

A P P E A R A N C E S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMISSION MEMBERS:

Carol Baker

Andrew Ball

Joseph Byrne

Daniel Curtin

Joe Del Bosque

Maria Herrera

David Orth

Armando Quintero

STAFF ON DAIS:

Rachel Ballanti

Holly Stout

Brianna Shoemaker

PRESENTERS:

Agenda Item 8: David Gutierrez

1 P R O C E E D I N G S

2 ---oOo---

3 COMMISSIONER BYRNE: Item number 6, this is the
4 opportunity for public testimony on items that are not
5 on the agenda, so if anyone in the public would like to
6 speak now, please step forward. There will be ample
7 opportunity for public comment throughout the program
8 and on the items as they come up.

9 Okay. Seeing nobody, this is a quick-moving
10 meeting.

11 We'll move to item number 7, which is an update
12 on the WSIP program, and I'm going to turn that over to
13 Rachel. Followed by -- we'll also then be doing item 8,
14 which is a walkthrough of the revised draft regulations.

15 MS. BALLANTI: Good morning. Well, that came
16 back to me quickly. So I am going to give the water
17 storage investment administrator and program update.
18 Following the Commission meeting held on August 29th,
19 staff prepared a formal notice to begin the public
20 comment period on our revised regulations. The notice
21 was sent out on our listserv, and in some cases, it was
22 sent out by postal mail to everyone who had commented
23 during the initial public comment period. The formal
24 public comment period on revised regulations and
25 additional documents officially began on Friday,

1 September 2nd, and all of those documents are posted and
2 available on our website.

3 Additionally, on September 9th, the climate
4 change modeling data for the Water Storage Investment
5 Program was made available to the public. A second
6 formal notice of public comment was sent out that same
7 day, and that data can be downloaded from the
8 Commission's website or members of the public can
9 request a DVD and we'll send it by overnight mail.

10 So the public comment period on all documents
11 and data is currently open, and the public comment
12 period for all of those documents will close at
13 5:00 p.m. on Monday, October 3rd. All comments will be
14 posted on the Commission's website as they are received
15 so they are available for public review, and as of
16 yesterday, we have received five comments so far.

17 Any comment received during this Commission
18 meeting will be part of the formal public comment period
19 and will receive our response in our final statement of
20 reasons, which will come at the very end of the OAL
21 process. And we do have a court reporter here today
22 recording our comments.

23 So I'd like to also cover our schedule between
24 now and the end of December for finishing the WSIP
25 regulations. So during the public comment period, which

1 closes on October 3rd, and immediately after, staff may
2 develop proposed changes to the regulations and staff
3 will be prepared to present those proposed changes at
4 the October 18th meeting.

5 October 18th meeting will be one of the most
6 significant on these draft regulations. Staff will be
7 seeking direction on any and all of the outstanding
8 issues relating to the regulations. We will be
9 presenting concepts rather than draft language similar
10 to what was presented in the July and August meetings,
11 and we would anticipate issues specific votes on what to
12 incorporate into regulations.

13 Following that October 18th meeting -- and I
14 should mention that there is a timeline schedule in the
15 packet materials under item 7. Following the
16 October 18th meeting, staff will work on revising the
17 draft recollection based on the Commission direction at
18 that meeting. We anticipated having a revised draft of
19 the regulation, language available to the Commission and
20 to the public on November 7th.

21 On the November 15th Commission meeting, we
22 would ask the Commission for any final direction to
23 ensure that staff's edits regulations are consistent
24 with direction given on October 18th, and then we would
25 begin -- ask for directions to begin one more 15-day

1 official public comment period.

2 Following that public comment period, if there
3 are no additional changes, the Commission can adopt the
4 regulation as final on December 14th of this year.

5 COMMISSIONER BYRNE: Okay. Any questions for
6 any commissioners? We've kind of talked a little bit
7 about this before, and I've mentioned that we can -- for
8 contingency, we can build in meetings and whatnot as we
9 need to consistent with the requirements of the Office
10 of Administrative Law.

11 MS. BALLANTI: I did also want to note that we
12 did receive one additional concept paper from Orange
13 County Water District for a groundwater storage
14 conjunctive use project and staff has responded to that
15 concept paper, and it is posted on our website and a
16 copy is available.

17 COMMISSIONER BYRNE: Great. Thank you.

18 MS. BALLANTI: Thank you.

19 COMMISSIONER BYRNE: Okay. Seeing no questions,
20 I'll move to item Number 8 on the agenda and
21 Mr. Gutierrez. Welcome back, Dave.

22 MR. GUTIERREZ: Thank you.

23 COMMISSIONER BYRNE: Also, I wanted to set it up
24 gracefully. We are going to be taking comments on each
25 of the articles of the draft regulations as they come

1 up, so if you want to submit comments on one of them,
2 then please pass them up to Brianna there over on my
3 right and your left, as well as if you have a thought
4 during the meeting after something has passed, whether
5 or not at the end as well, for people to kind of talk
6 about things that we haven't discussed. Dave.

7 MR. GUTIERREZ: First of all, thank you very
8 much. Again, Dave Gutierrez from the Department of
9 Water Resources, and -- Commission, Commissioner Byrne,
10 and the rest of the commissioners, today we are in a
11 little bit different mode here with the Commission
12 staffs in terms of what we are going to be trying to
13 accomplish. Typically what you see from us is us giving
14 you all presentations on various components of the Water
15 Storage Investment Program, and in particular, the
16 regulations. But instead, today we are in an listening,
17 mode, and so what our -- what we are trying to do today
18 is get a good understanding or begin that conversation
19 and begin that understanding of what are the various
20 comments and concerns of the draft regulations that we
21 recently released.

22 So we are certainly intending that the
23 regulations that were released are obviously going to
24 need to have some changes, and those changes will be
25 based on not only stakeholder input, but obviously,

1 Commission direction in the future.

2 And so what we are doing today, we won't be
3 necessarily be responding to any comments today. Again,
4 we are going to be -- we are going to be just listening.
5 The way we've got it set up here today is we are going
6 to try our hardest or at least try to help guide the
7 discussion, but the format would be for stakeholders to
8 come up, and we are going to do this article by article.
9 They would have their comments, their discussion. At
10 that point, the Commission may or may not have further
11 discussion. We have the entire Commission staff here
12 available today if there's points of clarification, but
13 again, we don't intend to respond to any comments today.
14 Instead, we are going to be listening, and over the next
15 several weeks, we'll be trying to get a good
16 understanding or common understanding of what the
17 various issues are so we can make those changes in the
18 future regulations.

19 So with that, what we'd like to do is we'd like
20 to kind of start off again. I'm going to give a very,
21 very brief discussion of the articles. We are not going
22 to go into detail of any of the articles, and instead
23 just kind of give a reminder of what -- each article.
24 We are going to do that article by article. And then we
25 are just going to open it up to stakeholders.

1 I actually don't expect a whole lot of comments
2 in articles 1 and 5 as the meat of the regulations are
3 really articles 2, 3, and 4, and that's where I would
4 expect most of the comments to come. So if we don't get
5 any comments in Article 1 and Article 5, I think that's
6 certainly okay. Those are a brief articles.

7 Let's get started with Article 1. So this
8 article actually doesn't really require much of an
9 introduction. This is really simply. It's really just
10 an introduction. Along with the introduction, it's the
11 definitions, so we may hear some comments from --
12 regarding any of the definitions. So we propose to let
13 the stakeholders begin now and give comments on
14 Article 1. Depending on how many comments we get, we'll
15 move on to Article 2 quickly if there's any further
16 discussion.

17 So with that, I'll leave the podium for now and
18 hand it over to stakeholders, and I'll come back and
19 redescribe Article 2 when we get there.

20 Any questions Commissioner Byrne or anyone?

21 COMMISSIONER BYRNE: No. I think we are good.
22 Thank you. And, obviously, commissioners, feel free to
23 chime in at any point in time during this discussion if
24 you have questions yourself.

25 MR. GUTIERREZ: Okay. Thank you.

1 COMMISSIONER BYRNE: I have three public
2 comments card for Article 1. The first is Mario
3 Santoya. Mario, San Joaquin Valley Water --

4 PUBLIC SPEAKER: Infrastructure Authority.

5 COMMISSIONER BYRNE: -- infrastructure
6 Authority.

7 PUBLIC MEMBER: Good morning. And I only have
8 one comment, but I think it's an important one in terms
9 of you are missing a definition. And that for us is
10 important, because as much as we talk about the
11 requirement for final feasibility reports, completed
12 feasibility reports, so forth and so on, you have no
13 definition for what a feasibility report is. And that
14 is important for us because the project that we've been
15 working on has gone through pretty vigorous federal
16 feasibility reports taking lots of years and lots of
17 money to get there. And so The only thing that's
18 concerning to us is that you define what level of
19 feasibility reports you are requiring. Are we going to
20 be talking about the same levels or different levels or
21 something. Bottom line, there is no definition for
22 feasibility reports in your section, and really, that's
23 the only comment that I have. Thank you.

24 COMMISSIONER BYRNE: Great. Thank you Mario.

25 Next up I've got Rachel Zwillinger from

1 Defenders of Wildlife followed by Jennifer Clary. Try
2 to recycle these cards. I think it's going to be an
3 array of the same people, which is fine.

4 PUBLIC MEMBER: Me again for another article I'm
5 Rachel Zwillinger with Defenders of Wildlife, and I have
6 just a couple of specific comments about the definition,
7 but also just wanted to start by taking one moment to
8 talk about process because there didn't seem to be a
9 specific place for public comment on process.

10 So I just wanted to reiterate again that we
11 remain concerned about there only being a 30-day public
12 comment period for this revised draft of the
13 regulations, that this recent change included over
14 400 pages of new regulatory language that hadn't been
15 included in the regulations before. I think this
16 constitutes a major change, and under applicable law,
17 there should be a 45-day comment period. And the 30-day
18 period is certainly better than the 15-day period, but I
19 still think it's legally and practically inadequate.

20 On the specific definitions, I wanted to first
21 note that definition 60 -- Section 6001(a)(32), which is
22 definition of existing environmental mitigation and
23 compliance obligations, just wanted to say that this is
24 a much improved definition from the previous draft and
25 wanted to thank the Commission and staff for that

1 helpful change.

2 And then one minor concern is -- definition
3 number 829, which is the definition of emergency
4 response, in the second sentence in that definition, we
5 think there's a need to delete the phrase "to customers"
6 to make clear that those benefits are available to
7 anybody and not just to customers, since these are more
8 generally applicable public benefits.

9 Thank you.

10 COMMISSIONER BYRNE: Thank you Rachel. Helpful
11 comments.

12 Okay. And Jennifer Clary, Clean Water Action.

13 PUBLIC MEMBER: So I did recycle my comment
14 card. Just keep the same one in the pile. Jennifer
15 Clary, Clean Water Action. I have a process question as
16 well, and I should have jumped up on item 7, but I
17 hadn't put in a comment card because -- I note that you
18 are being asked to give direction to staff, and that
19 basically means you are not going to be voting on
20 anything until December. And just once more, I think
21 it's really problematic that you don't sort of stake out
22 your position earlier on in the process, so that's just
23 a continuing concern I have about the way the Commission
24 conducts its affairs.

25 About articles 1 and 2, I really appreciate in

1 these regulations that they maintain the connection to
2 statutes, so in each section, they point out the
3 relevant statute and -- because that's something that
4 we've been looking at as we've been reviewing. But I
5 think that the first section, which is that 6000, should
6 specifically identify the requirement for regulations in
7 Water Code Section 79754, which says, "In consultation
8 with the Department of Fish and Wildlife, the state
9 board, and the Department of Water Resources, the
10 Commission shall developed and adopt, by regulation,
11 methods for quantification and management of public
12 benefits."

13 And I think as you go on, you'll see that you
14 have some concerns particularly about how public
15 benefits are managed during life of the project.

16 The other question -- the other difficulty we
17 have is throughout in all the articles I'm looking at
18 how these regulations help or hinder small projects and
19 in particular groundwater projects. And one thing that
20 I've noticed in reviewing the technical review document
21 and the regulations is that, you know, because of the
22 way the statute is written, you have to -- you have to
23 be really specific about conjunctive use project, and so
24 you've decided conjunctive use is a project that doesn't
25 involve new infrastructure. And that's great, but in

1 doing that, you've eliminated conjunctive use as a
2 public benefit of groundwater storage, and I don't think
3 you have to do that. I don't think one precludes the
4 other. And so something like looking at the technical
5 review document and the needs is how do we finesse that
6 so that groundwater storage and its contribution to
7 flows is counted as a public benefit.

8 And finally, this is our first chance to say,
9 you are -- the climate change piece and the within and
10 without project future conditions looking at two points
11 in time 2030 and 2070, you are basically averaging
12 climate, and that means that you are not looking at
13 projects that really help in times of stress and times
14 of drought, and again, that disadvantage is groundwater
15 projects. Thank you.

16 COMMISSIONER BYRNE: Thank you, Jennifer.

17 So quickly, on the process question, I think
18 I'll just address it. I think the way or the way that
19 I'm -- I think we've talked about it, kind of what
20 happens to our ag water regulation. A number of years
21 ago, that painful process was that -- so in soliciting
22 input from the Commission, I would think that if there's
23 a difference of opinion amongst commissioners as to
24 certain language -- let's say someone wants to see
25 something in there and another member doesn't -- then at

1 that meeting, we likely would be taking a vote amongst
2 ourselves to determine what the recommendations to the
3 staff would be to conclude that, and I think that's how
4 we've handled in the past when we've had significant
5 disagreement. I think that's how we handled it right
6 when we submitted the regs the first time last year,
7 early this year.

8 So I'm hoping that it wouldn't preclude a
9 Commissioner from trying to make a motion to amend
10 something at a later time, another meeting, but it could
11 provide a little bit more, not finality, but clear
12 direction, indication of what the Commission is intended
13 to do prior to the final adoption. So hoping that that
14 is helpful.

15 Okay. Turn back over -- or commissioner,
16 comments? Or anything of the public, comments or
17 questions? Okay. We'll move on to the next article.

18 MR. GUTIERREZ: Okay. Now we are starting to
19 get a little bit into the meat of the actual regulations
20 with Article 2, and you should think of Article 2 kind
21 of working in concert with Article 3 in the sense that
22 Article 2 is going to describe the application
23 information that's necessary in order for Commission
24 staff and agencies to do their evaluation.

25 So each piece that you are going to see is

1 required as part of the applicant should be matching up
2 with Article 3 and a piece of the evaluation, and I
3 think that's the way it's going to kind of work forward.

4 So specifically Section 6002 talks a little bit
5 about some of the basic information. This is the basic
6 information such as project's name and applicant, etc.
7 And then there's a section that requires an executive
8 summary. Again, an example would be that executive
9 summary is necessary in order to evaluate various
10 components and outlines in Section 6011 later on to
11 adjust the scoring by the Commission for water system
12 improvement and implementation risk and resiliency is
13 not lost by its benefits.

14 And then the requirements of the applicant are
15 to provide the information that's necessary for staff to
16 make basic and additional eligibility requirements,
17 whether they met or not and, of course, the completeness
18 requirements again as well, again, matching up with
19 Article 3.

20 And then we get into Section 6004, and that's a
21 little bit more complicated, and that's dealing with the
22 public benefits ratio and the requirements that are
23 going to be necessary by the applicant in order to do
24 their self-evaluation of their particular projects so
25 that we can get a monetization and understand what the

1 public benefit ratio is from their point of view.

2 Again, that will match up in Article 3, where
3 the staff will evaluate that information and potentially
4 make adjustments to those quantifications of benefits as
5 part of their evaluation, as well as other components
6 also required. There's some additional requirements in
7 the application process so that staff can figure out
8 what those other components that are outlined in
9 Article 3 in order to complete the evaluation and
10 scoring.

11 So, again, what Article 2 is all about is what
12 does applicant actually have to provide the Commission
13 in order for us to do our work and make those
14 evaluations of the various projects.

15 So with that, that's Article 2, I'll kind of
16 turn it back over to stakeholders and let them start
17 commenting on Article 2. I did fail to mention, though,
18 what we are going to do also at the end just so
19 everybody knows, is we are going to go article to
20 article, and then when we get to the end of Article 5,
21 we're proposing to let the stakeholders make comments on
22 something maybe that we didn't -- that doesn't really
23 fit nicely into one of the articles. So we can do that
24 after Article 5.

25 So with that, I'll end with Article 2 and,

1 again, we'll turn it over to stakeholders, unless
2 there's any further questions at this point.

3 COMMISSIONER BYRNE: Any questions,
4 commissioners? Seeing none. Thank you, Dave.

5 MR. GUTIERREZ: Thank you.

6 COMMISSIONER BYRNE: Okay. We'll start with
7 Otis Wollan with American River Watershed Institute.
8 Welcome, Otis.

9 PUBLIC MEMBER: Thank you very much. I do have
10 a -- Otis Wollan, American River Watershed Institute. I
11 appreciate this opportunity to address the Commission.
12 I want to specifically look at climate change and
13 specifically the item of averaging precipitation.
14 You've got a 2030 average increase of 2 percent and 2070
15 average increase of 5 percent. Basically what that does
16 is it relegates precipitation into a nonissue. That's a
17 margin of errors in percentages. And in 50 years in
18 California living in the Sierra, I've never seen an
19 average year. Either very wet or very dry. A thousand
20 years of tree rings shows exactly the same thing. In
21 fact, I was so jarred by the use of an ensemble of
22 scenarios to come up with this -- this homogenized
23 average that I tried to find an analogy that might work.
24 And since I love to cook, here's the analogy.

25 An alien comes to the planet and asks of us,

1 "What is your nourishment and how does it taste?"

2 And so you take this great spicy champino, a
3 wonderful, savory beef stroganoff, a hearty beef
4 stroganoff, and this great plate of sushi, and you mix
5 it all together and throw it in a blender. You stir it
6 up, give them a half a cop of this homogenous great
7 fluid and say, "This is what we call food, and this is
8 it tastes."

9 So that's how shocked I was. You know, I'm not
10 really a novice at this. I spent over 20 years on the
11 Placer County Water Agency Board and from the
12 perspective of the decision-maker, you want to
13 understand how your project operates over a range of
14 conditions, not the average. If I were to use your
15 ensemble of scenarios, I would go to the bookends and
16 not the middle. You'd want to understand plus or minus
17 50 percent precipitation from the average, not the
18 average, which is 2 to 5 percent. That will tell you
19 nothing.

20 I went to the Auburn hearing, the Auburn
21 workshop and I asked staff, "Why was this approach
22 taken?"

23 And the staff said, "Well, we have to give the
24 applicant a reasonable something to do here that is
25 doable and not so much work."

1 Well, I would suggest that actually a little bit
2 of work would help you. 15 years ago I go -- I was a
3 project manager for an APA-funded Sierra watershed
4 calculator. The calculator takes 50 years of hydrology
5 in the Sierra, specific to the north, middle, and south.
6 It calibrates it with weather data that includes 55
7 years of hourly precipitation, hourly dew point, hourly
8 wind speed, hourly solar radiation, and daily panel
9 operation, and comes up with this calculator so you can
10 take any catchment in the Sierra, and you can calculate
11 what that looks like. And if you look at the first
12 page, that's the input panel. And when we went to
13 precipitation, 15 years ago, likewise, we had the
14 problem. Is it more or is it less? We gave the
15 opportunity to do a scenario of 5 percent increments to
16 plus 25 percent and minus 25 percent.

17 If you go to page 2, you'll see that we did in
18 fact -- given the opportunity to create a scenario on
19 1 degree sea rise, 2 degrees, 3 degrees, and 4 degrees,
20 which is exactly what you proposed. And so there's a
21 scenario on the bottom there that is a scenario that
22 goes towards -- is 25 percent less precipitation.

23 So that's a tool that's out there. It's free.
24 It would take a staff of any catchment in the Sierra
25 about a half a day if they are any good at arch map at

1 all, to do the analysis and give you a range of how
2 these projects will operate over the range of conditions
3 as predicted.

4 Really quickly, page 3, there's the last
5 thousand years of tree ring data. It's 30 percent range
6 is the average. The red lines. It's basically a sine
7 wave on a centennial basis. Every 100 years you get the
8 dry and the wet. That's what's been happening. Your
9 prediction for precipitation should look more like that.
10 That's history.

11 The bottom of that page, over the last three
12 decades, and this is NCAR data, we've had a 5 percent
13 drying and precipitation over the last three decades.
14 You've got 15 percent less precipitation just over the
15 last 30 years.

16 You go to page 4, this goes to using ensembles.
17 Here is ensembles, again, from NCAR, dated -- 20
18 different scenarios, and 19 of them said there's going
19 to be permanent drought in the southwest. Bottom of
20 page 4, U.S. GS data ensemble for the Sacramento River
21 precipitation, and they project 15 to 35 percent
22 reduction in precipitation by 2016 to 2100

23 COMMISSIONER BYRNE: I'm going to have to cut
24 you off. I'm sorry. I appreciate -- I'm trying to be
25 generous.

1 PUBLIC MEMBER: It's a very --

2 COMMISSIONER BYRNE: No, this is helpful, I
3 think, overall for the meeting today, because it is --
4 the purpose is public comment, I'm trying not to be too
5 strict about the three minutes, but I would ask everyone
6 tries to do that, and maybe I'll give a little extra to
7 people as I've been doing here.

8 PUBLIC SPEAKER: Great. I hope the various
9 scenarios in here, the various ensembles inform the
10 choice you make to broaden that range of rebuilding.
11 Thank you very much.

12 COMMISSIONER BYRNE: I appreciate the
13 information very much. Thank you.

14 Next up is Michelle Denning with the Bureau of
15 Reclamation. Welcome back, Michelle.

16 PUBLIC MEMBER: Good morning. Thank you. And I
17 think the previous speaker really shows the evolution of
18 the science and the wide variability that's very
19 difficult to deal with.

20 Over the years, the Bureau of Reclamation has
21 been working closing with the Department of Water
22 Resources on climate change and many other types of
23 analyze. Our comments are related to concerns on the
24 impacts of these regulation on our potential cost-share
25 partners. We worked again with DWR on both basement

1 study and also on individual projects to develop common
2 assumptions and analytical processes so that we would
3 have proven, consistent, and repeatable results the
4 people could understand.

5 We also did this for the basin study. We are
6 concerned that this apposed approach for incorporating
7 climate change into your decision-making process may
8 enter into unproven, inconsistent, and speculative
9 assumptions and analytical results. We are concerned
10 that this will splinter stakeholders and potential costs
11 of partnerships. Without these partnerships, the public
12 benefits the state desires may not be able to come
13 through. Thank you.

14 COMMISSIONER BYRNE: Thank you very much,
15 Michelle.

16 Bill Swanson. San Joaquin Valley Water
17 Infrastructure Authority. Welcome, Bill.

18 PUBLIC MEMBER: Good morning. My name is Bill
19 Swanson. I work for MWH, environmental consultant.
20 Been working on storage -- primarily feasibility studies
21 for pretty much my entire career.

22 I'm here today on behalf of the San Joaquin
23 Valley Water Infrastructure Authority, to help them in
24 thinking through their application process. When I
25 looked at the 2030 and the 2070 planning horizons that

1 have been identified in the guidelines, I think more
2 than just climate change, because what the outcomes of
3 that analysis will be used for is the basis of cost
4 allocation and commitments by the nonpublic
5 beneficiaries. What this means, then, is that when you
6 go through the process of planning a project around a
7 common set of assumptions -- hydrology, land use,
8 economic framework, and environmental framework -- what
9 typically is done for planning projects is a series of
10 models get run, and the staff have put together one
11 model. What they provided is the hydrology inputs under
12 these two scenarios. The applicants, however, will be
13 required to make a whole host of other assumptions --
14 what's the land use going to look like; what will be the
15 infrastructure; what will be the environmental
16 condition, not just the regulatory framework, but the
17 actual environment as a basis for measuring the change;
18 and what will be the economic environment, not just in
19 California, but if you think about the agricultural
20 productivity that many of the projects will support.
21 The agricultural value is really driven by global
22 marketplaces. So there's a lot of uncertainty that will
23 be introduced into these applications. Each applicant
24 will be obligated to make their own set of assumptions.

25 I'd like to echo what Michelle suggested, is

1 that this could result in inconsistency, unintended
2 inconsistency, but nonetheless, inconsistency in how the
3 results are presented to you.

4 So we go back, then, to these planning
5 baselines. As Michelle mentioned, the large storage
6 projects that have been following is called common
7 assumptions, and in the process of developing those
8 common assumptions, the collaborative effort of
9 Reclamation, DWR, Contra Costa Water District, and
10 others was to establish a common sets of definitions of
11 not just the hydrology but the infrastructure, the land
12 use, the environmental conditions, and the economic
13 baselines. And as a result of that, the studies that
14 followed that have very comparable outcomes and outputs
15 because the studies didn't have to make those
16 individuals assumption.

17 So when you follow that process and you put a
18 project together, you run through the services analysis,
19 water operations, delta water quality, river water
20 quality, temperature effects on fish, other effects on
21 habitat, groundwater economics, and then you get to the
22 end, and that's sequential process. When you get to the
23 end you look at the results and you say, "Is this an
24 optimized project?" And invariably the first time
25 through, it is not. And so that requires some

1 iteration. In fact, the storage projects that have been
2 done at the CalFed program have gone through the
3 iteration multiple times to arrive at the formulation
4 they have today.

5 Our concern is that following these planning
6 baselines as opposed to applying a sensitivity to
7 evaluate the way projects could change with climate
8 change could require more time and more cost than may be
9 recognized. I would suggest you consider whether other
10 options are available to make the judgment on how
11 durable public benefits would be of these projects.

12 Thank you.

13 COMMISSIONER BYRNE: Thank you very much, Bill.

14 We have Victor Lopez from City of Orange Cove.
15 Welcome back, Mayor.

16 PUBLIC MEMBER: Good morning. Thank you
17 Mr. Chairman, members of the Board. My name is Victor
18 Lopez. I am the mayor of the City of Orange Cove. We
19 have a small rural community made up of farm workers at
20 the eastern part of Fresno County. I also sat on the
21 board of directors of the San Joaquin Valley Water
22 Infrastructure Authority, and thereby represent all of
23 the cities on the east side of the valley, the five
24 counties we represent.

25 Our project, Mr. Chairman, members of the board,

1 is Temperance Flats. We are proud farm workers, hard
2 workers. We care. We are building our community. We
3 are not giving up. We got beautiful families that have
4 bought new homes in Orange Cove. Proud farm workers and
5 their families are now really striving to make better
6 lives in our communities. I ask you to please,
7 please -- I am very concerned the additional
8 requirements your staff added to our application
9 process.

10 As I stated, we understand that our cost may go
11 up ten times of what we are reasonably expecting. We
12 cannot afford that. We are poor, but we are proud
13 citizens, and we are willing to work hard to keep the
14 food basket of the world. We are part of the food
15 basket of the world, and we are proud farm workers. And
16 I, as the mayor of the city and chairman of the Latino
17 elected officials for Fresno County, I speak for a lot
18 of the cities that are disadvantaged communities.

19 So I ask you, please, do not forgot the
20 well-being of the farm workers that will represent you,
21 and don't forgot your grandchildren and my grandchildren
22 will suffer if we don't do the right things.

23 So God bless you, and thank you for the
24 opportunity.

25 COMMISSIONER BYRNE: Thank you very much, Mayor.

1 Next up is Roger Dim -- Isom. Sorry, Roger.
2 California Cotton Growers Association. Welcome, Roger.

3 PUBLIC MEMBER: Good morning. Thank you. My
4 name is Roger Isom. I'm president CEO of the California
5 Cotton Ginners and Growers Associations and Western
6 Agricultural Processors Association. We represent
7 cotton gins, cotton growers, and tree-nut holders and
8 processors of walnuts, almonds, pecans, pistachios,
9 throughout California.

10 Our industries have been devastated by the lack
11 of water over the last several years and probably none
12 more evident than the loss of cotton acreage
13 particularly in Fresno County. And in 2005 -- this is
14 late as 2005 -- Fresno County was the number one cotton
15 producing county in the nation and home to 26 cotton
16 gins.

17 By 2009, more than 100,000 acres lay fallow.
18 Those 26 begins were down to six gins. Over a thousand
19 jobs were lost. Simply due to the loss of water.

20 Today only three cotton gins remain, and Fresno
21 County is no longer number one cotton producing county
22 in the country, but not even in the top 100. Despite
23 the fact that in Fresno County we have the highest
24 quality, highest yielding cotton in the world. It's the
25 most ideal growing conditions, but the landscape has

1 changed. Agricultural priorities for water now take a
2 backseat to environmental and urban demands and
3 requirements. And this situation is going to be
4 exacerbated even further with imposition of Sustainable
5 Groundwater Management Act or SGMA, which undoubtedly is
6 going to place the limit on the amount of groundwater
7 pumping that can occur in the valley and the state.

8 So while there's no silver bullet to address
9 this situation, service water storage in conjunction
10 with strategic groundwater recharge projects can play a
11 critical role in helping us resolve this crisis
12 situation. We believe the Chapter 8 can provide the
13 solution to this. The regulations before you today
14 provide a road map to do that. However, when we review
15 these regulations, we have some concerns, and in
16 particular, we are concerned that simple quantitative
17 assessment may not be enough to accurately decide on
18 projects.

19 And while in the numeric scoring presented is
20 necessary and prudent, it's important to value all of
21 the long-term impacts -- improving water storage and
22 helping maintain a sustainable agricultural industry and
23 food security, not only in the state but in the country
24 and in the world. Things like guessing on what the
25 water situation or agriculture will be in general in

1 2030 or 2070 is impossible. And quite frankly,
2 attempting to place those assumptions in a quantitative
3 assessment is pretty risky.

4 When determining the projects that should be
5 funded, it's important that the Commission not only
6 consider the quantitative assessments, but also the
7 magnitude of the social and economic benefits to the
8 communities and the workers and the employees and areas
9 such as Orange Cove explained just a few minutes ago.

10 When you look at Chapter 8, we need to go back
11 to what the authors of Chapter 8 envisioned, and want to
12 make sure these funds are used to the greatest potential
13 and meet what the goal of Chapter 8 when it was put
14 forth. We'll provide more specifics in our written
15 comments. Just want to thank the Commission for the
16 opportunity to make these before you today.

17 Thank you.

18 COMMISSIONER BYRNE: Thank you very much, Roger.

19 Next up is Craig White with Central California
20 Irrigation District. Oh, I'm sorry, Chris. Followed by
21 Mario Santoya.

22 PUBLIC MEMBER: Thank you very much, board
23 members. And I've had my staff tell me over the years
24 that they can't read my writing either, so --

25 COMMISSIONER BYRNE: Yeah, it looks a little

1 like a G, yeah. My apologies.

2 PUBLIC MEMBER: I'm Chris white, the general
3 manager of Central California Irrigation District here
4 today to speak to you on the proposed regulations.
5 Through the lens of -- I'm heading up the technical
6 advisory committee for the San Joaquin Valley JPA. We
7 are looking into regulations and we're asking you to
8 just consider -- I mean, you've got a set of regulations
9 and the 400-page guidance document to lead us through
10 the process to end up with a scoring system, but think
11 in terms of at the local level, how do we become -- how
12 do we become more sustainable, how do we become more
13 self-reliant, and how with we use storage to help us to
14 get there. And it involves preparing vision that --
15 just looking at the numbers doesn't necessarily convey
16 that vision to the entire board in making a decision as
17 to which projects do you move forward with.

18 Instead of looking at some of the other scoring
19 as an example, the way -- the way that the regulation or
20 proposed regulation looks at climate change, allows us
21 to spend our time looking at how the Sustainable
22 Groundwater Management Act can be enhanced by local
23 storage; how we can look at local projects to enhance
24 the ability of a temperance to help solve the local
25 reliance issue and let us get that vision in front of

1 you; the hard numbers as to what the yields of those
2 projects would be and how they will help us locally, not
3 only to meet the timelines of just being sustainable
4 into the future, having enough water to keep the Valley
5 agricultural system alive, but also meet the timelines
6 of SGMA, and maybe even exceed the timelines of SGMA.
7 How do with do that, and how do we use sources to do
8 that?

9 So you will see the written comments that you
10 received from the tack and from the JPA. Hold that as a
11 lens that will make many of our comments on. And I want
12 to thank you very much for taking our testimony today.

13 COMMISSIONER BYRNE: Thank you very much, Chris.

14 Next up is Mario Santoya followed by Rachel
15 Zwillinger.

16 PUBLIC MEMBER: You've heard from a lot of
17 experts in regard to the issues and concerns, and you
18 are going to hear some more. I'm going to focus more so
19 on the terms of the application process because some of
20 you that are on the Commission today were with us when
21 we were developing the legislations and what the intent
22 was for the Commission, and that's why we've brought it
23 out of dormancy, to be part of the process. So I just
24 want to reflect that at the beginning, but I definitely
25 want to give credit to staff who has taken on a very

1 difficult task to figure out how to bring to you a means
2 by which you can access the public benefits which are
3 outlining in the legislation. So they've done a good
4 job there.

5 I first want to reflect what is not criticism
6 but more of kind of what we had hoped for as we were
7 moving forward with the legislation, and that is this,
8 is that there -- we needed this process to be different
9 because it's going to be the first time there was ever
10 going to be big projects involved. It wasn't going to
11 be just the normal water bond and small projects. Had
12 to be different. The other thing that needed to be
13 different was this, is that typically, DWR would
14 administrate the awards because, typically, they are
15 working on grants. This was not going to be a grant
16 program. This was going to be an investment program.
17 So thinking had to be different. The process had to be
18 different.

19 We also wanted to make sure that -- that there
20 would be outside influences occurring from either the
21 existing administrations or the legislature, and that's
22 why you found continuous appropriation in it. That was
23 the purpose of that.

24 So the thought was, bringing in nine individuals
25 to bring in a little different approach than the grant

1 process. Grant process was principally scoring. Here's
2 the score; these are the projects. That's good for
3 grant program, but not good for an investment program.
4 So we were hoping that there would be maximum discretion
5 by the commissioners in looking beyond a scoring system
6 to look at the picture in a more holistic fashion.

7 Okay. What I see, though, in what staff
8 developed -- and no fault of the staff, because they had
9 a difficult task to try to figure this out -- is kind of
10 taken you back to the grant system. Here's the score;
11 approve it and move on. It really has diminished your
12 role as commissioners. And all I would ask you to do
13 is, as you are moving forward, clearly use what staff
14 has done to help guide you in terms of the value of the
15 public benefits, but find a means by which you can
16 increase your discretion in looking at a final decision,
17 because, again, you guys are looking at -- should be
18 looking at more as a business decision as compared to a
19 grant decision.

20 So with that, I thank you.

21 COMMISSIONER BYRNE: Thank you very much, Mario.
22 Excellent timing as well.

23 Rachel followed by Pablo Garza.

24 PUBLIC MEMBER: Hi. Rachel Zwillinger with
25 Defenders of Wildlife, and I want to take this

1 opportunity to focus on the technical reference
2 document, because I think this is the article where it
3 is incorporated by reference. And primarily I want to
4 focus on concerns regarding the incorporation of this
5 entire document into the regulatory text itself. And so
6 my initial review of the regulations and the technical
7 reference document suggests that nothing in the
8 technical reference documents may actually be mandatory.
9 And I think if you look at Section 6004(a) of the
10 regulations, the language there is repeated throughout
11 the regulations in technical reference document, which
12 suggests that the applicant shall select the most
13 appropriate method described in the technical reference
14 documents to describe public benefits, but an applicant
15 may also select a method not included in the technical
16 reference document. And that's basically the theme
17 that's carried throughout, that you shall use these
18 methods unless you have something different that you can
19 justify.

20 So in the way, I don't think, you know, there's
21 anything in this technical reference document that is
22 mandatory and, therefore, it doesn't actually need to be
23 part of the regulations. And I think there is some
24 really big problems with the technical reference
25 document.

1 There's some problems related to how it treats
2 existing mitigation and compliance obligations, the
3 emergency response public benefits section, and other
4 things that we'll detail in written comments, but that
5 incorporating it into the regulations itself will lead
6 to inconsistency within the regulations and between the
7 regulations and the statute that are problematic.

8 I also think if you review the technical
9 reference document there are a lot of problems with
10 compliance with the APA standards, and so there are
11 going to be issues with consistency, clarity, and
12 non-duplication. I think that may arise when OAL
13 reviews the regulations. And so that was all to say
14 that we would strongly recommend not incorporating by
15 reference the entire 430-page technical reference
16 document.

17 In this article, we have a number of other
18 concerns that we'll raise in written comments, but
19 quickly, we remain very concerned with how climate
20 change is addressed in the regulations, particularly the
21 lack of inclusion of variability, and also the fact that
22 eliminating climate change analysis to 2030 and 2070
23 while calculating benefits out on a much further
24 timeline of 100 years. And in our written comments
25 we'll also address some remaining concerns about

1 mitigation and compliance obligations and the way
2 drought emergencies are included in the emergency
3 response public benefits category.

4 Thank you.

5 COMMISSIONER BYRNE: Thank you very much,
6 Rachel.

7 Quickly I want to say my opinion. I think I've
8 discussed before is that I would love to not incorporate
9 by reference the -- so I know that I've communicated
10 that with staff, and I think people are looking at it
11 from all angles with that in mind. Conclusion, I think,
12 is that it needs to be include, so -- I also would love
13 to not have to have it as part of the regs as well.

14 Commission?

15 Okay. Pablo Garza with Nature Conservancy.
16 Welcome, Pablo.

17 PUBLIC MEMBER: Good morning. Pablo Garza with
18 the Nature Conservancy. Thank you for the opportunity
19 to provide these comments, and I think I'm in the
20 process of adaptively managing my comments this morning,
21 and wonderful comments to just go through, but I'll be
22 back up here a few times, so I appreciate that.

23 I think first off, I -- we share the concern
24 about the climate change in the averaging over 2030 and
25 2070 and the lack of variability, and I think gentleman

1 from the institute spoke very eloquently about that. I
2 love the metaphor, and I second or refer to those
3 comments, that we need to show the range of wet and dry
4 years, not an average over, you know, several decades.

5 Second point, I -- you know, we think overall
6 this draft has improved from the prior draft, so we
7 appreciate that and the work of the staff in getting
8 there. We share the process concerns that already been
9 raised, that with the substantial rewrite of the
10 regulations and the new 400-plus page technical
11 reference document, 30 days is really a short time
12 period, and 45 days is probably short too, but that's
13 what we are working with.

14 And then just on Article 2, I want to comment on
15 what's not there anymore, and in this draft, the
16 pre-application process was deleted. And we really have
17 always preferred or we liked the pre-application
18 process. We've seen that work really well with other
19 grant programs, and the reason is, this -- the cost of
20 doing an application -- and others have already hinted
21 that -- is going to be substantial, hundreds of
22 thousands of dollars, potentially, just to put an
23 application in.

24 So I think having that pre-application process
25 gives all projects and even smaller projects an

1 opportunity to see if they are on the right track. And
2 that's kind of a general thing we have here or concern
3 we have is that the way the regulations are written in
4 smaller projects are just not going to be able to
5 compete, and we think looking at the big picture, we
6 need a portfolio of different types of projects,
7 storage, groundwater storage, and conjunctive use
8 projects.

9 So we recommend reinstating the application
10 process, and I'll be back again. Thank you.

11 COMMISSIONER BYRNE: Thank you very much, Pablo.
12 Okay. Next up is Jennifer Clary followed by Adam Robin.

13 PUBLIC MEMBER: Hello. In case I didn't say so
14 before, I'm incorporating by reference the comments of
15 the Nature Conservancy, Defenders of Wildlife, and
16 Sierra Club. So we tried to make sure that we could get
17 all our comments in in three-minute segments and not be
18 too repetitive in -- except in cases where we are
19 particularly outraged, and so you'll figure out what the
20 emphasis is by our repetition.

21 So I want to again -- I'm interested in
22 understanding how projects that are going to do the most
23 good get approved, and when I say "do the most good,"
24 I'm thinking groundwater. And I'm not a one-trick pony,
25 but a lot of people here are starting to feel

1 comfortable in this company. And I want to reiterate
2 what Pablo said about eliminating the pre-application,
3 because that's the place -- I know that you feel the
4 concept papers are doing that, but I'm not sure that it
5 does, because the concept papers, you write down a
6 couple lines on a piece of paper and submit it. I think
7 having a pre-application with specific requirements like
8 "Are you able to do this modeling? Do you actually meet
9 these public benefits? What do you think your public
10 benefits are and how can you prove it?" kind of gives us
11 an idea of whether a project is viable before the
12 expense of putting in that application.

13 And also in the application process, I think the
14 executive summary is really weird, and maybe it's a
15 vocabulary thing, because when I look at the executive
16 summary, it doesn't really seem to be a summary of the
17 application. In particular, it talks about active
18 integration in the project, and yet that's the only -- I
19 love the word search on my computer. I just love it.
20 Because the word "integration" only appears once in the
21 entire regulations, and it's right there in executive
22 summary.

23 So if we want to have integrative projects and
24 understand how they work together, having a paragraph in
25 the executive summary isn't really the place where it's

1 going to get done. It's going to get done in the
2 operations piece. How is this project going to operate
3 in conjunction with the other projects in the area? How
4 do you integrate that? And that's something that I
5 think is another thing that puts a ding against
6 groundwater projects in this proposal.

7 Thank you.

8 COMMISSIONER BYRNE: Thank you, Jennifer. Adam.

9 PUBLIC MEMBER: Good morning, commissioners. My
10 name is Adam Robin. I'm with the Association of
11 California Water Agencies and appreciate this
12 opportunity to provide comment. ACWA represents over
13 430 public water agencies. We actively participate in
14 the develop of Proposition 1, and we've engaged on the
15 development of these regulations since November of 2014.
16 We are currently reviewing the revised draft regulatory
17 package including the technical reference document, and
18 we will be submitting detailed written comments by the
19 deadline of October 3rd.

20 Consistent with the intent of Chapter 8, our
21 comments will be aimed at ensuring that the final
22 regulations allow the Commission to considering the
23 funding of the public benefits of storage projects that
24 are diverse in scale, location, type, and function, with
25 the goal of improving the operations of the State's

1 water system and providing net improvements in ecosystem
2 and water quality conditions.

3 In terms of specific comments in Article 2, we
4 do have concerns that several of the proposed
5 application requirements would impose significant
6 burdens on potential project proponents and will have
7 the effect of limiting the number of applications that
8 the Commission is ultimately able to consider for
9 funding. For example, we agree and acknowledge that
10 applicants should conduct comprehensive meaningful
11 analyses of project benefits under a range of future
12 climate conditions. We remain concerned, however, that
13 the proposed single climate scenario modeling
14 requirements detailed in the technical reference
15 document impose costly and time-consuming requirements
16 to produce analyses that won't result in the meaningful
17 improvement of this Commission's consideration of the
18 critical issue of project resilience.

19 We also have concerns that the new provisions
20 related to environmental compliance obligations and
21 mitigation measures associated with the public benefits
22 are potentially inconsistent with this Commission's past
23 direction to mirror the statutory language on that
24 critical point.

25 Chapter 8 provides that, "Funds shall not be

1 expended pursuant to this chapter for the costs of
2 environment mitigation measures or compliance
3 obligations except for those associated with providing
4 the public benefits as described in this section."

5 Writing restriction not found in the statute
6 into the regulation will limit the ability of the
7 Commission to consider funding the benefits of storage
8 projects that improve the operation of the State's water
9 system and provide net improvements in ecosystems and
10 water quality conditions, as well as impose requirements
11 of project applicants that may be impossible to satisfy.

12 In closing, I'd emphasize that the Commission of
13 the project proponents have a shared interest in
14 ensuring that this process allows both parties to move
15 forward in a timely and efficient manner. Accordingly,
16 the regulation applications requirements should focus on
17 twin objectives, of ensuring compliance with the
18 requirements and intent of Chapter 8, but also providing
19 a workable framework for project proponents to utilize
20 when presenting the public benefits of their project to
21 this commission for potential investment.

22 We appreciate the opportunity to continue to
23 work with you and your staff and we certainly intend to
24 do so, appreciate your consideration, and like others, I
25 will be speaking to you again later this morning. Thank

1 you.

2 COMMISSIONER BYRNE: Great. Thank you very
3 much, Adam.

4 Next speaker is Kyle Jones. Kyle, if I didn't
5 know you, I wouldn't be able to read your last name
6 there.

7 PUBLIC MEMBER: Sorry. I was running late and
8 trying to get the card in on time. Kyle Jones, Sierra
9 Club California. Good morning.

10 Commission, I just wanted to add on to what my
11 allies said on here -- I think Jennifer knows who they
12 are -- with some concerns that we still have referred to
13 climate change analysis.

14 One item that we commented on in the initial
15 iteration of the regulations was the need for the
16 climate change analysis to kind of follow the same
17 timetables as the planning horizons, and noting that in
18 the previous version, I believe that the impacts of
19 climate change were often for 2050. So the current
20 version now has impacts of climate change being modelled
21 after 2085, but still project benefits can accrue until
22 the 2120, I believe. And so I'm concerned about how
23 that's really going to take into account, you know, the
24 governor's executive order and the need to have these
25 projects be adequately resilient to climate change. And

1 I understand that there is increased uncertainty with
2 the impacts of climate change, but we are certain that
3 those impacts will exist. And so, again, continuing
4 without modeling those impacts to project benefits will
5 possibly inflate or deflate the benefits of the project
6 and not really give the Commission a big picture of
7 what's going on.

8 Another issue that we've found with the new
9 version is over, you know, we've been thinking about is
10 how demands sites of climate impacts aren't fully
11 addressed, and we'll go into this more in written
12 comments, but things like increased ET. And I know
13 there's some more specific things in there to just run
14 off, and we'll go look at that more.

15 Then finally I had a question I raised that was
16 thought of, which is, we noticed that the projections
17 and the climate models show that the state will be
18 significantly wetter than what is already done in BDCP
19 modeling, and so we just was wondering if there would be
20 clarification on the difference between these two models
21 and provided and why the -- how the different scenarios
22 kind of arose.

23 Thank you.

24 COMMISSIONER BYRNE: Thank you very much, Kyle.

25 Any comment or questions from the commissioners?

1 COMMISSIONER CURTIN: For the whole
2 presentation, or how are we --

3 COMMISSIONER BYRNE: Just given people an
4 opportunity to jump in if they want to.

5 COMMISSIONER CURTIN: I have a lot of questions,
6 but are we just going to --

7 COMMISSIONER BYRNE: How would you prefer,
8 David, Commission questions at the end, or do you want
9 us to go article by article -- is it related to the
10 articles?

11 COMMISSIONER CURTIN: Well, it's related to the
12 presentation, so I assume it's related to the articles,
13 but, you know --

14 COMMISSIONER BYRNE: I'd leave it up to you.

15 COMMISSIONER CURTIN: Well, I do want to ask
16 Bill Swanson to come back, if you don't mind, because
17 you started off with -- the presentations have all been
18 very good, I might add, and there's a lot of detail in
19 them, so I couldn't keep track that well. But you had
20 sort of raised the question about the durability of the
21 benefits and some of the analyses -- there was these
22 projects that are out there working have a series of
23 analyses that don't seem to be reflected -- I'm not
24 sure -- in this set of regulations, because it's based
25 on hydrology. But you said there's other options to

1 evaluate, and before you -- I wasn't sure we were
2 supposed to ask at the time -- so one of the issues that
3 seems to be causing such difficulty is the uncertainty
4 of the climate change and the adaptability of the
5 management of benefits.

6 So was that what you were getting at when you
7 were talking about other options to evaluate, or -- I
8 wasn't clear on that. What were you specifically
9 indicating that is in the regulation?

10 PUBLIC MEMBER: That's exactly what I was
11 getting at. What's been laid out in the guidelines is a
12 prescriptive process to incorporate climate change into
13 a planning framework, and that's one way in which
14 climate change effects could be evaluated, but there are
15 other ways as well.

16 For example, in some of the recently completed
17 work that the Bureau of Reclamation has done, rather
18 than adopting climate change into the planning framework
19 and making predictions of what the future environment
20 will look like or the future land use will look like,
21 they used today's conditions essentially, or the 2030
22 conditions, evaluated the projects, optimized the mix of
23 benefits, and said, then, given that project and that
24 that mix of benefits, how would it perform with a
25 different climate change condition, leaving all other

1 conditions in place. In other words, it's not including
2 a whole new without project condition in the year 2070.
3 Instead, it's applying the project change sensitivity to
4 the results of the project formulation that's already
5 been completed. And that's a vastly different approach
6 than what's been described in the technical reference
7 documents. What's been laid down here, I would
8 interpret is different planning framework to that's
9 which has been applied for the past decade.

10 COMMISSIONER CURTIN: So you plan for maximizing
11 the benefit, whatever it is -- public, economic,
12 otherwise -- up to a certain period, and then you're
13 suggesting that -- you sort of outline the resiliency of
14 those benefits under different -- instead of redoing
15 your entire --

16 PUBLIC MEMBER: Exactly, yeah. So the question
17 before --

18 COMMISSIONER CURTIN: Ask Dave if that make any
19 sense or if that --

20 PUBLIC SPEAKER: These are questions before the
21 Commission, that your obligation is to question how
22 durable or resilient will your investment in public
23 benefits be, and you have a variability of options in
24 how you can make the evaluation. One of them was laid
25 out in the document, and I honestly say from a technical

1 approach, it's a very elegant approach.

2 Unfortunately --

3 COMMISSIONER CURTIN: Mathematical term, if I'm
4 not mistaken.

5 PUBLIC MEMBER: Unfortunately, it's not
6 consistent with what's already been done, and so that
7 creates some challenge for the completed work that would
8 then be adapted to get into the frame work. I'm merely
9 suggesting there may be some other methods that are more
10 expedient for you to make the same decision and perhaps
11 with the same degree of confidence in the results. And
12 it may be beneficially to ask staff to look at
13 alternative ways to bring that information to you as
14 opposed to just bringing a singular proposed approach
15 and saying either vote up or down in approach.

16 COMMISSIONER CURTIN: Well, that's why I brought
17 you back up is it's a little out of my capability to
18 express that, but I'm hoping that you got the message.
19 I think the real question is going to be, the
20 resiliency, the long-term resiliency in a future that is
21 pretty uncertain. I mean, I think Kyle mentioned that
22 it's certain that we are going to have a change; what
23 the change is, I don't think is clear at this point,
24 depending on whose documents we look at.

25 So the resiliency is critical, and we'll get to

1 that in addition to some other management areas. And
2 that's what I wanted to ask you, so thank you for that.

3 PUBLIC MEMBER: Thanks.

4 COMMISSIONER BYRNE: Commissioner Orth had a
5 question for you as well.

6 COMMISSIONER ORTH: While you are up here, as
7 well, I was really interested or intrigued by your
8 comments about establishing common assumption to kind of
9 further narrow the variability of the comparisons, you
10 know, land use and populations and those various
11 things -- and I -- I can get my brain around doing that
12 for a project, but I struggle with -- and I guess I'd
13 like your thoughts on -- is that even possible for the
14 entire state of California, given the diversity and
15 geography and conditions, can we really get ourselves to
16 a place where it's reasonable to think we can set up
17 some common assumptions that take that regional
18 variability out of it?

19 PUBLIC MEMBER: I don't know if I can give you
20 an accurate answer to that, Dave. My gut tells me the
21 time frame we have available, no. When we began the
22 CalFed storage projects in the early 2000s, that was one
23 of the first tasks that Reclamation, DWR, and the other
24 project components took on, was let's develop a set of
25 common assumptions, and it began with identification of

1 the CalSim model, which was the statewide operations
2 model, operates to CDP and state DWR budget. It goes
3 beyond that. It also then goes to what is the economic
4 common assumptions, what could we assume as far as the
5 value of agricultural projects, what do we assume as the
6 municipal willingness to pay. And the mechanisms used
7 for establishing those are recent past history.

8 So the value of agricultural products in today's
9 marketplace are the basis for judging agricultural
10 benefits. It's very difficult to say how would we
11 speculate what that would be in the year 2070. That's
12 given not just by California conditions or just the U.S.
13 It's global.

14 The same goes for the willingness to pay for
15 municipalities. That's being driven effectively by the
16 alternative costs of other projects. If -- essentially
17 the cost for municipality to buy water from a project
18 is, well, what would be my next least costly
19 alternative. Well, those will change over time, as
20 we've seen the cost of desalination, the cost of
21 advanced water treatment is reduced over time, what
22 would we say is the case in the year 2070 for that?
23 What do we assume for the value of energy in the year
24 the year 2070, which is a big driver for advanced water
25 treatment?

1 The third point I'd make on that is that the
2 other mechanism that's used for looking at the value of
3 water was the recent water transfer markets. So we look
4 at the cost that people are willing the pay to transfer
5 water from one part of the state, one water use to
6 other, whether from ag to urban or ag to environmental.
7 If you remember the early 2000s, it was the
8 environmental water account that effectively did that.
9 Well, again, that's based on past recent experience.

10 If we say we leave all things in place -- one of
11 the things I noted in the description of how we would
12 define the "without project conditions" is that the only
13 changes from today that would be in the "without project
14 conditions" are projects or regulations that have been
15 authorized, permitted, and funded.

16 Well, that's a big leap to get from 2016 to the
17 year 2070 saying we would have the exact same
18 infrastructure in 55 years, yet the vast specific
19 climate we would have done nothing to adapt it to.

20 So I guess the short answer to your question,
21 since there's a lot of speculation and conjecture that
22 would be needed to get from where we are today to a
23 universally accepted set of common assumptions for
24 economic conditions, environmental conditions,
25 infrastructure, land use, and maybe population, be a big

1 leap.

2 As a consequence, if each project applicant has
3 to take that on themselves, it's reasonable to expect
4 you will get applications that are based on different
5 assumptions.

6 COMMISSIONER ORTH: Thank you.

7 COMMISSIONER BYRNE: Thanks you, Bill.

8 Jim Watson from Site 30 has a public comment.

9 PUBLIC MEMBER: Thank you. My comment is -- I
10 was here the -- first, appreciate the opportunity to
11 speak and the effort that staff is going through to take
12 the complexities of Prop 1 and turn it into regulations
13 that are appropriate and meaningful. My comment today
14 comments the section of Prop 1, which was 79753,
15 environmental mitigation compliance obligations, that
16 for the current draft, September 2nd, it's going back to
17 the language that was in the November 24th staff working
18 draft. It doesn't reflect the language that was in the
19 January 11 version. We believe this is a critical
20 component because it -- it was the intent of the
21 legislature in three locations to deal with the subject
22 of existing mitigation. One was to water acquisitions,
23 second is protection of streams and waters, and third
24 was the public benefits under Chapter 8.

25 So by -- if this language in addition has a new

1 concept of new environmental mitigation compliance
2 obligations but also was not intended by the
3 legislature, so with these two items, we end up with
4 some significant concerns that the statutes are being
5 read in isolation. They need to really be read
6 together, and where there is potential overlap, be read
7 in a way that harmonizes.

8 They also have to be an applied into the terms
9 and quantifications that are supporting the language of
10 the provision, which means, in this case for Chapter 8
11 and except for the -- except for the -- expect for those
12 associated with providing the public benefits, there was
13 a clear intent of the legislature. So these are two
14 procedural deviations from how you normally interpret
15 statutes, and we feel that the fact that the legislature
16 deliberately put these in three locations and
17 specifically in Chapter 8, we request that you go back
18 to the language that was in the January 11 version of
19 the draft regulations.

20 We will be following up with written comments,
21 but I wanted to focus on this critical item today.

22 Thank you.

23 COMMISSIONER BYRNE: Thank you, Jim.

24 Commissioner, questions or comments? I know
25 that Commissioner Del Bosque and Mr. Curtain as well.

1 COMMISSIONER DEL BOSQUE: My question was about
2 a comment that mentioned about increasing application
3 costs tenfold. I'm not sure who made that comment, but
4 I'd like to understand that a little bit more, why or if
5 application costs have -- have increased. Maybe it
6 was -- maybe it was Mayor Lopez. Mayor Lopez, could I
7 get a little clarification on that?

8 PUBLIC MEMBER: Though I am not Mayor Lopez, if
9 you'd like me to, I'll go ahead and address that. I
10 believe at some point in time early on, Commission asked
11 staff to do an assessment of what -- what would the
12 estimated cost for an applicant be for applying for
13 these type of projects, and I think it came up with a
14 figure. In going to our consultants and getting an
15 estimate in terms of everything that will have to be
16 done to meet your current requirements, we have seen
17 that the estimates coming back from what we originally
18 understood are significant, and that's -- that's part of
19 the echoing here by lots of the experts, is that when
20 you add these additional layers of work that has to be
21 done, not only is it going to be time-consuming, but now
22 you have some challenge because you've shorten our
23 window, but it adds significant cost.

24 And I know that all of you have probably been
25 involved in computer modeling and things along those

1 lines. It's not cheap. And if you do very many
2 iterations, it becomes even more expensive. So the
3 bottom line is that based on our estimates and our
4 original understanding of what staff had produced of the
5 original number, we are looking easily at about tenfold.
6 That's significant.

7 And I would just ask, if you do not have a
8 current figure by staff, have them revisit that. They
9 have the first one. Have them revisit the second one.
10 It's good information for you to have because it is
11 going to be challenging for lots of folks to meet that
12 hurdle if that number is significant.

13 Thank you.

14 COMMISSIONER BYRNE: Thank you, Mario.

15 Okay. Commissioner Curtin?

16 COMMISSIONER CURTIN: I'm just going to hold off
17 for a while. Now I'm baffled. We can get back to it.

18 COMMISSIONER BYRNE: Okay. Anybody else?

19 I have one question for you, Dave, on the
20 environmental definition of environmental obligations --
21 existing environmental mitigation compliance
22 obligations. Is there -- so we have a definition. I
23 get it's a little more expanded than what it was. And
24 is it referenced in the document just as simply -- you
25 can't -- you know, you are prohibited from satisfying

1 the existing environmental mitigation obligations as
2 statement -- I was trying to find it in the document.

3 MR. GUTIERREZ: So we are trying to find it
4 right now too.

5 COMMISSIONER BYRNE: The definition. I'm just
6 thinking where in the document does it say --

7 MR. GUTIERREZ: Commissioner Byrne, I think
8 it -- Joe is trying to look that up right now. We can
9 move on and come and back --

10 COMMISSIONER BYRNE: Yeah, we can move and come
11 back. That's fine. I just wanted to find it.

12 MR. GUTIERREZ: We'll do that.

13 COMMISSIONER BYRNE: Okay. With that, you want
14 to feel free to move on to the next one, we can -- I'm
15 happy to have Joe come up later.

16 MR. GUTIERREZ: So we will definitely come back
17 to that. So, again, we appreciate these comments.
18 These are actually really good comments, the type of
19 comments that we are looking for in order to make a
20 better regulation in the future.

21 So moving on to Article 3. So as I said,
22 Article 2 and Article 3 are going to kind of work
23 together, and we've already detailed out Article 3. So
24 Article 2, again, that's going to be what the
25 application is required.

1 Article 3 is all about the Commission staff
2 taking that information and actually doing the
3 evaluation. So we went over that in detail during last
4 Commission meeting, and I'll trying not to get in too
5 much detail again on that, but essentially lays out the
6 criteria used by Commission staff to evaluate, and then
7 ultimately develop a preliminary score for the
8 commissioners to consider and potentially change in
9 fact.

10 So we've got an outline for what's going to be
11 required and what's going to be considered for part of
12 the additional eligibility requirements. That's
13 basically outlined already in the statutes in addition
14 to what's going to be considered a complete application.

15 Then that roles into that detailed presentation
16 that I gave last time and the five metrics that are
17 going to be used to actually try to figure out to score
18 projects in the future, how those will be evaluated, how
19 each of the components will be evaluated, and then
20 ultimately, details of how they will actually be scored.
21 And then 6009 outlines the applicant's appeal process
22 for the public benefits ratio component.

23 So with that, that's what Article 3 is, and
24 again, I'll open the question and we'll come back to try
25 to more fully answer your question. Thank you.

1 COMMISSIONER BYRNE: Thank you, Dave.

2 Okay. We'll move into public comment in Article
3 Number 3. Starts off with Otis Wollan, American River
4 Watershed Institute, followed by Lucinda Shih.

5 PUBLIC MEMBER: Thank you again for this
6 opportunity to address the Commission. During my
7 career -- I'm almost 70 now and retired, but during
8 career, I was a professional facilitator, basically
9 focused on skillful means of public feedback of all
10 kinds of those feedback loops.

11 What I'm seeing here in your decision-making
12 process out through -- I believe I'm looking at the
13 GAANT chart -- you get the draft rankings and you have
14 an appeals process, and then you have the final
15 rankings. And that's seems to be all internal process.
16 There was the applicant looking at your ranking and
17 appeals it, and then you review it. But that would be a
18 very strategic time to open up a window for stakeholder
19 feedback and review from the public, from others.

20 There is a bank of expertise out there that can
21 help you make wise decisions, you know, there's --
22 there's lots of perspectives need to be brought to bear
23 in order to make this money that you will be allocating
24 effective, efficient, and smart.

25 So I really urge you to revisit the process and

1 not have a process that's fully internal to applicant,
2 staff, and Commission, because the Commission look out
3 to the broad bank of expertise and call on for
4 assistance. Have people help you look at these things
5 that and make sure that this is the best possible
6 investment the State of California can make.

7 Thanks very much.

8 COMMISSIONER BYRNE: Thank you Otis. I would
9 say that's going to be an open public process when the
10 Commission would have the appeals, so that's primarily
11 our purpose would be to get input from folks coming to
12 meetings and also an opportunity for people that --
13 public documents submitted are made public as well, so
14 hopefully it will be a free flow of information for the
15 people.

16 Lucinda, welcome.

17 PUBLIC MEMBER: I'm Lucinda Shih from Contra
18 Costa Water District, as you know, a project proponent
19 for Los Vaqueros expansion whose beneficiaries
20 include -- the potential partners are Bay Area Water
21 Agency, as well as south of Delta wetlands refuges.

22 You might not -- well, I know you've never seen
23 me before because I've never seen any of you before, but
24 usually it was Marguerite Patil and Maureen Martin here.
25 Usually they have me chained to my desk doing computer

1 work. I'm the model lead for the Los Vaqueros expansion
2 project, but since they were unable to make it today
3 because of a scheduling conflict, very sad to miss this,
4 they unlocked my chains and said, "Go, go, talk about
5 modeling," which I'm always happy to do, also the
6 blinding light is good.

7 Got to keep it short. Marguerite told me that.

8 UNIDENTIFIED SPEAKER: Too late.

9 PUBLIC MEMBER: We do have a lot of concerns.
10 We are currently reviewing the modeling that just came
11 out last week, and we'll submit all that stuff in
12 writing to you before the deadline. But I just did want
13 to focus on, because I am the modeler, on the modeling
14 tools. I apologize. I wasn't sure whether I should go
15 into Article 2 or Article 3, but I think you kind of
16 straddled our concerns about the climate change modeling
17 the input hydrology. As Mr. Wollan and also Mr. Jones
18 already referred to, it's kind of counterintuitive that
19 the future in the scenarios have been put forth, the
20 future is wetter in all year types. That's not quite
21 the climate change modeling that I am familiar with, the
22 science that I'm familiar with has been saying. And
23 furthermore, it's not what we expected to see, these
24 scenarios are not what we expected to see coming out of
25 the Commission based on both your interest and all our

1 stakeholder interests in evaluating a wide range of high
2 hydrologies.

3 We don't know what the future holds, but we are
4 pretty sure that looking at just wetter dry years and
5 wetter wet years is not going to encompass the full
6 range of possibilities, so from a perspective of the
7 Commission being able to review all the applications and
8 all of the projects, it -- we don't think it's going to
9 be useful unless you have, like other people have
10 already mentioned, evaluation of the more extremity
11 bookend events rather than sort of the more limited
12 range, because we do want to really look at what these
13 projects can do given the uncertainty of the future. We
14 can't do anything about the uncertainty, but we can try
15 to put bounds on it in our modeling assumptions based on
16 assumptions.

17 So again, Marguerite said to keep it short, but
18 the -- I would ask for maybe a public technical workshop
19 so we can get into some of the more details about, you
20 know, what -- why the staff came up with these -- went
21 with these particular assumptions. I think that would
22 be really useful, because I think there are also policy
23 indications of how it differs from the information, how
24 it differs from the baseline that has been used in the
25 California water fix, the BDCP modeling. So, again, we

1 are also interested in hearing what the other
2 stakeholders' concerns are, so that would be the request
3 for a public technical workshop.

4 Thank you for the opportunity.

5 COMMISSIONER BYRNE: Great. Thank you very
6 much, Lucinda.

7 Okay. Rachel Zwillinger followed by Ellen Wehr
8 and then Jeffrey Volgert.

9 PUBLIC MEMBER: Again, Rachel Zwillinger with
10 Defenders of Wildlife. I first wanted to echo Lucinda's
11 request for a technical workshop. I think that would be
12 help that we are also concerned about the apparent
13 dissimilarities between these models and those used in
14 BDCP and Water Fix in that that could be helpful to
15 further understand the details.

16 I have three major points to make with respect
17 to Article 3. The first of which is the inclusion of
18 water system improvements in the scoring criteria, and
19 that shows up in Section 6007(b)(3) and (d) and table 5,
20 and in all of section 6008. I think inclusion of this,
21 the water system improvements as part of the scoring
22 criteria is inconsistent with the statute, and that it's
23 a very big problem.

24 Water Code Section 79750(c) clearly states that
25 projects are to be ranked based on the expected return

1 for the public investment as measured by the magnitude
2 of the public benefits provided.

3 And so under this section of the statute, the
4 ranking can only be based on the magnitude of the
5 specifically enumerated public benefits. Water system
6 improvements are not a specifically enumerated public
7 benefits, and I think they are pretty clearly a private
8 benefit. They are to be considered by the Commission.
9 And I think it's made clear in section 79750(b) where it
10 states that the funded water storage projects must
11 include the operation of the state water system, but
12 it's appropriate for inclusion as an eligibility
13 criteria, not as a part of the ranking system. And I
14 think it's already one of the eligibility criteria in
15 6006(c)(2)(b). And that is the only place where I think
16 it should be appropriately considered.

17 The second issue, then, takes me to the scoring.
18 Right now, the water system improvements is, you know,
19 accounts for 20 out of 100 points, and I think that
20 needs to be removed from the scoring. As an alternative
21 approach, we would suggest allotting 40 points for
22 ecosystems benefits and priorities since that is
23 supposed to be half of the public benefits that are
24 funded; 40 points for other public benefits, so water
25 quality improvements, flood control, emergency response,

1 and recreation; 10 points for resiliency; and 10 points
2 for implementation risks. And I think both those are
3 properly considered because they speak to the magnitude
4 of public benefits that will be provided.

5 My third concern, which straddles sort of across
6 articles 3 and 4, and I apologize for that, is focused
7 on public participation in the process that the
8 regulations set up. I also really echo the concern that
9 we heard earlier about the lack of public engagement
10 that is specified in the regulation. And I appreciate
11 commissioner comments about having an open public
12 process, but in the way the regulations are currently
13 drafted, that's not what it looks like.

14 So first, I think Water Code Section 79750(c)
15 states that "Projects shall be selected by the
16 Commission through a competitive public process that
17 ranks potential projects..."

18 And so its suggested that public process needs
19 to be included as a part of the ranking approach. Right
20 now, to the regulations, I think the only opportunity
21 for formal public comment appears in Section 6013, after
22 projects have been ranked already, the maximum
23 eligibility criteria has been determined. So I think
24 that's a big problem.

25 The other process point that I think is a big

1 problem is that the regulations unlawfully limit the
2 Commission's ability to alter staff scoring. That
3 statute is also clear that projects shall be selected by
4 the Commission, and right now, the way the regulations
5 are drafted, the Commission only make certain
6 adjustments to certain categories and by a certain
7 amount. And I think that is also contrary to the intent
8 of the statute, whereas the commissioners are to select
9 projects.

10 So for both of these reasons, I think that the
11 process for ranking and selecting the projects is
12 contrary to the statute. As an alternative proposal, we
13 would suggest that project components submit an
14 application, that staff review the project eligibility
15 and developed draft scores, and that then there's an
16 opportunity for public review and comment on the
17 eligibility and on the draft scores. And the project,
18 in that, you -- rather than having an appeal process
19 just for the project component, they have an opportunity
20 during the public comment process to also contest the
21 scores.

22 After that public comment process, the
23 Commission should direct staff to revise the recommended
24 scores based on the public comments received in their
25 own independent reviewed, and the scoring decisions that

1 are made should be based on substantial evidence or some
2 other standard to guide the Commission's review of the
3 scoring.

4 Thank you.

5 COMMISSIONER BYRNE: Thank you very much,
6 Rachel.

7 Okay. Next up is Ellen Wehr, Grassland Water
8 District.

9 PUBLIC MEMBER: Good morning, Chair Byrne, Vice
10 Chair Del Bosque, members of the Commission. My name is
11 an Ellen Wehr, and I work for the Grassland Water
12 District in Merced County.

13 Our district provides water to the grasslands
14 ecological area, which is -- it contains much of the
15 last remaining wetlands in California's great Central
16 Valley. In addition to providing water to our
17 landowners who serve as stewards of the grasslands, we
18 also convey waters to adjacent to state and federal
19 wildlife refuges that are within the internationally
20 significant grasslands ecological area.

21 You haven't heard from us before, because as the
22 regulations were being developed, there was not yet a
23 specific water storage proposal that proposed to provide
24 direct public benefits to wetlands and refuges through
25 water supply delivers, but now there is. Contra Costa

1 Water District has proposed to partner with refuge water
2 suppliers to provide through the Los Vaqueros Expansion
3 Project, what could be a very significant and important
4 public benefit through direct water delivers to south of
5 delta refuges.

6 Refuges also provide significant groundwater
7 recharge benefits to local communities and the
8 development of new reliability sources of supply for
9 south of delta refuges would increase the flexibility
10 and the timing and method of refuge water delivers,
11 which will in turn benefit our agricultural neighbors.

12 We hope and believe that there will be other
13 water storage projects that propose to provide direct
14 public benefits through refuge water supply deliveries
15 in the Central Valley. I'm here on behalf of our
16 district land owners that I mentioned, but also on
17 behalf of all sports people in California, wildlife
18 advocates, and those like me who appreciate the
19 migration of millions of migratory waterfowl each year
20 through the Central Valley.

21 25 years ago, wildlife agencies identified the
22 specific volume of water that's needed to sustain the 19
23 designated refuges within the Central Valley. That
24 is -- has two components, that water supply. The first
25 is Level 2. Level 2 water makes up two-thirds of water

1 supply from the refuges, and that is already delivered
2 to most refuges through the Central Valley Project.

3 The remaining one-third that is needed to
4 sustain the refuges is referred to as Incremental
5 Level 4 water, and that was supposed to come from other
6 sources of supply. And after 25 years there's still a
7 large gap in the Incremental Level 4 refuge water needs
8 and the available supply.

9 So I'd like to express our support to public
10 benefits assessment process and also point out our
11 understanding that public benefits proposed for refuges
12 and wetlands should create new water for refuges. So
13 what we referred to is that Incremental Level 4 water
14 supply. It shouldn't be used to just simply replace
15 water that's already been delivered to the refuges.
16 Secondly, we think there should be basic terms for
17 agreements that are proposed between the resource
18 agencies that will implement these public benefits, and
19 that the Commission should establish triggers for
20 assessing, up front, what it will do if these public
21 benefits that are proposed are not realized.

22 Water storage projects, as you may know, are one
23 of the prime conflicts of wetlands and habitat law in
24 California. California has lost 90 percent of its
25 original wetlands. We encourage the Commission to give

1 strong preference to water storage projects that
2 dedicate specific portion of their yield toward closing
3 the Incremental Level 4 water supply gap.

4 Thank you.

5 COMMISSIONER BYRNE: Thank you very much, Ellen.
6 Quick point of order. Court reporter may need a
7 break. Right now break or ten minutes.

8 THE REPORTER: Ten minutes is find.

9 COMMISSIONER BYRNE: Okay. I've got about five
10 more public comments, and then we'll take a ten minute
11 break for the court reporter.

12 COMMISSIONER CURTIN: So I just wanted to
13 comment that and maybe make sure Dave hears that part of
14 my concern has always been focusing on so some version
15 of the environmental water bank, which sounds like what
16 this is all about, so we incorporate this concept and
17 these regulation, or we will be.

18 It makes it more adoptable in the long run if
19 there's some ability to put water where it's needed at
20 the time it's needed.

21 MR. GUTIERREZ: I don't think there's any
22 restriction of how we are going to proceed with an
23 applicant and how they are going the make an agreement
24 with an agency and how they are going to provide those
25 project benefits so I would say that's --

1 COMMISSIONER CURTIN: It's a question of --

2 MR. GUTIERREZ: -- how you value them, right?

3 Well, value, but eventually that's going to lead the
4 findings of whether or not that's a project benefit and
5 then ultimately a contract, and the contract is going to
6 be between the applicant and the agency to manage those
7 public benefits in the future. And so that's going to
8 all be outlined in a contract of how do you go about
9 doing that, so I don't think there's anything in the
10 regulations that --

11 COMMISSIONER CURTIN: It concludes that, and so
12 that contract has the potential to be adaptable.

13 MR. GUTIERREZ: It has to be adaptable.

14 COMMISSIONER CURTIN: It has about to be
15 adaptable, so if there's another source of water for
16 wetlands coming in from a different area because of a
17 successful project, then that water, which was so
18 initially promised for wetlands, can be utilized for
19 other purposes.

20 MR. GUTIERREZ: Yeah, I think what you've
21 heard -- and we would completely agree this over and
22 over again -- is we cannot and we will not be able to
23 predict the future, exactly what it's going to look
24 like, you know, 50 years from now or whatever, and the
25 project is still in the middle of the proceeding. And

1 therefore, we are going to have to adapt to those
2 changes and be up to the applicant and the agency --

3 COMMISSIONER CURTIN: Okay.

4 MR. GUTIERREZ: -- to figure out how to adapt to
5 that.

6 COMMISSIONER CURTIN: Okay. Thanks.

7 COMMISSIONER BYRNE: Okay. Jeffrey Volgert.

8 Welcome back, Jeff. And then followed by Pablo Garza.

9 PUBLIC MEMBER: Thank you Chairman Byrne, and
10 members of the Committee -- or the Commission. My name
11 is Jeffrey Volberg. I'm with the California Waterfowl
12 Association, where I have the title of director of water
13 law and policy; California Water Law Association --
14 California Waterfowl Association is an organization that
15 restores and manages wetlands, mainly for the benefit of
16 waterfowl, ducks, and geese, migratory and locally
17 breeding birds.

18 Ms. Wehr covered a number of the subjects that I
19 would have covered. I will make very specific comments
20 toward the regulations in writing. I would like to
21 reemphasize, which Ms. Wehr said, and state that the
22 provision of Level 4 water is an ideal environmental
23 benefit to be included in these regulations and in the
24 consideration of these projects. Sites Reservoir, in
25 particular, and Los Vaqueros expansion both have

1 tremendous potential to provide the water that was
2 promised in 1992 through the Central Valley Project
3 Improvement Act and has never been fully provided for
4 that Incremental Level 4 water. This is a tremendous
5 opportunity and should be considered as a public benefit
6 that would -- that would trigger public investment of
7 dollars from Proposition 1.

8 So thank you, and I'll provide more specific
9 comments in writing. Thanks.

10 COMMISSIONER BYRNE: Thank you very much, Jeff.

11 Pablo Garza followed by Jennifer Clary.

12 PUBLIC MEMBER: I agree with other comments that
13 have been made and I think they have been articulated
14 better, but I'll summarize some of those points.

15 On the water system improvements measurement, I
16 agree with the comments of Ms. Zwillinger that that is
17 an inappropriate criteria to be included. It's not
18 identified as a public benefit in Proposition 1. It is
19 an eligibility requirement but not something that looks
20 like it should be ranked, and I'd agree the deletion of
21 that from -- as an evaluation criteria -- criterion, and
22 also from table -- is it table 6 -- on the component
23 scores.

24 So definite support those, that comment, and
25 think that's consistent with Proposition 1.

1 We also share comment of Ms. Wehr and
2 Mr. Volberg on refuge water. We think it's a really
3 important environmental public benefit, and appreciate
4 the inclusion under the table. We might want to make --
5 put a finer point on it that kind of along the line of
6 it said that this should be additional and new water to
7 give to the Level 4 standard, not replace existed Level
8 3 water, and that's where we see the public benefit on
9 that.

10 Agree with the comments on public -- on process,
11 that Mr. Wollan made and Ms. Zwillinger made. We think
12 it's important to have an opportunity for public input
13 on the evaluation scores, and it's -- that may be the
14 intent, but it's not in the regulation as drafted.

15 Again, kind of on the components on table 6, the
16 maximum point values, support deleting the water system
17 improvement and moving those points to the environmental
18 benefits. 50 percent or a quarter of -- 50 percent of
19 these funds need to deliver environmental benefits, and
20 we think that's appropriate reallocation of the points.

21 And then a final comment -- and it's maybe more
22 of a question on the normalization of the scores, and
23 I'm probably being too -- so I don't quite understand
24 what the num -- sorry -- the denominator is supposed to
25 be. I think it's supposed to be the highest -- you are

1 going to normalize each component of each project, and
2 you are going to compare it with the highest score of
3 all the other projects on that component. I think I'm
4 reading that right, but I'm not sure. So it might be
5 help to clarify that so it's a little clear what the
6 denominator means.

7 And then I'm not sure -- I'm still trying to
8 think through what that normalization process does, you
9 know, sort of creates a curve, right, grading everyone
10 on a curve, but I think the concern, again, that I
11 stated earlier about smaller projects and the ability to
12 committee with these funds, and I that potentially this
13 discriminates against the smaller ones.

14 I'll be back one more time. Thank you.

15 COMMISSIONER BYRNE: Thank you, Pablo.
16 Jennifer, Adam Robin, and then Kyle, and then we'll take
17 a break after that.

18 PUBLIC MEMBER: Okay. I'm be short and to the
19 point. And so in continuing what my colleagues have
20 said, I think we should delete table 5, water system
21 improvements, and then -- and table 6, the component
22 scores. I want to mention the implementation risks that
23 as it's written in the regulations, that risk is only as
24 it applies to completion of the project, and we think
25 that should be expanded to include the risks of

1 benefits, like are those benefits -- what's the risk of
2 benefits if benefits won't be provided as promised. So
3 we just do a little expanded definition there.

4 And, yeah, I think -- this kind of normalization
5 score, I'm really confused by it, because it looks like
6 what the purpose of it is, is to the rank the projects,
7 but I thought the project ranking would come by the
8 score for expected return on public investment, and that
9 doesn't look like it's supposed to be a comparative
10 score. It's supposed to be, like, if you've got 12
11 projects and they are all great and all 100 percent,
12 that's wonderful, and then the Commission has to figure
13 out which is the best project based on other factors.
14 So I just think it's -- you're, like, creating a ranking
15 and then you are going rank them. So I'm totally
16 confused, and I'm sure you guys will get it figured out.

17 Thank you.

18 COMMISSIONER BYRNE: Thank you, Jennifer. Adam
19 and then Kyle.

20 PUBLIC MEMBER: Good morning. Adam Robins with
21 the Association of California Water Agencies.
22 Appreciate the opportunity to provide comment on behalf
23 of the California public water agencies. As I
24 previously mentioned, we are -- revised draft regulatory
25 package and will be submitted detailed written comments

1 on the evaluation criteria and funding processes, as
2 well as the application process.

3 It's obviously critical that the applications
4 and technical review inform your understanding of what
5 these projects -- the public benefits that these
6 projects provide. However, we think it's important to
7 note that the continuous appropriation of Prop 1 funds
8 to the Commission under Chapter 8 highlight the need for
9 a couple things.

10 Number one is an open and transparent process as
11 you developed these regulations and as you make your
12 decisions. I think that's been the case over the past
13 couple years, and I think that's the case with the
14 process that you've outlined in the regulations. But it
15 also highlights the need for this Commission to retain
16 its direct authority over funding for projects. And,
17 again, the applications play an important role in
18 forming your decisions, but ultimately the decisions are
19 going to be based on a ranking that you, the Commission,
20 decide upon.

21 As mentioned previously, we strongly believe
22 that these regulations need to focus on twin objectives
23 of ensuring the clients with the requirements intent of
24 Chapter 8, but also provide a workable framework for
25 project components to utilize as they present the public

1 benefits of their project to you with their potential
2 investment.

3 And as you know, while the Commission has been
4 charged with the responsibility of allocating the
5 Chapter 8 funds for the public benefits of these
6 projects, any project which will be funded through this
7 program must also secure substantial additional funding
8 and support from local project proponents.

9 Accordingly, we intend for our written comments
10 to provide specific suggestions that are consistent with
11 these objectives. We really appreciate all the efforts
12 of staff to help drive this process forward and you, the
13 Commission, for the consideration of these critical
14 issues. And we will be submitting comments on
15 October 3rd.

16 Appreciate your consideration. Thank you

17 COMMISSIONER BYRNE: Thank you very much, Adam.
18 Kyle? I appreciate the clarity.

19 PUBLIC SPEAKER: I took my time.

20 Kyle Jones with Sierra Club California, and I
21 don't want to belabor the points that I think Defenders
22 of Wildlife and Nature Conservancy and more actually
23 made, and as well the Otis. Thank you.

24 We agree they are -- I understand the intent the
25 Commission was to provide a robust public process, but

1 we would like to see more of that spelled out,
2 even if it is just a just extra reference to existing
3 APA requirements, but something in there so we can all
4 plan our schedules a little better in the future. That
5 would be helpful. And I just also want to mention again
6 that the -- we agreed that the limits on Commission
7 authorities should be unshackled from those, but at the
8 same time, we would like to see some sort of procedural
9 safeguards regarding Commission findings. And I do like
10 the standard of substantial evidence being used, just to
11 make sure there's something objective in the regulations
12 to, you know, protect the process.

13 Thank you.

14 COMMISSIONER BYRNE: Thank you very much, Kyle.

15 So in interest of the court reporter's fingers
16 and durability for later, we are going to take a ten --
17 is a ten-minute break okay?

18 THE REPORTER: Yeah, that's find.

19 COMMISSIONER BYRNE: Ten-minute break right now.
20 It is 11:13. We'll come back at 11:25.

21 (Brief recess was taken.)

22 COMMISSIONER BYRNE: I see a quorum of members
23 up here. So we'll officially come back into the meeting
24 and pick up where we were. And at this point, we were
25 talking about Article Number 3. We had public comment.

1 I'd like to give commissioners an opportunity to comment
2 if they'd like on that, and if not, we can move to
3 Article 4.

4 Okay. Seeing none, we'll go to Article 4.

5 Dave, give a quick introduction and then go to
6 public comments.

7 MR. GUTIERREZ: Okay. Almost there, actually.

8 So Article 4, conditional eligibility and
9 funding process. So Article 4 is where we are kind of
10 wrapping everything up. We are taking the information
11 that we developed. We are taking the scoring, and then
12 we are developing the ranking and providing the funding.

13 It also includes the potential funding for
14 environmental documentation and permitting, if decided
15 by the Commission. It also talks about how the
16 Commission can adjust particular scores in the appeal
17 process for considerations and how we run through that,
18 and this includes some of the components including the
19 project benefit ratio to water system, risk resiliency,
20 and monetized benefits, which the Commission will adjust
21 as necessary.

22 The ranking of the projects that leads to the
23 assignment of conditional eligibility and amounts is
24 next, and then finally the distribution of the available
25 funds to the winning applicants. So all this the laid

1 out in Article 4. And then finally what we have in
2 Article 4 is the description of the findings. The
3 findings are what's made by the various agency. There's
4 kind of two findings there are outlined in the statutes.
5 One is Commission's findings, but the one we are talking
6 about here is the findings of the agencies that will
7 ultimately lead to a future contract.

8 So, remember, we need findings to make sure that
9 the project benefits are in fact project benefits. We
10 use that in order to score the projects, and then when
11 you get closer to actual design and potential
12 construction of the projects, that is when we'll get
13 more towards a contract between agencies. So this is
14 outlined, the finance part, in Article 4.

15 So with that, I'll leave it to, again, the stake
16 holders to give us comments in Article 4. And we'll
17 talk quickly about Article 5 and kind of wrap up some of
18 the things that we've heard today and some of the next
19 steps that I think we are going to need to do in order
20 to get to October of potentially finishing out these
21 regulations this year.

22 Thank you.

23 COMMISSIONER BYRNE: Thank you, Dave.

24 First speaker is Rachel Zwillinger followed
25 Jennifer Clary, Kyle Jones, Michelle Denning. And

1 Rachel, we'll do her last since she's not back yet.

2 Jennifer.

3 PUBLIC MEMBER: I get to go first, wow.

4 COMMISSIONER BYRNE: Those who were last shall
5 be first. I think you were the last time -- or Kyle
6 was.

7 PUBLIC SPEAKER: Jennifer Clary, Clean Water
8 Action. And we've made lot of comments already. We've
9 already talked about the need for a stronger Commission
10 role in making decisions based on some kind of standard.
11 I kind of want to highlight the issue of infinite
12 technical review, because this was an item that was
13 removed by staff, I think back in June, and just the
14 comments that we've heard from folks from the experts
15 today have actually given us a lot of good information
16 and a lot of good feedback on the regulations. And I
17 can't help but think that that technical review panel
18 that was in the original regulations might also be a
19 valuable tool. So just kind of putting in a plug for
20 putting back some of the things that were taken out.

21 Thank you.

22 COMMISSIONER BYRNE: Thank you, Jennifer.

23 Kyle? You good.

24 Okay. Michelle Denning followed by Rachel.

25 PUBLIC MEMBER: Good morning. Thank you again.

1 I'll be quick. 6011(b)(1), (2), and (3), have an author
2 of many analyses and documents and maybe of some of the
3 things that you might see in an application. One limits
4 the Commission to consider information provided in the
5 executive summary and state policy. And I would hope
6 that you have the freedom to look throughout the entire
7 application, as the applicants would be putting a lot of
8 work into that.

9 Also the Commission shall consider the technical
10 review comments and evaluate if the comments are
11 consistent. I just think that a little bit the
12 commissioners shouldn't be limited so much in what they
13 can consider.

14 I don't know the organization -- (c)(8). It
15 says, "The proposed project appears to be feasible." So
16 I would think in your application process you have a
17 definition of feasibility, and that the staff are
18 advising you, does it meet the definition of feasible or
19 not?

20 Subsection 10, "The proposed project is
21 consistent with all applicable laws and regulations."

22 Applications won't quite be there, I think,
23 based on the regulation draft. Legal compliance will be
24 provided so they can't really be determined to be fully
25 applicable. Plus, there are all kind of federal laws,

1 and without federal involvement in your evaluation, I'm
2 not sure how you do determine the compliance of federal
3 law.

4 And then on (d), staff shall rank -- create
5 these ranks and shall include the projects with the
6 total expected return investment score of 85 or higher.
7 And I think you might consider a curve, and the reason I
8 say that is because some of your ratings you might still
9 have the highest rated project but same environment --
10 an organization of ranking on that has both a regulatory
11 responsibility as well as a contractual responsibility,
12 may be conflicted and have a difficult time giving a
13 high number to storage projects. So a curve might be a
14 better way to deal with the scores because your top ones
15 might have a score of 45 rather than 85.

16 So that's just my thoughts on that. Thank you.

17 COMMISSIONER BYRNE: Thank you very much,
18 Michelle.

19 Rachel Zwillinger.

20 PUBLIC MEMBER: All right. Last time for me
21 today. Rachel Zwillinger with Defenders of Wildlife,
22 and I want to focus on section 6014 of the regulations,
23 which focuses on managing public benefits. And in
24 particular, we think this is an essential component of
25 the regulations, because this is how we are going to

1 make sure that the funding of public benefits actually
2 materialize. So we previously requested that the
3 regulations at least provide minimum terms that the
4 contracts between the agencies -- that's DFW, DWR, and
5 the state board -- who are charged with managing public
6 benefits they are supposed to enter into with the public
7 applicants. So those minimum contract terms that we
8 suggested were that the contracts be subject to public
9 review and comment, that they include a right of third
10 party enforcement, and they specify how adaptive
11 management will be implemented, and that they require
12 the monitoring data and reports be made available to the
13 public.

14 We are really concerned in the latest draft of
15 the regulations that there are almost no details about
16 how public benefits will be managed and what will be in
17 contracts with the agencies.

18 And so in particular, we think this approach in
19 the current draft of the regulations is problematic for
20 two reasons. First, the water code specifies in section
21 79754 that the -- that in consultation with the
22 Department of Fish and Wildlife, the state board, and
23 Department of Water Resources, the Commission shall
24 develop and adopt by regulation methods for
25 quantification and management of public benefits.

1 And what you have in the current draft of the
2 regulation is hundreds of pages of methods for
3 quantification and public benefits and, arguably, no
4 methods for management of public benefits. And like we
5 said before, the management of public benefits is
6 important because that's how we actually see that the
7 wildlife refuges and others who could benefit from
8 the -- these funds are actually going to see the
9 benefits on the ground.

10 In addition to the lack of details of how public
11 benefits will be managed and what will be in the
12 contracts with the agencies, we are concerned about an
13 apparent shift in responsibility for management of
14 public benefits from the expert agencies to the Water
15 Commission.

16 And so in particular, the -- the statute
17 indicates, in section 79755(a)(3), that the project
18 applicant has to enter into a contract with the public
19 agency to ensure that the public contributions of funds
20 pursuant to the chapter achieves the public benefits
21 identified for project. But all there is in the
22 regulations, in section 6014(b), is a statement that the
23 project applicant will entered into contracts with the
24 agencies to administer the public benefits of the
25 projects.

1 And then responsibility for actually ensuring
2 that the public benefits accrue seems to have been
3 placed instead of with the contracts with the individual
4 resource agency with the funding agreement with the
5 Commission. And we think that's problematic, that it is
6 the expert agencies that have the expertise and ongoing
7 obligation to manage the contracts, and that the terms
8 that define how the public benefits will be managed need
9 to be in those contracts with the agency, rather than in
10 the funding agreement with the Commission.

11 Thank you.

12 COMMISSIONER BYRNE: Thank you very much,
13 Rachel.

14 Commissioner comments or questions? I'll do a
15 catchall at the end.

16 So move to item -- same item, Article Number 5.

17 MR. GUTIERREZ: Okay. So Article Number 5 may
18 not have any comments. In fact, it's very
19 self-explanatory. It's a simple article, and really
20 just talks about how the Commission will deal with
21 confidentiality of certainly parts of the application,
22 so I won't go into too much description there. See if
23 we have any comments. If no comments, we'll come back
24 and kind of wrap this up.

25 COMMISSIONER BYRNE: Okay. Any public comments

1 on -- Michelle?

2 PUBLIC MEMBER: Sorry. Didn't put in my card

3 COMMISSIONER BYRNE: Please. You are welcome.

4 PUBLIC SPEAKER: So one of the issues that
5 probably just not contemplated here is what if the --
6 what if the facility is owned by the federal government,
7 and what are our roles for confidentiality? Five-days
8 notice phone call or e-mail might be a little bit short
9 notice when people actually go on vacation. Sometimes
10 you get old and we get hurt or something, we are sick,
11 or we have turnover, you know, we retire and our
12 replacement hasn't been identified. So the five-day
13 period, which is probably related to state
14 responsiveness, I think that's just a little short for
15 practicality. And so that's all I can say.

16 COMMISSIONER BYRNE: All right. Thank you very
17 much.

18 Okay. Dave, your wrap-up, commissioner
19 comments, and then we'll have another opportunity for
20 the public comments as well.

21 MR. GUTIERREZ: Maybe what I'll do is kind of
22 avoid referring -- or responding to any of the comments,
23 but acknowledge to the fact the some of the comments
24 that we did hear today are a matter of clarification.
25 So I think there may be some things that we obviously

1 need to be more clear on the regulations because there
2 may be some misinterpretation going on of exactly what
3 we are trying to get out of the regulations, so we'll do
4 that. So that's -- that's very obviously something that
5 we are going to have to do. We'll work with
6 stakeholders to make sure there's a common understanding
7 of what the issue is first, and then we'll address that
8 as appropriate.

9 And then the other than that, I think some of
10 the major issues, we are going to have to continue to
11 kind of work with the Commission to get a direction of
12 which way to go on some of the bigger issues. I think
13 he's -- certainly see from the comments some folks are
14 asking us to go to the right and others are asking us to
15 go to the left, and we'll have to figure out where to
16 particular balance is, so we'll work on that.

17 There was one kind of left on the table. I
18 think we one of the commissioners had a question
19 regarding mitigation, and I think it's a matter of us
20 kind of, again, point of clarification, we -- I didn't
21 completely following when it was up front, but I think I
22 understand it now, so it's a matter of us getting back
23 to regulations and making a point of clarification of
24 exactly what we are trying to say.

25 So with that, I'll kind of -- I'll close up.

1 Again, the comments were very, very good today. We -- I
2 think we have a very good understanding of where the
3 stakeholders are on this. What we are going to be doing
4 now is this will be the beginning of the course. We are
5 not going to wait until we get the formal comments.
6 We'll start working on this now, and work certainly with
7 the Commission in order to resolve the rest of the
8 issues forward.

9 So with that, we'll leave it to you,
10 commissioners, to make any discussions you want. Our
11 staff is here. If there's any further clarification
12 that you need on any of the points, either made today or
13 the regulations themselves.

14 Thank you.

15 COMMISSIONER BYRNE: Thank you very much, Dave.
16 So why don't we just -- to the general public comment,
17 and then have a -- we'll close with commissioner
18 comments and whoever -- commissioners would like to ask
19 questions are able to as well.

20 So with that, I've got two speaker cards on the
21 general one. Pablo Garza -- sorry. Jennifer Clary is
22 first, and then Pablo, you are second.

23 PUBLIC MEMBER: So I just want to reiterate that
24 the Commission's process is really important here
25 because you are the public, and to the extent that you

1 are able to provide time for public review, it's really
2 appreciated.

3 The second thing is, I continue to have concerns
4 that groundwater projects are being disincentivized by
5 these regulations we've put in specific -- I don't know
6 the -- put in specific language changes, especially not
7 in the technical reference document, but will put in
8 very specific comments on that.

9 And I think that's about it for me. It's been a
10 good process, and we appreciate having the opportunity
11 to comment specifically on the regulations.

12 COMMISSIONER BYRNE: Thank you very much. Pablo
13 Garcia, Nature Conservancy -- Garza. I'm sorry.

14 PUBLIC SPEAKER: Again, Pablo Garza with the
15 Nature Conservancy. Thanks for hearing us out one more
16 time.

17 I think -- and I guess I was going to start with
18 this, but like I said, I adaptively manage a bit. In
19 the bigger picture when we approach this, when we are
20 worked on Prop 1, as many of the folks in this room did,
21 also worked on, we saw the Chapter 8, an opportunity to
22 make, you know, investment in the portfolio project that
23 would deliver environmental benefits and -- public
24 benefits and in particularly environmental benefits. So
25 I think it's really important that you look at the

1 applications to kind of think about how they add up into
2 a greater whole to address some of the, you know, the
3 harm that's been done to environment in the past century
4 and provide stable water for the refuges and other
5 environmental needs going forward, and particularly, in
6 the face of climate change.

7 So I think I would support some of the comments
8 that others have hinted at or made about, you know, your
9 discretion as the Commission and the ability to have a
10 little more discretion to prioritize certain projects or
11 to achieve that outcome. You know, it is addressed in
12 one part of -- let's see -- in Article 4, but it's a
13 comment -- there's the provision article about a
14 collective use projects, and in Section 6011(g)(1)(b),
15 where maybe I would -- we'd like that to maybe be more
16 prominent. But you think, again, this is about a
17 portfolio -- view of portfolio of investments to
18 delivered public benefits and help us as a state, you
19 know, better confront climate change.

20 Thank you again for the opportunity to make
21 comments.

22 COMMISSIONER BYRNE: Thank you very much, Pablo.
23 Anybody else?

24 Okay. So at this time, I'd open up to
25 commissioner question, comments? Whatever you'd like to

1 start.

2 Commissioner Orth?

3 COMMISSIONER ORTH: Well, first of all, I was
4 looking forward to today because I wanted to hear the
5 public's thoughts about where we are at and some of the
6 key issues. So I appreciate everybody's time and effort
7 here that have been trying to list kind of what I
8 thought were some of the key issues and I -- I do find
9 the conversation about trying to give the Commission a
10 discretion and flexibility and looking at the big
11 picture and all of those things is consistent with where
12 I know we'd like to be. I think it's also critically
13 important that the process be clarified so that -- and I
14 take that's what staff has been attempting to do, is to
15 lead us to -- through a process that's defensible,
16 that's consistent with the statute, that still gets us
17 to this place where, you know, we support the
18 investments consistent with the overall goal and
19 objective of Prop 1, and specifically Chapter 8.

20 I know that we've kind of -- we've heard this
21 narrow conversation about eliminating water systems
22 improvements as a scoring component, but then we've also
23 heard from those very same people the importance of
24 looking at this more holistically and making investments
25 in water system improvements that achieve public

1 benefits, right? So I'm still struggling with exactly
2 what that looks like and where the right place is to
3 deal with that. I also -- and I think it is my last
4 comment.

5 Dave, we didn't hear much from you about the
6 minimalist approach to managing public benefits that's
7 currently -- in the current draft, and I -- found
8 observations there that we do have a duty there that
9 maybe we need to add a little bit more. I'm not quite
10 sure what that looks like either, because I've struggled
11 with that for quite some time.

12 MR. GUTIERREZ: So we've got to make knowledge
13 of that direction. We are actually working on that, so
14 it's not quite an oversight. Just not quite in these
15 particular regulations and whether they go in these
16 regulations or not is something we need to discuss with
17 the Commission. So more to come on that whole issue.

18 COMMISSIONER ORTH: Thank you.

19 COMMISSIONER BYRNE: Mr. Quintero?

20 COMMISSIONER QUINTERO: Thank you, everybody,
21 for coming here today. Really good to hear your
22 comments, and good to hear also the folks from the
23 wetlands being here and talking about specifically some
24 of the beneficiaries and some of the water that we are
25 talking about in the future.

1 I think it was important to me and to all of us
2 to hear the comments around the climate scenarios, and I
3 do think that practically speaking, we literally better
4 looking at wet and dry. And so I'm very much looking
5 forward to the work that goes on there.

6 And thank you, Lucinda, for coming out. Your
7 comments were great, and you also you reinforced the
8 comments that were made by Otis and others, and I think
9 I was -- we heard you.

10 Thank you.

11 COMMISSIONER BYRNE: Commissioner Del Bosque.

12 COMMISSIONER DEL BOSQUE: I'd like to thank all
13 the people that came up to comment. I think that they
14 brought up a lot of important points that maybe some of
15 us haven't thought about it. So those were very
16 helpful. And I also thank staff on -- on their work on
17 these regulations. And I -- I want to thank you for
18 trying to put together a ratings system for us, which is
19 pretty complicated, and I understand that we have to
20 find some way to rate some of these projects. I do have
21 some concerns, though, because maybe you can rate things
22 within ecosystem improvements, but to compare, you know,
23 one public benefit with another one is maybe a little
24 bit subjective and -- and because there is this element
25 of subjectivity in the rating system, I think my only

1 concern is that we, as a Commission, maintains a certain
2 degree of discretion in this thing, that we don't want
3 to be too restrictive that the rating system selects the
4 project for us. And I don't know how we would do that,
5 so that's -- that's going to be what your task, I guess.
6 But I -- I hope that maybe my fellow commissioners
7 share that thought, that we do -- we do need to have
8 some discretion on selection of the rating.

9 And as far as the water system improvements, I
10 don't know how that fits in there, but it is important.
11 The voters did vote for that. That is stated in the, I
12 think, second chapter of -- second paragraph of the
13 chapter. So it is important, and so we need to have --
14 we need to have discretion on probably rating those --
15 that non-public benefit also, because our project
16 proponents are investors just like we are investing in
17 this. This isn't a grants program really; it's an
18 investment program. So we have to consider our -- our
19 partners in this thing too, which they are concerned
20 about improvement of water systems of the state water
21 system.

22 So it's a complicated thing. I think that we
23 are heading in a good direction here. So we'll just
24 want to be sure that -- that we, as commissioners, have
25 a lot of input into that.

1 Thank you.

2 COMMISSIONER BYRNE: Commissioner Ball.

3 COMMISSIONER BALL: I think there was a lot of
4 good comment today. I'm actually surprised, though,
5 that at this point in time after everything that we've
6 gone through, we still have what appears to be a lot of
7 issues that have been pointed out. I heard specific
8 comments on climate change that I hope you are going to
9 take a look at. I heard what I may have been confused
10 by, but it appeared to be from Lucinda that when she
11 looked at some of the modeling results that appeared, we
12 were going to have wetter years in future years as
13 opposed to dry years, and that concerns me a great deal.
14 So looking at how we evaluate the climate change to make
15 sure that it is logical and consistent and appropriate
16 is going to be focused, and we really need to be sure
17 that the California model works, and we are asking
18 people the look at and use these models in their
19 applications and the subjects is going to be accurate.
20 So that's -- that's a matter that I came out a lot more
21 concerned about at the end of this day than coming in.

22 I think any general references to we just
23 shouldn't have anything in the regs that isn't in the
24 statute need to be specific. You know, general comments
25 are just not going cut it right now. They are just too

1 much to look at, specifically to look at what we meant
2 by that, so please be specific.

3 But in general, you know, we have a very tight
4 deadline left for us. And it appears we still have a
5 lot of work to do, so I think it's important to focus on
6 the critical issues and make sure we get those fixed.
7 We have requirement to get this done by December 15th of
8 this year, and we intend to meet that deadline. That's
9 not going to be an easy task.

10 So thank you.

11 COMMISSIONER BYRNE: Thank you,
12 Commissioner Ball. Any other commissioners?

13 I have a few things.

14 You know, I don't really -- climate change stuff
15 from a simplistic point of view I understand, but
16 technical side, I don't. It did seem like there was a
17 consensus amongst all the different stakeholders that
18 there's -- may be a need to take a closer look, and from
19 a basic standpoint, some of the things that were stated
20 if accurate, which I assume they are, may sound kind of
21 problematic, so I would encourage looking at that.

22 I also think that on the public engagement part,
23 there's some real easy -- I think some of the things
24 that I've assumed we can -- once an application come in,
25 I would think that there's an opportunity for the

1 applicant to come in and speak about their application
2 project and for the public to comment on the project.
3 So I think we can build in things that, in my head, I
4 think we already planned to do, but I do appreciate the
5 need to have that be specific so that it's clear there's
6 opportunity for public involvement.

7 And that's it for me. I -- I do -- when I think
8 of the system wide improvements, it's something that I
9 think we need to think about as well. Similar to what
10 Commissioner Orth has said. I've thought of those in
11 the context of improvements that allows more increased
12 public benefits, more opportunities public benefits and
13 not just water supply, so how is characterized and
14 described as something, I'd like to think about as well.

15 So on the whole, though, I thought we got a lot
16 of great comments today, and I really appreciate people
17 taking the time as well the same people who've been
18 sticking through the process of a number of -- what? --
19 it's been years now. And I think we are in crunch time,
20 so we need to get continued feedback. And to Commission
21 Ball's comment, the more specific, the better, I think.
22 It's getting comments that are -- wouldn't want to
23 discourage any comments, but the more specific and
24 easier it is to address and more suggestive language --
25 and I thought we got a lot of real positive, specific

1 comments today. Got public comments that I wrote down
2 and plan to follow up with on staff and offered some
3 very good ideas.

4 So I'm hoping that -- so the next meeting, not
5 to talk about -- well, I guess we'll transition into the
6 items on the agenda, which is items to be justified on
7 the next meeting. We are going to have the regs. They
8 are going to come to us formally. Public comment period
9 will have expired. So the staff will either will
10 looking to us for a decision, which obviously -- or
11 we'll be looking to us to suggest amendments at that
12 time, which we will then considered, and if there are
13 any -- having been through this process a few times
14 now -- if there's any changes that we have or whatnot
15 that we would like to hear from the public, we would go
16 back out. I'm assuming that we will have a chance, so
17 we have more than just this meeting.

18 And I did really like the opportunity to have us
19 have this workshop, more opportunity for public input,
20 so if we need to have more meetings in order to
21 accommodate more public input, I think we should. And I
22 also did like the idea of having a technical meeting
23 with the folks who work on modeling and are smarter than
24 I am, to go over the climate change and any of the
25 technical things.

1 And, Rachel, I don't want to steal you thunder
2 on the last items. Is there more we are going to
3 discuss?

4 MS. BALLANTI: So I think you covered what we
5 will be covering on the Water Storage Investment Program
6 on October 18th. And he will also have the DWR SGMA
7 team coming back and giving you the final update on the
8 basic boundaries modifications at that point. They will
9 be final, so it is just an informational update. And
10 DWR is also working on a regulation for water loss audit
11 requirements, and they are just getting up the process
12 on that, so they will be given you initial briefing.

13 COMMISSIONER BYRNE: That I recall was something
14 they just present to us that we don't technically
15 approve, correct?

16 MS. BALLANTI: At this meeting, it will be
17 informational because it's just the beginning of the,
18 progress, so it would be consistent with the Commission
19 statutory authority to approve --

20 COMMISSIONER BYRNE: In the regulations. Okay.
21 Got it.

22 Okay. Any other Commissioner comments or
23 question? Seeing none, I want to thank everyone again
24 for being here. Look forward to the last couple months
25 of this process, and I'll entertain a motion to adjourn

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNIDENTIFIED SPEAKER: So moved.

COMMISSIONER BYRNE: Second it. All in favor?

(Ayes.)

COMMISSIONER BYRNE: All right. We are
adjourned. Thank you very much.

(Meeting adjourned at 11:59 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss
COUNTY OF SACRAMENTO)

I, JESSICA SOTELO, CSR, hereby certify that I was duly appointed and qualified to take the foregoing matter;

That acting as such reporter, I took down in stenotype notes the testimony given and proceedings had;

That I thereafter transcribed said shorthand notes into typewritten longhand, the above and foregoing pages being a full, true, and correct transcription of the testimony given and proceedings had.

JESSICA SOTELO, CSR No. 13679