjunctive use projects. The GRA stated that the terms are considered interchangeable within the industry. Staff feels that the statute clearly implies a distinction, and the definitions should retain that distinction in order to adhere to the spirit of the statute. Commissioners Orth and Ball agreed.

On page 3, the definition of Delta outflow included a reference to an outdated plan. Staff will work with State Water Board staff to update the definition.

On page 4 under the definition of groundwater storage project, there was a request to change the word “engineered” to “designed.” On the same page, a SAC member commented that local or regional projects should be defined by ownership, not size. Staff has yet to discuss this comment. Commissioners Daniels, Byrne, and Ball stated that they did not feel the change was necessary. Staff agreed.

On page 7, staff clarified that the definition of state water system includes all public and private facilities, since mutual water companies are eligible applicants. There were questions from stakeholders as to whether willingness to pay was a necessary definition. Staff believes it is and did not make any changes based on this comment.

Commissioner Daniels stated that she had several edits to the regulation language to more clearly express the Commission's desire to not provide funding for existing environmental mitigation and compliance obligations. She presented a list of five proposed edits:

1) Section 6000(gggg): Under the definition of without-project future conditions, she requested that the phrase “including the applicant’s environmental mitigation and compliance obligations in effect at the assumed time” be added to the end. Commissioner Byrne responded that he felt the regulations should restate the statutory language, and that this issue would need more discussion at a later time.

2) Section 6004(a) (1)(iv): Ms. Daniels stated that the sentence “The applicant may include in its quantification of public benefits the identified physical changes created or caused by the proposed project that coincidentally contribute to meeting a third party’s requirements or obligations” was incongruent with conclusions that were reached in previous Commission discussions and suggested replacing the word “may” with “shall not.” Commissioner Byrne suggested deleting both Section 6004(a)(1)(iv) and Section 6004(a)(1)(iii). Ms. Marr responded that staff is developing a document that discusses the issue in greater detail and delves into how a decision impacts a project proponent’s analysis. The modeling platforms that are currently available make it difficult to account for existing compliance and mitigation actions that have not yet been taken.

3) Section 6002(b)(2)(v): Ms. Daniels suggested adding the words “newly created” revising the sentence to read, “Summary of the estimated magnitude of newly created physical public benefits over the project planning horizon.”

4) Section 6002(c)(2)(xi): Ms. Daniels suggested adding the words “including existing environmental obligation” revising the sentence to read, “A discussion of how the applicant will ensure that the proposed project will comply with and be consistent with all applicable laws and regulations including existing environmental obligations.”

5) Section 6002(6)(iii)(1): Ms. Daniels suggested adding the word “new” revising the sentence to read, “The Commission shall only fund the costs of new environmental mitigation measures or compliance obligations...”

Ms. Marr next reviewed Section 6001, General Provisions.

On page 8, staff added language stating that applicants will have the opportunity to request an exemption from public posting of documents that may present a security concern. The Commission's Executive Officer will address these requests on a case-by-case basis. There was some stakeholder feedback requesting that some rules be set about the types of information that can be redacted and a way to acknowledge redactions. Commissioner Byrne suggested seeking guidance from staff counsel.

Moving on to section 6002, Ms. Marr stated that since the previous meeting, comments on the selection process have decreased and staff is confident that they can begin to finalize the draft. Staff considered comments regarding extending the 14-day period for interaction with applicants during the eligibility and completeness review, but ultimately felt that the time period was adequate and should not be changed.

Commissioner Ball asked what would happen if an applicant is unable to get their missing or revised documentation to the Commission in the 14-day period. Ms. Marr responded that if an applicant misses a deadline, that does not mean they will be automatically disqualified, but it may hinder their ability to move forward and stay competitive. Mr. Ball suggested adding clarifying language to that effect, and Ms. Marr agreed to make that change.

In Section 6002(4)(v), staff updated the length of time allowed for provision of additional or clarifying information during the technical review from 30 to 60 days. In Section 6002(c)(3)(iv)(6), staff modified the language in order to make it more inclusive of SGMA.

During public comments, Mr. Watson stated that after the technical review, there does not appear to be any further opportunities for the applicant to provide input. He stated that if an applicant is denied, they may desire an opportunity for explanation or rebuttal. Ms. Marr replied that Commission meetings will continue to be held throughout the process, and project applicants are always welcome to come to the meetings and make public comments directly to the Commission.

Mr. Walukiewicz-Robin supported Mr. Watson's comment. In Section 6002(c)(5)(ii), he recommended adding "and the applicants" so that the passage states "The independent peer reviewers may contact the technical reviewers and the applicants should they have any clarifying questions before completing their evaluation."

Mr. Jones stated that in Section 6002(c)(3)(iv)(6)(b)(i), he recommended changing "an existing groundwater management plan" to "SGMA" so that the passage states "The applicant has prepared and implemented, participates in, or consents to be subject to SGMA..."

Commissioner Herrera stated that she would like to see a draft version of the decision support tool. She added that in Section 6002(c)(6)(iii), she would like language added that refers to the tool. Ms. Marr responded that staff will consult with legal counsel to see if the language could be added. She stated that if a reference is made to a scoring tool in the regulations, then OAL may require a completed version of that tool. Because that tool is not finalized yet, including references to it may inadvertently delay the approval process.

Ms. Marr reviewed Section 6003, Funding Commitments. Staff received a significant amount of feedback requesting that some funds be set aside specifically for smaller projects. There will be an

in-depth discussion on the subject at the November Commission meeting. Commissioner Orth stated that legal analysis will be needed to confirm that such an allocation is legally feasible. Staff also received questions on how to address projects that experience significant changes that may result in a decrease in public benefits. Staff did not have a position on the subject.

Ms. Marr moved on to Section 6004, Quantification of Benefits. Staff received varied feedback on modeling methods; some commenters requested prescriptive models and data sets, and others stated that applicants should have flexibility to select models most applicable to their project. The regulations provide minimum requirements and specific economic considerations but do not specify a model for quantification of public benefits.

In Section 6004(5), staff removed the contingency language. The current draft of the language states that there is a performance-based standard where cost estimates should be approved and signed by “a California licensed Professional Engineer who is involved in the planning and design of the proposed project at a supervisory level.”

Ms. Marr discussed how the current draft of the regulations requires applicants to analyze sources of uncertainty, including climate change. In the current regulation, applicants may use historical hydrology in their without-project condition and are required to do a sensitivity analysis to determine how their projects’ benefits are affected by climate change. In public comments, staff has been asked to require applicants to use climate change data in their without-project conditions. Because there are 20 climate change models staff would need to create a single without-project condition for all projects delaying the WSIP timeline. Historical hydrology allows projects’ public benefits to be reliably compared to each other. The staff recommendation is to not require applicants to analyze their project with climate change in the baseline. Applicants will be required to conduct their sensitivity analysis using the climate change scenario that would put the most stress on their project.

Commissioner Ball agreed with this approach. Commissioner Daniels stated that because of the uncertainty associated with multiple climate change scenarios, it did not make sense for staff to select a single scenario, but asked for public comment on the issue.

During public comment, Mr. Jones stated that it is the position of the Sierra Club that it is preferable to use an imperfect model that factors in climate change over historical data that is no longer accurate, and suggested staff develop a single climate change model.

Commissioner Ball expressed concern that because of the uncertainty associated with climate scenarios, selecting one scenario could arbitrarily favor one project over another. Ms. Daniels agreed with Commissioner Ball’s concern, but suggested staff look for a climate scenario that would not advantage or disadvantage specific projects or regions. She encouraged staff to bring forth potential models at the next Commission meeting. She suggested UC Water Security and Sustainability Research Initiative and Stanford University’s Water in the West program as potential sources for modeling expertise.

Mr. Watson stated that a project’s Environmental Impact Report will provide adequate analysis of climate change effects and resiliency.

Ms. Clary suggested that project proponents should be required to include drought contingency plans for project operations. Commissioner Ball agreed.

Mr. Marr discussed Section 6007, Managing Public Benefits. Staff is developing recommendations for the enforcement of public benefits. They will work with legal counsel to develop language for the regulation, which will be reflected in the next draft. This may include language regarding contracts and permits for public benefits, and a mechanism to defund a project that is not delivering its promised benefits. The next draft regulation will also include more language on project resiliency.

11. Consideration of Items for Next California Water Commission Meeting

At its next meeting, the Commission will continue their discussion of the WSIP regulations. There will be an update on the program and administrative activities for the WSIP and a presentation by the SGMA team on their next steps.

The meeting was adjourned at 3:55 p.m.