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MEETING
STATE OF CALIFORNIA
WATER COMMISSION
ITEMS 6, 7, & 8

CALIFORNIA RESOURCES BUILDING
AUDITORIUM
1416 NINTH STREET
SACRAMENTO, CALIFORNIA

TUESDAY, OCTOBER 18, 2016
9:37 A.M.

JAMES F. PETERS, CSR
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A P P E A R A N C E S

COMMISSIONERS:

Mr. Joseph Byrne, Chairperson

Mr. Joe Del Bosque, Vice Chairperson

Ms. Carol Baker

Mr. Andrew Ball

Mr. Daniel Curtin

Ms. Maria Herrera

Mr. David Orth

Mr. Armando Quintero

STAFF:

Ms. Taryn Ravazzini, Acting Executive Officer

Ms. Holly Stout, General Counsel

Mr. David Gutierrez

Mr. Stephen Hatchett

Mr. Rob Leaf

Mr. Andrew Schwarz

Mr. Sean Sou

Ms. Amy Young

Mr. Joe Yun

ALSO PRESENT:

Ms. Juliet Christian-Smith, Union of Concern Scientists

Ms. Jennifer Clary, Clean Water Action

A P P E A R A N C E S C O N T I N U E D

STAFF:

Ms. Michelle Denning, United States Bureau of Reclamation

Mr. Justin Fredrickson, California Farm Bureau Federation

Ms. Kirsten James, Ceres

Mr. Kyle Jones, Sierra Club California

Ms. Maureen Martin, Contra Costa Water District

Ms. Lauren Noland-Hajik, California Cotton Ginners and Growers Association, California Citrus Mutual, California Fresh Fruit Association, Nisei Farmers League

Mr. Ric Ortega, Grassland Water District

Mr. Adam Robin, Association of California Water Agencies

Mr. Mario Santoyo, San Joaquin Valley Water Infrastructure Authority

Mr. Scott Sellers, Environmental Defense Fund

Mr. Bill Swanson, San Joaquin Valley Water Infrastructure Authority

Mr. Jim watson, Sites Project Authority

Mr. John Weed, Alameda County Water District

Ms. Rachel Zwillinger, Defenders of Wildlife

I N D E X

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6. Public Testimony

5

7. Update on Public Comments Received on the Water Storage Investment Program (WSIP) Revised Draft Regulations and Briefing on Concepts for Staff Recommended Changes

5

8. Action Item: Commission Direction on Recommended Concepts and Outstanding Issues Related to the WSIP Regulations

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Adjournment

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Reporter's Certificate

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P R O C E E D I N G S

CHAIRPERSON BYRNE: We'll move on to Item number 6 on the agenda. This is the opportunity for public comment of items that are not on the agenda. If anyone would like to come forward. There will be ample opportunity for public comment as we go through each agenda item.

Seeing nobody.

(Off record: 9:37 a.m.)

(On record: 9:47 a.m.)

CHAIRPERSON BYRNE: With that update, we will now move back to Item number 7 on the agenda, which is an update on public comments received on the WSIP program and a briefing on concepts for staff recommended changes, which is the heart of the rest of the meeting will be with Dave as our guide going through the progress that we made.

(Thereupon an overhead presentation was presented as follows.)

CHAIRPERSON BYRNE: Welcome, Dave.

MR. GUTIERREZ: Thank you. Again, my name is Dave Gutierrez. I'm with the Department of Water Resources and I'm helping the Commission and Commission staff get to approval of the regulations for the Water Storage Investment Program.

I'm looking forward to a productive and lively

1 discussion. And I think that's what we'd like to start
2 off with.

3 --o0o--

4 MR. GUTIERREZ: So what we'd like to do is --
5 first, this action item -- this Agenda Item number 7 is
6 really I'd like to just explain kind of the format of the
7 meeting, and get your approval on how we would actually
8 move forward with the meeting itself, and then we'll get
9 into the actual regulations and the discussion, et cetera.

10 So, first of all, the purpose of today's meeting
11 is to actually review and discuss the regulation, and in
12 particular review some of the public comments that we
13 received both verbally, through several meetings, but also
14 through the various letters and comments that we received.
15 We received a total of 41 letters and over 160 total
16 comments, and they were on various subjects and various
17 issues associated with the draft regulations that we have
18 out.

19 Now, what I have here on this particular slide is
20 our best job in actually grouping the various comments.
21 And this isn't all of them, but this is certainly the
22 majority of them, and things that we saw as the major
23 issues. The bars indicate the number of comments that we
24 received in each one of those subject areas. And to give
25 you kind of a scale, application process and climate

1 change was on the order of, I think, 20-ish or so types of
2 comments to give you a scale of what those orange bars
3 represent.

4 --o0o--

5 MR. GUTIERREZ: Now, what we'd like to do today,
6 and in particular in the format that we'd like to propose
7 today is we'd like to give a description of the comments
8 that we actually received by subject area, and we'd like
9 to discuss the comments that we received, as interpreted
10 by our staff. And then at that point, we would like to
11 then get some public comments, and then come back and have
12 a further discussion.

13 And so in particular, there's several issues that
14 we would like to put up front to make sure that we, in
15 fact, discuss, and those are actually highlighted here.

16 --o0o--

17 MR. GUTIERREZ: And what we actually decided to
18 do or propose for today's format of the meeting is talk
19 about these first issues first: Application process, the
20 management of public benefits, project evaluation and
21 scoring, Commission decision-making process and the public
22 involvement, then public comments, and then we'll -- we'll
23 take those first. I should say we'll take those first
24 subjects first.

25 And then what we would like to do is invite

1 public comment on any one of those subjects, and then we
2 would go to discussion and Commission direction.

3 Now, really the reason that we grouped this is
4 when we compare them to some of the next subjects, we see
5 these as the easier of the most difficult comments to talk
6 about. And we think that these will kind of go fairly
7 short and probably not as many comments -- public comments
8 on these particular issues.

9 CHAIRPERSON BYRNE: I'm sorry to - excuse me - to
10 interrupt you. I just want to make clear to the public.
11 We're not going to do speaker cards today. I think it's
12 probably just easier for folks to just feel free to come
13 up. So we'll -- I talked to Brianna about that. And if
14 that works, that's how we'll do it. So as the public
15 comment period is kind of throughout this item, please
16 feel free, and I will be requesting as well people, if
17 they comments.

18 ACTING EXECUTIVE OFFICER RAVAZZINI: And, Mr.
19 Chair, if I may. Dave, I know we're on agenda Item 7,
20 that officially the Chairman noticed that, but I recognize
21 we're moving into essentially Agenda Item 8, so I believe,
22 Mr. Chair, we had talked about the possibility of kind of
23 merging 7 and 8 together. I just -- I didn't want to lose
24 the public on where we are on the agenda, since 8 is
25 listed as an action item.

1 CHAIRPERSON BYRNE: Yeah, I appreciate that. And
2 we talked about that. I think it makes sense, since
3 they're kind of blended together and there could be some
4 direction that the Commission is giving throughout as
5 appropriate with public comment.

6 MR. GUTIERREZ: And to clarify, Agenda Item 7 is
7 just to kind of layout the format of what we're going to
8 discuss about, and Agenda Item 8 is actually discussing
9 it.

10 CHAIRPERSON BYRNE: Okay.

11 MR. GUTIERREZ: And so I gave you the previous
12 issues that we'd like to discuss, and we'd like to put
13 those together and discuss them, you know, one by one, but
14 also have stakeholders actually address those comments
15 collectively.

16 And then we're going to get into the more
17 interesting comments and some that may be a little bit
18 more divisive that I think we're going to take -- want to
19 talk a little bit more time on.

20 And so the next issue is climate change and we'd
21 like to go through the same kind of process, where we
22 would talk about the climate change issues, just kind of
23 lay out the actual agenda item. Then what we would like
24 to do is go over the comments that are actually addressing
25 climate change. Certainly, we would want to take points

1 of clarification between the Commission and Commission
2 staff as we make those presentations.

3 Then after that, what we'd like to do is invite
4 the public to come up and talk about this particular
5 issue. Then after the public talks about this issue, what
6 we want to do is we want to talk between Commission and
7 Commission staff about the particular issue, with the hope
8 of getting some direction from the Commission, so that the
9 Commission staff could take that and finish off or draft
10 the next set of regulations.

11 And then we'd like to do that for the next issue
12 as well. So we'd stop after climate change, and we'd
13 start all over again with mitigation and compliance
14 obligations. This is another fairly complex issue, and an
15 issue that could be divisive. And so we would again
16 present this particular issue what it's all about. We
17 would then, of course, present the comments from the
18 public, then certainly questions of clarification between
19 the Commission and Commission staff during that
20 presentation.

21 And then finally, what we would like to do is
22 invite the public come up, talk about the compliance
23 obligations, maybe we did or didn't represent what
24 collectively they told us. They would be able to
25 straighten that out. And then at the end of that

1 particular issue, again we would have a discussion of the
2 issue between Commission and Commission staff, with the
3 hope again of getting direction from the Commission, so
4 the Commission staff could take that, and finalize the
5 draft regulations.

6 --o0o--

7 MR. GUTIERREZ: Now, we think we've captured what
8 we thought were the most important items, but we don't
9 want to assume that. And so what we left in the final
10 piece of today's meeting would be wrap-up and missing
11 comments not yet discussed. And so the Commission staff
12 may not have presented something that the Commission wants
13 to talk about. There may have been a comment that we have
14 not put up on the agenda, because maybe we didn't think it
15 was a significant enough comment, but we could be wrong.
16 The Commission may want us to talk about a particular
17 issue, but the public as well. So we would like the
18 public to be invited up at the last slide, bring up any
19 public comments of something that we didn't, as a
20 Commission staff, bring up, and then we would be prepared
21 to talk about that.

22 Now, in addition to that, the format that we have
23 here today is you see a panel in front of you. And the
24 purpose of that panel in front of you is to make sure you
25 have access to your Commission staff and the technical

1 experts associated with developing these regulations. And
2 I'll introduce those folks to you today.

3 So we have Joe Yun. You know Joe and he's our
4 project manager and has been highlighting many of the
5 regulations over the last several months. We have Steve
6 Hatchett. Steve is our consultant, and our expert on the
7 economic analysis. And then we have Rob Leaf. And Rob is
8 going to help us discuss compliance obligations and
9 modeling techniques. And then we have Andrew Schwarz.
10 He's going to help us with any technical issues associated
11 with climate change. And then we also have Amy Young
12 who's going to help us. And she's been one of our lead
13 authors in drafting the actual regulations. And then
14 finally Sean Sou who's also our technical expert on the
15 modeling climate change and economic analysis.

16 So with that, maybe I'll stop right there and ask
17 the Commission if that approach sounds reasonable to you,
18 and we would start right off, if that is.

19 CHAIRPERSON BYRNE: It sounds good to us.

20 MR. GUTIERREZ: Okay. Let me pull up the next
21 one.

22 (Thereupon an overhead presentation was
23 presented as follows.)

24 CHAIRPERSON BYRNE: So officially moving to Item
25 number 8.

1 MR. GUTIERREZ: So now we're officially moving to
2 Item number 8. And now we're going to go ahead and get
3 into the details of the actual Water Storage Investment
4 Program, the comments associated with those, and the so
5 far recommended staff direction on the various issues that
6 I had just outlined.

7 So, first, let's start to talking about what are
8 we actually trying to achieve with this?

9 --o0o--

10 MR. GUTIERREZ: The basic objective that we're
11 actually trying to achieve with these regulations is so
12 that the Commission could actually make funding decisions.
13 And then that will, of course, lead to implementation
14 and -- of an adaptable management process for those
15 project benefits of the future. So that's what we're
16 trying to achieve.

17 Now, that's not quite -- it hasn't been all that
18 simple, and that's because I think some of the statutes
19 that we have in front of us. They're not -- they are a
20 difficult statute to implement. And part of the problem
21 is actually what we're actually required to do. One of
22 the requirements is to actually quantify the public
23 benefits. So that's not a simple task. And the reason
24 that hasn't been a simple task is we're trying to quantify
25 public benefits. And we have to figure out metrics that

1 can actually measure those particular public benefits.

2 We have to actually compare those metrics amongst
3 each other. And so this is why we've developed the
4 process that we've developed over the last, I guess, a
5 year and a half actually, and the approach that we're
6 actually trying to take. Some of the difficulties of this
7 is we're trying -- we're trying to do this in a consistent
8 manner. So certainly our applicants have feasibility
9 reports, CEQA documents, et cetera.

10 But what we're trying to do is we're actually
11 trying to develop a consistent approach, so that we can
12 compare projects as fairly as we possibly can. And
13 therefore, what we're doing here with the regulations and
14 with the process that we developed in making a funding
15 decision, that should not be compared to a CEQA type of
16 analysis or even a feasibility level study that the
17 applicants have to do to select their alternative
18 projects.

19 And again, the reason is we have to make a
20 funding decision. In order to make a funding decision, we
21 have to make things as consistent as possible. And that's
22 not always easy, and that's where the struggles I think
23 lie.

24 The other thing that I think we've been trying to
25 harness and pay attention to is we're trying to compare

1 large projects with small projects. And that's difficult
2 to do as well. Again, what type of process will actually
3 be allowed to do that? We've been working, over the last
4 year and a half, to develop a project that fairly you
5 could look at small projects when we compare those small
6 projects to large projects.

7 Now, when we talk about the actual nearly \$3
8 billion that we're actually going to be spending on the
9 Water Storage Investment Program, the challenging -- the
10 challenges of water management in the future are going to
11 be great. So this is a good program. It's a program that
12 the State of California absolutely needs. And I think you
13 could look at the water management changes that we
14 actually have in front of us right now.

15 So I'd like to think of the big storage quote
16 facilities that we have in front of us, that we have
17 surface water storage, we have our snowmelt, and we have
18 our groundwater. Well, we know the groundwater is going
19 to change in the future of how we're going to manage
20 groundwater in the future. That's as a result of the
21 Sustainable Groundwater Management Act.

22 We think snowmelt is going to also change. So
23 the volume that we can capture in snowmelt will most
24 likely be different than it has been over the last several
25 decades, and that's as a result of climate change.

1 So as a result of all this, we have to be really
2 smart in our future investments. We absolutely have to
3 capture water and build our capacity for capturing water
4 in the future. And I think that that's what this
5 particular program is all about.

6 Now, the difficult part that we all have facing
7 in front of us is how do we make those smart
8 investments -- how do we select the most efficient
9 projects in the future? And I think that's what we're all
10 struggling with here today, and that's the whole purpose
11 of putting this regulation together. So I invite us all
12 to kind of pay very close attention to some of these
13 discussions as we kind of move through this. We've been
14 struggling with many of these key items that I just
15 discussed in front of us, as we try to make some of these
16 pretty tough decisions.

17 And so we're going to kind of guide you through
18 this now. And again, this presentation is for you, the
19 Commission, it's also for our stakeholders and the public,
20 so that everyone can see the direction that we're going.
21 We're trying to be as transparent as possible. We've got
22 a series of fantastic comments over the last month or so.
23 And these comments are in 2 different forms.

24 One are just clarity. There's certainly parts of
25 the regulations that certainly made sense to us. But

1 after we got comments, well, maybe it didn't make that
2 much sense. So we obviously have to go and we have to
3 change those.

4 And then there are just points of disagreement,
5 and those are the more difficult pieces. And those are
6 the pieces that I think we're going to talk about today.
7 So with that, we're going to start. We're going to start
8 easily, and then we're going to get more and more
9 difficult as we go through this, and so we'll see how this
10 goes, and we'll follow that format.

11 --o0o--

12 MR. GUTIERREZ: So I'm going to first turn the
13 first one over to Joe who's going to talk about the
14 application process.

15 MR. YUN: So we had about 17 comments on the
16 application process itself. Most of these comments are
17 talking about the excessive documentation, too complex,
18 leading to increased application costs. And, of course,
19 it would affect sections 6003 and 6004 of the regulations.

20 I don't want to -- I don't want to make this seem
21 trivial, but -- because I only have one other bullet on
22 this topic, because application costs are an issue. I
23 think a lot of what we're talking about later in the
24 agenda and the other topics have much more effect on what
25 folks need to submit, and how we look at applications.

1 If you go to the next slide, Dave, I think
2 that --

3 --o0o--

4 MR. YUN: -- what we can do is whatever processes
5 and whatever decisions and directions staff gets today, we
6 can certainly go back to the regulations and make sure
7 that we are asking only for what we are using in the
8 process and what we need to evaluate the applications.

9 So it looks like a real small item. I think it's
10 one that carries over into the other items later on today.
11 That's about all I have on that subject right now.

12 MR. GUTIERREZ: So we're going to keep running
13 through these first four or so. But the Commission please
14 stop us if you have points of clarification. After we get
15 through these first four, then we're going to invite the
16 public to talk about anyone of these first initial
17 subjects.

18 CHAIRPERSON BYRNE: Commissioner Quintero.

19 COMMISSIONER QUINTERO: Just for everybody's
20 clarification, what's the process after this? When we
21 leave this meeting and you make the changes to the regs,
22 what is going to be the opportunity for engagement with
23 the public and the Commission?

24 MR. GUTIERREZ: So I'll kind of tag-team with
25 Taryn on trying to explain this next. And it kind of

1 depends. It depends on how this meeting actually goes
2 today.

3 COMMISSIONER QUINTERO: I just -- the reason I'm
4 asking is one I want to get it out everybody's head before
5 we start talking about this.

6 MR. GUTIERREZ: Absolutely. No. That's a great
7 question, and I think we should cover it, and now is the
8 appropriate time to cover it.

9 So what we're looking for is obviously direction
10 from the Commission. And the Commission, I think, is
11 looking for public comment in order to give us that clear
12 direction.

13 Now, if we all agree, and it's pretty
14 straightforward and pretty simple, we're going to be able
15 to take that information and go draft the regulations, and
16 we'll bring them back sometime -- we'll talk about it in
17 November, but we'll release them I think it's the first
18 week of November, is that right, Taryn?

19 ACTING EXECUTIVE OFFICER RAVAZZINI: I think the
20 goal is November 7th.

21 MR. GUTIERREZ: So November 7th we would actually
22 release the next set of the draft regulations. Now, with
23 that being said, we can certainly modify that. We still
24 want to bring back a set of regulations to you all and
25 discuss a set of regulations to you all in -- on -- in the

1 middle of November at the next meeting.

2 Now, if some of these points are not that clear,
3 some of these points need further discussion, then we're
4 going to have to talk about what should we do between now
5 and then, with the possibility of an additional meeting.

6 But what we'd like to do is get through, so that
7 if we do have any additional meetings they're very
8 focused, and we could actually solve and get very clear
9 direction on those -- some very difficult issues that
10 we're dealing with.

11 CHAIRPERSON BYRNE: So to summarize, we're going
12 to get as much accomplished today as possible. And if we
13 can get consensus or -- from the Commission on a number of
14 the issues, then come back possibly, release November 7,
15 have a meeting in November, where we would set off public
16 comment could potentially make a few on-the-spot edits
17 there. If there are some issues of which we still have
18 some desire for more discussion, then potentially another
19 meeting either right before or right after the release.
20 I -- or maybe it would be prior to release, but staff
21 would come back with suggested language and whatnot to --

22 MR. GUTIERREZ: That's correct. And I think we
23 could -- we could kind of play that by ear. Let's see how
24 it goes today. And then at the end of today's meeting,
25 let's all decide which is the best approach forward, again

1 depending on how it goes today.

2 CHAIRPERSON BYRNE: Yeah.

3 COMMISSIONER CURTIN: Did you say November 7th?

4 CHAIRPERSON BYRNE: November 7th is the date that
5 they've targeted for releasing the next draft publicly.

6 COMMISSIONER CURTIN: But would that be for a
7 meeting or just for the release?

8 MR. GUTIERREZ: Well, that would be for the
9 release, unless we have an additional meeting between now
10 and November 13th or whatever that date is.

11 CHAIRPERSON BYRNE: Right. So just for the --
12 and jump in here, Holly, and correct me, for the benefit
13 of the Commissioners and the public. So once -- in order
14 to -- if we want to make our December 15th deadline, we'd
15 have to have a 15-day public comment period, at which we
16 have taken action to introduce it into the public comment
17 period, come back and approve it in that same form. There
18 is time to make changes as it goes back into that public
19 comment period.

20 So if you back up from December, and we were to
21 hold -- let's say our meeting with Thanksgiving, whatnot,
22 on the week we're planning to, which I think is maybe the
23 15th, that would, as a target, be the time in which we
24 would want to be adopting something that we are hoping is
25 final.

1 So if we want to have more discussion prior to
2 that, then that's what Dave is talking about.

3 Accurate?

4 GENERAL COUNSEL STOUT: One minor clarification
5 is that nothing is formally adopted until we're done. So
6 the last step is the adoption.

7 CHAIRPERSON BYRNE: Right. Thank you for that.

8 Okay.

9 MR. GUTIERREZ: Let's move on to our next
10 subject, and our next issue is the management of public
11 benefits.

12 MR. YUN: So we have 8 comments talking about the
13 section in the regulations, 6014, that talks about
14 managing public benefits, and lacking the in -- some
15 information that would be important to put into that
16 section.

17 So if we go to the next slide --

18 --o0o--

19 MR. YUN: -- I think the recommendation from
20 staff is that we do add to that section, specifically
21 trying to make clear the Commission's role in managing the
22 public benefit. So reporting to the Commission, what
23 should be reported, when it should be reported, including
24 the monitoring data and the reporting, including things
25 after the agency contracts are active coming back and

1 reporting status that they've done adaptive management and
2 public benefit, what was it, and how did they do it. We
3 will clarify the adaptive management plan is required.
4 And that will be the central piece of those agency
5 contracts.

6 But we also realize that there are probably
7 things that we cannot get into that section at this time.
8 So staff's other recommendation coming to you is that we
9 start a second set of regs, after this set is completed,
10 to really talk about administration of public benefit, and
11 how -- and so we can put in some of the other more
12 detailed pieces that we may need to satisfy everybody.

13 CHAIRPERSON BYRNE: Commissioner comments or
14 questions?

15 I have just one. I appreciate that, Joe. I
16 think some of the things you're talking about adding are
17 very important. If we were to -- I know we had talked a
18 little bit about whether DWR would have a contract with
19 the applicant or not. So is that contemplated to be
20 discussed in more detail in a second set of regs?

21 MR. YUN: I would think so. I think some of the
22 issues there are, you know, we've already heard folks say,
23 you know, there should be a lead of the 3 entities and how
24 does that work, and again we've had those conversations.

25 CHAIRPERSON BYRNE: And we're kind of presenting

1 for all of you to communicate on that.

2 MR. YUN: Right.

3 CHAIRPERSON BYRNE: And I take from your comments
4 also that inclusion of some language about -- although
5 it's still obviously going to be a public process in
6 everything we do, but something that indicates that the
7 public has time to -- or an opportunity to get the
8 information and comment on that.

9 MR. YUN: Right, and I think part of that is
10 using this forum and the Commission as that place where
11 you can have the touchstone, and the public can have some
12 access to what's going on and monitor how things are
13 going.

14 CHAIRPERSON BYRNE: Okay. Anybody else?

15 COMMISSIONER QUINTERO: That would also, of
16 course, include timing, so for how many years going
17 forward these projects would be reported?

18 MR. YUN: (Nods head.)

19 COMMISSIONER QUINTERO: And I'm stating the
20 obvious.

21 CHAIRPERSON BYRNE: Commissioner Orth.

22 COMMISSIONER ORTH: I guess I'm curious as to
23 whether or not this fits the statutory obligations and
24 authority we have under chapter 8. And it sounds like
25 we're doing a second set after the December 15 deadline.

1 So help me understand how that works?

2 MR. GUTIERREZ: Okay. I'll take a shot and then
3 Holly can help us out. So, first of all, the comments
4 itself. This one did not fall under the category of
5 clarity. This one fell under the category of we just
6 didn't have enough information in here. And it was a good
7 comment that we agree with, and we agree that we have to
8 actually put a lot more information on actually managing
9 the public benefits.

10 So if you read the statutes, and I was going to
11 pull it out, but I won't know, because I'll be flipping
12 through pages here. But if you read the statutes, we're
13 required to not only quantify the public benefits, but
14 describe how those public benefits will be managed.

15 And we have to do that by December of 2016 in
16 order to meet the requirements of the statutes. So what
17 we want to do here is put enough in the regulations today
18 to discuss how those project benefits will be managed in
19 the future. And however, later on in the statute, it
20 talks about how the agencies, the agencies being the
21 Department of Water Resources, the State Water Resources
22 Control Board, and the Department of Fish and Wildlife,
23 how they're going to develop contracts, and how those
24 contracts are going to be working with the applicants in
25 order to project -- manage projects in the future.

1 And so our thinking is that's a lot more
2 administrative issues that we have to deal with. And the
3 statutes allow us to deal with that administrative at a
4 different time. And so our thinking is to deal with the
5 administration part and the regulations in the second set
6 of regulations, and deal with the management part in
7 today's set of regulations.

8 COMMISSIONER ORTH: Thank you.

9 CHAIRPERSON BYRNE: And, Dave, what's the thought
10 on the timing of those regs in the context of people
11 submitting applications and whatnot.

12 MR. GUTIERREZ: So we would like to start those
13 second set of regulations right after we finish this one
14 and breathe a little bit. But that would be probably
15 starting in January. I actually don't think those will be
16 as complicated. We have to, of course, meet with the
17 agencies and figure out how we're going to actually
18 administer those particular contracts.

19 But I think we can finish those before the actual
20 regulation, possibly before we actually put the -- start
21 receiving the applications in. So they'll be ready well
22 in advance of any projects needed to move forward, and you
23 approving projects. Because as you all know, you have to
24 have the contract in place, before we actually get that
25 contract with the agencies in place, before we actually

1 move forward.

2 CHAIRPERSON BYRNE: Is that right now?

3 MR. GUTIERREZ: I think we have plenty of time is
4 what I'm thinking right now.

5 CHAIRPERSON BYRNE: Okay.

6 ACTING EXECUTIVE OFFICER RAVAZZINI: Mr. Chair,
7 if I may?

8 CHAIRPERSON BYRNE: Yeah.

9 ACTING EXECUTIVE OFFICER RAVAZZINI: Dave, just a
10 clarification for the public. On this slide, I believe
11 the -- an incorrect Water Code section is noticed. It
12 should be 79755, I believe, when it comes under
13 administration of public benefits. So it was a -- just an
14 editing error on our part. So for the public, it would be
15 79755, which is the Water Code section which would be the
16 focus of these -- this second set of regulations.

17 MR. GUTIERREZ: Okay. So let's move on to the
18 next one.

19 --o0o--

20 MR. GUTIERREZ: And the next one is project
21 evaluation and scoring. And a lot of this one actually
22 had to do with charity. I think after receiving comments,
23 it was obvious that we weren't very clear of exactly how
24 we're going to be scoring and evaluating. It was
25 certainly clear to us, otherwise we wouldn't have put them

1 in the regulation that way. But we obviously have to do
2 some work in making some clarification. So, Joe.

3 MR. YUN: So there was comments that related to
4 use of normalization and not understanding, I think, how
5 we're applying and using normalization. There's also
6 comments about water storage improvement, and whether that
7 should be part of the scoring criteria. The other pieces
8 that we put into this section are a couple of comments
9 that we're talking about.

10 Identification of contracts that would help
11 assure the ecosystem improvement benefits in the delta or
12 tributary. We have a little piece of language in the
13 application that says if you're outside the watershed of
14 the Delta, you need to provide us a list of contracts that
15 would be changed in order to secure that benefit or assure
16 that benefit. And we have a couple of comments about that
17 language and whether or not it can be other mechanisms.

18 So if you'd go to the next slide, Dave.

19 --o0o--

20 MR. YUN: For the clarification parts of
21 normalization, staff is really recommending we need to go
22 back and do a better job of explaining, not only how
23 normalization works, but where we apply it and how we
24 apply it. Really, what we're talking about when we talk
25 about normalization is grading on a curve.

1 So the example on the slide before you simply
2 shows 5 applications, and their public benefit ratios that
3 I made up. And you can see the max of those 5 is 3.9. If
4 you normalize to our score scale, because we said it was a
5 40 point scale, I think, you can see that the high, 3.9,
6 ends up with 40, and everything else is in relation to
7 that.

8 So the second highest score does not get a 39.
9 It's completely in relation to where it falls in relation
10 to that high score. So that's -- that's what we're
11 meaning. We'll take the time to try to go back and
12 explain that, and really show you where we apply that.
13 And I think that will help clarify for folks what that's
14 all about.

15 If you'd go to the next slide, Dave.

16 --o0o--

17 MR. YUN: So in terms of water storage
18 improvement component, the staff is recommending that we
19 do remove the water storage improvement component
20 entirely. And we do not want to use deliveries, so we'll
21 pull that.

22 Part of this is we do want to use some of the
23 water storage pieces in more a resiliency form so. In
24 order to do that, I'd like to we'd like to separate out
25 the non-monetized benefit from resiliency, because

1 currently in the regulations those are one category.

2 We can do that by pulling out the non-monetized
3 benefit score, and relate it more to the public benefit
4 ratios score. So I think that's pretty clean.

5 Then resiliency is just a component in and of
6 itself. And, Dave, if you'd just flip to the next one.

7 --o0o--

8 MR. YUN: So the resiliency component then I
9 think we want to look at 3 subcomponents.

10 CHAIRPERSON BYRNE: We have a question here.
11 Commissioner Curtin.

12 COMMISSIONER CURTIN: Yeah. It's pretty clear,
13 but not to me.

14 (Laughter.)

15 COMMISSIONER CURTIN: Not unusual.

16 So what do you mean when you say we're going to
17 remove water storage improvement component and --

18 CHAIRPERSON BYRNE: You mean, the water system
19 improvement?

20 MR. YUN: Oh, I'm sorry, water system
21 improvement, yes.

22 COMMISSIONER CURTIN: Okay. That makes it a
23 little clearer.

24 MR. YUN: Sorry.

25 COMMISSIONER CURTIN: And then do not use

1 deliveries, what is that?

2 MR. YUN: Yeah. So the water -- so the way it is
3 in the regulations today, it's a water system improvement
4 component. And we had looked at the metric of
5 deliveries -- water deliveries during certain times. And
6 so some of the comments that we got we're simply saying,
7 you know, that really is not in the public realm of
8 benefit, and we don't think you should use it.

9 We think we can use water storage in a slightly
10 different way, which is what I'm trying to get to, but --
11 so what we're -- what I'm saying is is we're not going to
12 use deliveries at all, when we -- when we use that metric.

13 COMMISSIONER CURTIN: In the scoring of public
14 benefits, the delivery of water is not part of the score,
15 although fundamentally that's a critical element of the
16 system.

17 MR. YUN: Right.

18 CHAIRPERSON BYRNE: So are you saying that when
19 you look at water system improvement overall, you're not
20 going to use, as one of the criteria, how much additional
21 storage is created, because it's not one of the public
22 benefits?

23 MR. YUN: We won't use deliveries.

24 CHAIRPERSON BYRNE: You won't use deliveries,
25 okay. And then you're shifting to, I think, your next

1 slide here.

2 MR. YUN: Right.

3 COMMISSIONER CURTIN: I did want to ask about
4 non-monetized too, because again, I'm -- forgive my
5 ignorance. Separate non-monetized benefit from
6 resiliency? Just give me an example of what that means,
7 because the jargon is --

8 MR. YUN: So in the current regulations, we had a
9 component that is called resiliency and non-monetized
10 benefit. And we couched it that way, because we don't
11 think -- we don't want to -- number one, we don't want to
12 require applicants to have non-monetized benefits.

13 COMMISSIONER CURTIN: Give me an example of
14 non-monetized benefit?

15 MR. YUN: So I think the example that Dave has
16 used previously is in flood benefits we never monetize
17 human life. So that would be something on non-monetized.

18 COMMISSIONER CURTIN: Okay.

19 MR. GUTIERREZ: But it should be considered. And
20 the way we want to consider it is all we're doing is
21 moving it from one category.

22 COMMISSIONER CURTIN: Okay.

23 MR. GUTIERREZ: And it can't be by itself,
24 because you don't want to -- you don't want to dissuade
25 people not to -- or those folks that don't have

1 non-monetized benefits. So we're putting it up where it
2 really belongs, and that is in the public benefit ratio.

3 COMMISSIONER CURTIN: Okay. That's a little
4 clearer.

5 CHAIRPERSON BYRNE: Commissioner Orth, do you
6 want to wait?

7 COMMISSIONER ORTH: I'll wait.

8 CHAIRPERSON BYRNE: Okay. I think you're getting
9 to what Dave is about to ask.

10 MR. YUN: Okay. So we'd like to look at
11 resiliency --

12 --o0o--

13 MR. YUN: -- in 3 components. We'd like to make
14 an integration component, an increase in system
15 flexibility component. And we think that an increase in
16 flexibility would mean storage at the end of September.
17 So that's where some of the storage data would come back
18 in.

19 And the third component, which is the largest, is
20 uncertain future. And that would consist of the
21 uncertainty analysis. It's already required in
22 regulations. So that is the sensitivity analysis to
23 extreme climate futures, as well as water projects -- I
24 think water projects.

25 MR. SOU: Other projects.

1 MR. YUN: Other water projects.

2 And then we also want to look at I think a
3 drought period. We wanted to -- so in the analysis that
4 folks need to prepare already, they will have data over a
5 hydrologic period that we're asking them to analyze. We
6 can either specify the parameters of the drought period or
7 specify specific years that they need to go back to and
8 show us what kind of storage that they have at the end of
9 that drought period.

10 So that's how we'd like to rebuild resiliency and
11 remove the water system improvement component. We'd have
12 to go back and redistribute score points across what would
13 be now 4 criteria. So we need to do that as well. So
14 that is the concept.

15 CHAIRPERSON BYRNE: I think we're going to have
16 some questions here. And I can start.

17 Go ahead.

18 COMMISSIONER CURTIN: Go ahead. I'm sorry. You
19 want to?

20 CHAIRPERSON BYRNE: No, I -- so if we're looking
21 at page 33 of the draft regs, that line, I think -- so
22 what you're talking about -- is it 33?

23 MR. YUN: Thirty-three has the Table 6 on it.

24 CHAIRPERSON BYRNE: Yeah. So we're talking about
25 removing -- and I don't have the table -- any table yet,

1 but removing water system improvement, and then
2 incorporating some of the concepts in water system
3 improvement into kind of a resiliency public benefit
4 ratio? Is that my understanding or --

5 MR. YUN: So you would remove water system
6 improvement. You would have resiliency, and that's the
7 one we're talking about expanding and kind of changing.
8 So the point value for that would need to go up.

9 A non-monetized benefit would probably be couched
10 and related to the public benefit ratios score before you
11 at the top. So I think the concept there is to
12 incentivize folks to monetize, as much as they can,
13 because they need to do that, so we can figure out the 50
14 percent public benefit and the allocations. So what we
15 can do, I think, with a non-monetized benefit is to say if
16 you have a score less than maximum in public benefit
17 ratio, we'll look at your non-monetized benefits, we'll
18 apply some limited amount of storing to bring you up to
19 whole for the public benefit score -- public benefit ratio
20 score.

21 But we won't ever exceed that for you. So I
22 think we can connect those two pieces, so that folks get
23 credit for their non-monetized benefits. But there's no
24 requirement for them to have non-monetized benefits in
25 their application.

1 CHAIRPERSON BYRNE: So then some -- and correct
2 me if I'm wrong. So some of the same concepts that go
3 into our thoughts on water system improvement, rather than
4 have it as a separate category, maybe not with the same,
5 you know, deliveries, which I like, would then be
6 incorporated into the resiliency category.

7 MR. YUN: Right. And I think by doing --

8 CHAIRPERSON BYRNE: So you're not really getting
9 rid of it. We're just kind of shifting it and tying it
10 more to -- or is that -- yeah.

11 MR. YUN: Yeah, I think what it does is it puts
12 the project resiliency in one place, so that people when
13 you look at it can have an understanding, instead of
14 spreading out in 2 different places. So you have those
15 pieces of the climate change uncertainty, other major
16 projects coming on line, how does the project behave, a
17 period of drought, what is the project providing, how much
18 more flexibility in the water system is it providing,
19 what's it integrated to? You know, is it just a local
20 system? Is it a larger State system? Those kinds of
21 things.

22 CHAIRPERSON BYRNE: Commissioner Curtin, or Orth.
23 Orth then Curtin.

24 COMMISSIONER ORTH: I have my brow furrowed,
25 because I'm trying to figure this out. Joe, I think I

1 heard you say, at the end of this conversation -- I'm
2 tracking what your proposing to do that an applicant
3 wouldn't necessarily have to have non-monetized benefit.
4 Did I understand you to say --

5 MR. YUN: We don't want to make that a
6 requirement or shape our scoring so you must.

7 COMMISSIONER ORTH: But you're going to -- but
8 you're also going to move improvement to the State water
9 system into the non-monetized benefit category, so --

10 MR. YUN: No, no.

11 COMMISSIONER ORTH: No. All right. Correct me
12 then.

13 MR. GUTIERREZ: So let me explain a little bit
14 differently what we're trying to do. So this goes back to
15 -- we've talked about this before, 79750, where we're
16 trying to improve the operation of the State water system.

17 COMMISSIONER ORTH: Correct.

18 MR. GUTIERREZ: So we still want to do that. And
19 in the past what we -- we did it with the previous scoring
20 system of -- what was the term, Joe?

21 MR. YUN: Water system improvement.

22 MR. GUTIERREZ: Water system improvement. We did
23 it with that term before. We're still not losing the
24 concept, and we don't -- we believe that we can have the
25 concept in reading the statutes. But what we're trying to

1 do is we're thinking that that actually fits more with the
2 resiliency. It talks about the integration of the system.
3 It talks about the flexibility of the water system. And
4 so we want to put it into that category, and that's
5 basically what we're trying to do.

6 Now, the non-monetized benefits -- at one time,
7 the non-monetized benefits were within a separate category
8 with something else. What we're trying to do is we're
9 trying to put that back with public benefit ratio. But
10 the non-monetized benefits are not this. The
11 non-monetized benefits are the things like loss of life,
12 things that you can't actually monetize. Yet, it's still
13 a public benefit and it really belongs in the public
14 benefit ratio. And it's up to us to figure out how to
15 score that effectively without penalizing folks that don't
16 have non-monetized benefits.

17 MR. YUN: I mean, one way to think about this is
18 in the regs now, non-monetized benefits and resiliency are
19 one thing. They're kind a of hooked together. I need --
20 we really needed to isolate resiliency so we could really
21 look at those 3 components that are on the screen now, so
22 I we need to -- we need to move non-monetized benefits
23 somewhere else.

24 COMMISSIONER ORTH: Okay. That helps.

25 COMMISSIONER CURTIN: Maybe for my own

1 clarification, 79750. Boy, that's the first time I think
2 I've actually quoted a number.

3 (Laughter.)

4 COMMISSIONER CURTIN: That's the overriding
5 issues for storage projects that improve the operation of
6 State water system are cost effective and provide a net
7 improvement in water quality conditions, et cetera. That
8 doesn't actually mean we can pay for those things, but it
9 doesn't mean that the project itself should be carefully
10 considered, and that we can then pay for the public
11 benefit portions of it. Is that kind of what we're saying
12 here?

13 MR. GUTIERREZ: That's correct. That's correct.
14 And that refers -- what you're talking about is 79750, and
15 then you have to refer to (c), where it talks about the
16 competitive process and how we're ranking projects.

17 COMMISSIONER CURTIN: Right.

18 MR. GUTIERREZ: And what we're looking at is
19 pursuant to the criteria established under this chapter.

20 COMMISSIONER CURTIN: Right.

21 MR. GUTIERREZ: And so what we're trying to do is
22 develop the criteria established under this statute.

23 COMMISSIONER CURTIN: Okay. I understand. And
24 I've always been an advocate for not forgetting 79750(b).

25 (Laughter.)

1 COMMISSIONER CURTIN: But we can only pay for
2 what we can pay for, which is pretty well enumerated.

3 MR. GUTIERREZ: That's correct.

4 COMMISSIONER CURTIN: Okay. That helps. So I do
5 have another question, if you don't mind, if you're done?

6 CHAIRPERSON BYRNE: Please, Commissioner Curtin.

7 COMMISSIONER CURTIN: One thing I don't quite get
8 is the September deal, an increase in system flexibility
9 as measured by storage available at the end of September,
10 which I think is sort of a traditional way of looking at
11 when do we really make -- we need to have a lot of storage
12 availability for the winter storms, is that what you're
13 saying?

14 MR. YUN: Yeah. And actually what I'll do is
15 I'll let Sean speak to some of those things.

16 COMMISSIONER CURTIN: From -- let me just
17 complete the thought, so you can address that as opposed
18 to something I may not comprehend.

19 For me, the flexibility is going to be we're
20 going to handle our water issues differently in the
21 future. The reoperation of reservoirs, I think, is going
22 to go way up the ladder here, and hopefully when the Feds
23 get their head together on this.

24 So measuring it at a point in time might
25 actually -- depending on what you're trying to measure, it

1 might be counterintuitive, because to some degree it would
2 be nice to have, you know, whatever you set in this -- I'm
3 not going to explain this. I can feel it already --

4 (Laughter.)

5 COMMISSIONER CURTIN: -- in the storage
6 component. But if they're managing it differently and
7 more effectively, my instincts are that it will move water
8 out of the storage -- surface storage into groundwater
9 storage as quickly and as often as possible, so that our
10 historic metrics may not actually fit a more effective,
11 you know, management of water. So I'm just curious about
12 why is it there and what does it mean?

13 MR. YUN: So, Rob, before -- Sean, before you
14 talk -- and I think the other piece that would probably be
15 important to talk about is -- and it's something that we
16 had brought up in previous Commission meetings, is that
17 we'd be looking at what the project would provide for
18 whatever system that it's looked to. So if you --

19 COMMISSIONER CURTIN: Or could be hooked to.
20 That's the key to sustainability, and reliability, and
21 flexibility, and all the other abilities we talk about,
22 it's not what exists today. You build your project to
23 meet what exists today, but hopefully your project is also
24 resilient enough to include more groundwater storage
25 capabilities, different flood control patterns. That's

1 the way I view this. That what we're investing in -- not
2 granting in, investing in is a process that actually
3 encourages the growth of these other systems to adapt to
4 climate change. Less snow, more rain. So that's why I'm
5 asking, what's the September deal?

6 MR. YUN: So one of you guys want to hop in on
7 the September deal.

8 (Laughter.)

9 COMMISSIONER CURTIN: Thank you. He's using my
10 jargon now.

11 MR. LEAF: I'll start it. Sean, you can jump in.

12 So the presumption here is that the resilient --
13 the resiliency, you can -- the monetization of benefits
14 will capture what is actually used for private and public
15 benefits in -- that's the monetization process. There --
16 in the simulation of -- in the evaluation of the, you
17 know, long-term trends, there is water that will be
18 residing in the system, whether it's in groundwater or in
19 surface water that is present throughout, that is -- it's
20 being held through time. It's being held through
21 droughts. It will result in benefit in someway, but
22 there's a value of it just being held in the system.

23 And we could measure that storage at any point in
24 time, but -- you know, so it could be end of May, it could
25 be end of December, you know, it could be at a high point,

1 at a low point. September is indicative of that overall
2 performance improvement in terms of what you have
3 essentially in the bank account, and what you have access
4 to if something happens that is unexpected, which is not
5 captured in the monetization process.

6 So September is the traditional time period that
7 we would capture that improvement and simply to select
8 something is why we selected September.

9 COMMISSIONER CURTIN: Okay. I don't really want
10 to dwell on it. I understand what you're saying. And
11 maybe when the comment period comes, we'll get a different
12 approach. I don't want to hold up the works, but that's
13 helpful. Thanks.

14 CHAIRPERSON BYRNE: Commissioner Orth.

15 COMMISSIONER ORTH: No, I'm fine.

16 CHAIRPERSON BYRNE: Okay. I'm sorry. Okay.

17 Anybody else on this piece?

18 Obviously we'll get public comment.

19 Okay.

20 MR. GUTIERREZ: Okay.

21 --o0o--

22 MR. YUN: I think there's one more piece to this,
23 Dave. So some of the comments that we received, and this
24 goes back to that piece I talked about before, where we're
25 asking somebody outside the watershed of the Delta to give

1 us some assurance of the ecosystem improvement benefits to
2 the Delta, which they must show.

3 We would like to add additional verbiage to that,
4 which includes water right identification. We felt that
5 it's critical -- and why we left it -- we want to leave it
6 at water right and contract is because we feel it's
7 critical to ensure some kind of -- to -- how do I say
8 this? -- emphasize how you can help assure that benefit.
9 We couldn't think of other mechanisms that are less than
10 contract that would really say this benefit is assured.

11 So we'd like to clarify that language and tighten
12 that language, and not make it more expansive is the
13 bottom line.

14 This also kind of relates to the findings that
15 agencies will need to make. And so we felt that if you
16 can't give us the initial what contract, what kind of
17 water right would need to change, at this point, I think
18 showing assurances eventually to get your -- to make the
19 agency finding, and then to eventually get an agency
20 contract for that benefit, would be problematic.

21 COMMISSIONER CURTIN: I just want to make a quick
22 comment on this, because it really does indicate the
23 fundamental questions that we're going to be grappling
24 with -- and I say, "we", I mean California -- into the
25 future. If we capture more water and store more water,

1 the question is who's going to use that water? And I
2 think the questions you're raising here are really
3 profound and important.

4 I don't quite understand all of it, but we are
5 going to have to deal with we build this system to capture
6 water, put it in the ground, capture much more, put it in
7 the ground, how do we distribute it? The way we've
8 distributed it is based on a whole historical and legal
9 series of decisions that are going to have to be really
10 looked at, which is tough.

11 So thank you for this. Again, I'm looking
12 forward to public comment on that.

13 MR. GUTIERREZ: Okay. The next subject actually
14 falls into the category of clarity --

15 --o0o--

16 MR. GUTIERREZ: -- in the sense that we received
17 quite a few comments. And I think it was a complete
18 misunderstanding and clarity that we obviously have to
19 make on our part, and that's Commission decision making
20 and the process and the public involvement in that
21 process.

22 And so when we -- and I see where the confusion
23 actually lied. The way the regs were written, it actually
24 made it look like the Commission staff is making the
25 decisions, and they're giving that to the Commission to

1 up with a funding decision at the end.

2 So we do need to go back and clarify Commission
3 activities, how the public participates, clarify that
4 staff is just setting the Commission up, and trying to
5 provide the information to allow the Commission to make
6 changes, and make final decisions, and also clarify that
7 the Commission can change staff work in conjunction with
8 participation from the applicant, participation from the
9 public, so you're really making an informed decision.

10 I think we can go back and look at some of what
11 we already know as process schedule. I think we have a
12 process schedule kind of on the website right now that's
13 posted. I think we need to go back to those piece, look
14 at those again, and see where we can give some assurance
15 to the public of X number of days. You know, we'll post
16 something X number of days before the Commission does
17 their decision making, so it's clearer for folks.

18 I think it's all there, as Dave was saying, and
19 staff just didn't make it clear enough. And with the
20 diffuse step-wise process, we lost even more clarity. I
21 think we can develop some tools which really don't talk to
22 the regulation, so I don't want to go there too much. But
23 I think we can develop other tools that we can put out on
24 the web that would help folks understand process.

25 But the regulations themselves certainly need

1 more clarification and we will go back and do that.

2 CHAIRPERSON BYRNE: Thank you, Joe. I think that
3 would be good.

4 Thank you.

5 Commissioner comments or questions?

6 Commissioner Del Bosque.

7 VICE CHAIRPERSON DEL BOSQUE: Yes. I've -- I can
8 appreciate that -- you know, that we're trying to help us
9 to select the best projects possible. I've always been --
10 expressed my concern about the scoring system picking the
11 project for us. And so I would just like to know
12 how -- how in the language we're going to be able to
13 maintain discretion just by the scoring system kind of
14 pointing to this is the better project. Whereas, we need
15 to evaluate a lot of things also that may not enter the
16 scoring system.

17 MR. YUN: So some of the pieces that we have --
18 and part of what you're talking about, I think, is why we
19 kind of laid it out step-wise. So you have a process and
20 ability to affect every level of process, of score, of
21 looking at different scoring components individually, and
22 saying this isn't right. That helps.

23 Because you're going to be considering policy,
24 while staff is kind of dealing with the more nuts and
25 boltsy places. So we'll make it clear what basis that you

1 have to change scores. In some instances in the
2 regulations, when we talked about component scores, we put
3 in a point value that the Commission could move the score.
4 And I think that, from a staff perspective, I think that's
5 still a good thing, but - and I'll kind of expand that -
6 you're dependent -- depending on staff to give you good
7 staff work.

8 And I think if the staff does their job, then we
9 can say, you know, there's a little bit of wiggle room
10 here that the Commission can make easy, dais-based
11 decisions that say let's move this a little bit. I think
12 if we get into the larger point values, from a staff
13 reviewer point of view, I think what we're saying -- what
14 you'd be saying is if this was really a zero, and I
15 really -- the Commission really think it's a 10, I think
16 we assume that there would be a piece in there that you
17 would want staff to go back and look at something. It
18 would be more fundamental, something more systematic.

19 And so we didn't put in the piece that said the
20 Commission can certainly always look at whatever the staff
21 is providing and ask us questions. And if we did it
22 wrong, go back and really redo it, or based on comment, we
23 think staff really erred, just go back and redo it.

24 We put in small point increments to really cover
25 those things that said, well, you know, staff has got it

1 90 percent right. We just need to make -- to finish it
2 off for our final decision to say we don't agree. For
3 example, staff came back and said the risk was high on
4 this project, we don't think it's as high as staff has
5 indicated by their comments for whatever reason, whatever
6 policy reason that you guys have.

7 And you can say, well, we can shift that a little
8 bit. If staff really blew how we laid out risk, I think
9 it's a larger conversation probably for -- and staff would
10 like the opportunity to rectify any of large errors to
11 make sure they're not systemic in the scoring system. So
12 we'll put that -- we'll clarify that there's a piece of
13 working in each component, but there's always the
14 overlying piece of the larger policies that you consider
15 in saying something went wrong. Staff we really need to
16 correct this, and staff would be happy to do that, and
17 then bring it back.

18 So that's where I think you need to clarify how
19 we laid it out, that there's other pieces that we assumed
20 that were obvious and there. And, no, we need to go back
21 and make sure how they all fit together, and so everybody
22 knows how it all fits together.

23 I hope that helps. It wasn't too rambling.

24 VICE CHAIRPERSON DEL BOSQUE: Thank you.

25 CHAIRPERSON BYRNE: Commissioner Orth?

1 COMMISSIONER ORTH: I think what I'm hearing, and
2 I just want to state this back in my words to make sure
3 it's clear to me is that we're committed to a scoring
4 process. I mean, that's the quantification element of the
5 statute. And so our discretion is going to be bounded
6 within that scoring system. You're going to let us tweak
7 the dial a little bit, right? But if we feel that the
8 dial needs to be tweaked beyond the range of discretion
9 that you're going to grant us in here, you know -- I wrote
10 down sliding scale -- a small sliding scale.

11 Then, it's up to us and the public to point you
12 back to the drawing board and do -- develop additional
13 analysis to support your initial score or modify the score
14 based on that subsequent analysis.

15 MR. YUN: And I would say that's true within the
16 components or shifts. You've got other opportunity when
17 you look at max -- conditional -- maximum conditional
18 eligibility determination.

19 COMMISSIONER ORTH: Right.

20 MR. YUN: That's a huge -- we need a better word
21 for that.

22 (Laughter.)

23 MR. YUN: But -- or a word for that.

24 And so you have in that realm -- certainly staff
25 is saying we added things up like the regulations said we

1 would. We're providing you a starting point as the
2 regulation say we should. You guys need to talk about
3 policy and how you would shift those maximum conditional
4 eligibility things. I don't see -- I don't see that
5 component coming back to staff and saying staff go back
6 and change the scoring. I think that's really addressed
7 up in the scoring components, so -- and that's where I
8 said, you know, this is laid out very step-wise. And we
9 need to go back in and try to make it clear where all
10 those opportunities are, and the decisions you're making.

11 Because it really builds up to that final
12 decision that you're making, and you are considering all
13 the information. It's just parsed out in all these
14 different sections.

15 CHAIRPERSON BYRNE: Mr. Quintero.

16 COMMISSIONER QUINTERO: And in actuality, the
17 final decision that we'll be making based on all the staff
18 work, and public input, and discussion of the Commission,
19 is how much money we allocate to different projects.

20 So what this is really doing, and what you're
21 saying, is with this scoring we're going to know what that
22 group of projects is identified.

23 And so, you know, another part of that discretion
24 is going to be how much, you know, in all of these
25 projects? It's not going to be a -- I don't see that as

1 necessarily the --

2 COMMISSIONER CURTIN: That's the fun part.

3 COMMISSIONER QUINTERO: Right. But I'm just
4 pointing that out, that we get to look at the projects
5 individually, consider everything, and say, you know what,
6 this project probably needs, you know, either a big
7 project or a small project, and we'll make a decision
8 based on that. I just wanted to point that out as
9 important as it is.

10 MR. YUN: Right, right.

11 CHAIRPERSON BYRNE: Commissioner Baker.

12 COMMISSIONER BAKER: I just want to thank staff
13 for -- you know, Joe you've indicated that there are going
14 to be some additional tools on the website that will help
15 us and the public understand -- you know, understand kind
16 of the different components of the decision-making
17 process. And I think I've mentioned to you all before in
18 the meetings that something akin to a flowchart or
19 decision-making chart, or whatever it's called, you know,
20 I think will hopefully help inform the public, in terms
21 of, you know, when they can participate, when we're
22 supposed to be making decisions, et cetera. So I just
23 wanted to thank you for that.

24 MR. YUN: Thank you.

25 CHAIRPERSON BYRNE: So thank you for that as

1 well, Joe. So if I'm looking at, you know, page 41, 42 of
2 the regs -- and don't worry, I'm not going to segue into
3 it. But, in general, when we're ranking into Rank 1, 2,
4 or 3, I mean, I understand we've got some discretion
5 throughout to question what you have brought to us. And
6 ultimately, if you look at the different scores that we're
7 giving for each category, it says that we're going to look
8 at it and we're going to decide based upon what you
9 presented to us and input from the public.

10 So then we get everybody into a category, I think
11 a ranked category, and then within that, assuming that --
12 you know, so we have some opportunity to participate in
13 the scoring, we get into a ranked category, and then
14 that's when we're, you know, an update of 42, it looks
15 like maximum conditional eligibility amounts, and the
16 Commission gives input, look at leveraging private
17 dollars, and implementation of the Water Action Plan. So
18 that's where a lot of the discussion -- and I wouldn't
19 call it discretion, but Commission input would play into
20 the addition of dollars between projects that are all
21 within one category and reasons for that.

22 MR. YUN: Right. And staff doesn't have a -- you
23 know, anything past that. I mean, we're giving you the
24 addition of stuff in our -- and the initial starting
25 point. You're really taking those funding decisions and

1 working with those -- within those categories, like you
2 said, to figure it out.

3 CHAIRPERSON BYRNE: Right. So in order to kind
4 of get to the score, we're participating throughout.
5 Granted, it's highly technical, and we'll be leaning on
6 you and the public to figure out. And it would be
7 unlikely for us I think to deviate super significantly on
8 something that's hyper technical, or at least we would
9 have to in ourselves, Commissioners, justify how we're
10 voting on something based upon the information we're
11 getting. And then there's that next step once you
12 consider the categories.

13 MR. YUN: Right.

14 CHAIRPERSON BYRNE: Okay. Commissioner Herrera.

15 COMMISSIONER HERRERA: I just want to also thank
16 staff for really looking into this section. To me, I
17 think this is a very, very important section. We want to
18 be really clear, you know, in terms of the process that
19 we're going to be using to make these decisions. As I was
20 reading through these pages, it seems like perhaps just --
21 I understand that staff sort of laid this out in a
22 step-by-step process, but it does sort of read as sort of
23 like the staff being in the lead role.

24 And so maybe when you make the modifications, if
25 you sort of start with the Commission will make this

1 decision. Here is how staff will support the Commission,
2 and here is where the public, you know, plays a role, I
3 think that, you know, that makes it very, very clear that
4 the Commission is sort of in the lead role. These are
5 decisions that are going to be made by us, but that we are
6 going to, through the process, receive support from the
7 staff and input from the public.

8 MR. YUN: Thank you.

9 CHAIRPERSON BYRNE: Okay.

10 MR. GUTIERREZ: Okay. So at this point, any
11 further questions on the initial issues? If not, what
12 we'd like to do is take a break here and allow our
13 stakeholders to come and comment on these particular
14 issues and whether or not we presented them appropriately,
15 or any additional comments that they may have before we
16 start a discussion.

17 CHAIRPERSON BYRNE: Okay. So at this time, if
18 there's public comment on the items that we've just
19 discussed, with keeping in mind that we're going to be
20 having a, I'm sure, much lengthier discussion on climate
21 change, environmental mitigation obligations. And it
22 would not preclude -- there's other ones that people may
23 wish to raise as well, that you will have an opportunity
24 to.

25 So with that, I see the line forming starting

1 there. If you could just state your name and who you're
2 with for the record, and we'll be off.

3 MR. ROBIN: Good morning, Commissioners. I'm
4 Adam Robin with the Association of California Water
5 Agencies. I'd like to begin by thanking Dave and staff
6 for starting us off with the easy issues here.

7 (Laughter.)

8 MR. ROBIN: A couple comments, a couple snap
9 reactions based on the staff recommendation, which we're
10 all, I think, trying to digest and understand in greater
11 detail right now.

12 I'd like to begin by echoing Commissioner
13 Herrera's comments. I think, on the whole, when it comes
14 to the selection process, an emphasis on the Commission's
15 decision making, as informed by staff's technical
16 recommendations, and the input you receive from the public
17 would be appropriate.

18 I'd like to turn to 2 specific items that were
19 mentioned as part of the staff presentation. The first is
20 this idea of proving out Delta benefit. We think it's
21 clear that the statute requires that these projects
22 provide measurable improvements to the Delta. In deed,
23 they're going to have a public process after applications
24 are submitted, where folks will be evaluating these
25 projects very closely, whether its agency with technical

1 review for the public or other stakeholders in their
2 review of the applications to see that these projects
3 can -- will measurably improve the Delta ecosystem.

4 As Interim Interim Executive Officer Taryn
5 Ravazzini mentioned earlier today, the Commission has to
6 make a finding under Section 79755 that the projects
7 provide measurable improvements to the Delta before
8 finding can be allocated.

9 However, we think that the recommendation to
10 tighten up the application requirement by including an
11 identification of a specific water right, for example, is
12 too restrictive at the time an application is submitted.
13 That's basically 6 months from January. And for
14 groundwater projects, or other projects in
15 export-dependent regions that need to prove that there's a
16 measurable improvement to the Delta to identify specific
17 water right at that point precludes their search for a
18 water right holder that might be willing to enter into a
19 contract.

20 So again, we think preserving the flexibility
21 that applicants have to describe their approach to
22 demonstrating measurable improvements to the Delta at the
23 time an application is submitted is important, recognizing
24 that you have layers of process later on in the process
25 that will ensure those benefits are maintained.

1 So we know the staff recommendation is to add
2 additional verbiage. We actually provided some additional
3 verbiage that we think is consistent with enhancing your
4 flexibility here. We think that that will allow you to
5 consider products that are more diverse type, location,
6 size, and function. And we think that that's what this
7 program should be about.

8 I'd like to briefly turn, in whatever time I have
9 left, to this idea of a second set of regulations on the
10 administration of public benefits. You've heard a lot of
11 project proponents express an interest in clarity in a
12 process when it comes to securing these contracts with the
13 Department of Fish and Wildlife, and the State Water
14 Resources Control Board.

15 We think this is a high profile enough issue and
16 an important enough issue, that it could be brought back
17 to the Commission maybe on the January time frame for a
18 separate meeting.

19 Just an initial reaction is that a regulatory
20 approach, as think I we heard, isn't necessary under the
21 statute, and it might not be advisable for the right
22 reasons. So we'd welcome an opportunity to talk more
23 about that at a later date.

24 Thank you.

25 CHAIRPERSON BYRNE: Great. Thank you very much,

1 Adam.

2 MR. SANTOYO: Good morning. I'm Mario Santoyo,
3 executive director of the San Joaquin Valley Water
4 Infrastructure Authority.

5 And I have 2 comments, possibly more like
6 questions in a way. But the first issue is in terms of
7 the improvement to the California Water System. And the
8 discussion that revolved around focusing strictly on
9 storage at a specific point in time. I don't know about
10 you guys, but I've operated systems. And to accomplish
11 what we want to accomplish, you don't do it that way.

12 Actually, Commissioner Curtin was right on, is
13 that for us to be able to move water into the ground, for
14 us to be able to integrate with other systems in the
15 State, for us to optimize deliveries, there are more
16 variables associated with that, and they tie into
17 deliveries. How are you delivering this water and where
18 is it going to?

19 It cannot just be focused on a singular storage
20 point at some point in the year. That's not the way you
21 operate real systems. So what I would -- what I would ask
22 you is to do two things. If you're not going to go away
23 for storage, that you make it really clear that you're
24 looking at the combined storage of above and below, and
25 not just above, because that -- our goal is to improve

1 groundwater conditions. And so we're going to be moving
2 water as quickly as we can into the ground.

3 Okay. So the second issue I wanted to highlight
4 was in regard to basically -- and we were one of those
5 that made the point about discretion of the Water
6 Commission. And I'm glad to hear staff say that they
7 didn't intend to picture it so that it's staff's decision,
8 and you're just rubber stamping it. As you recall, I made
9 some similar comments last time, and I'm going to say it
10 again, is that I'm encouraged by what they said, but I'm
11 also a little concerned about what they said.

12 I'm hoping that you don't get put into a box,
13 where staff brings you a scoring system and you have to
14 kind of play within that scoring system, and you don't
15 have discretion to be looking at the bigger, broader
16 picture. I think the tools that they developed were
17 important for us to assess that a project is eligible and
18 that would put you in bucket number one, or whatever we
19 call it.

20 But once you get to bucket number 1, then that's
21 when the Commission needs to kick in and look at all the
22 variables that exist in terms of how this project will
23 would work, much like with what Commissioner Quintero had
24 said.

25 So again, I'm hoping that there's better clarity

1 in terms of what flexibility the Commissioners have after
2 staff has brought you, you know, a bucket number one
3 condition.

4 Thank you.

5 CHAIRPERSON BYRNE: Thank you very much, Mario.

6 Good morning. I'm Maureen Martin from the Contra
7 Costa Water District. And first of all, I would just like
8 to thank staff, because I know that they have been working
9 really hard to make adjustments and trying really hard to
10 listen to potentially conflicting input from all of us
11 stakeholders. And so I can see that they're doing a lot
12 of good work. So first of all, thanks for that.

13 Secondly, I want to echo the concerns about a
14 second round of regulations that -- about the managing of
15 public benefits in the future. And I -- we've
16 consistently voiced concerns that those contracts that are
17 required are a new feature, something that's undetermined,
18 and those are in addition to the operating permits, the
19 permits you have to get from State and federal agencies to
20 move your project forward. And so really even though we
21 want to advance it, we want to talk about it and have
22 discussions, we want to highlight that and move that
23 forward to get clarity, I think that if you go down the
24 path of having more regulations, you will really run the
25 risk of, you know, coming up with highly idealized,

1 prescriptive requirements that aren't going to match the
2 exact projects that you have, and you're not going to
3 match the operating permits, and there's going to be
4 potential conflict there.

5 And that's not really helpful. That's not
6 speeding up the process. And so I really caution against
7 starting a second round of regulations in terms of just
8 how long they might take, the material that would be
9 covered in them, because really each project is different.
10 And so all of those terms, all of those public benefits
11 despite the incredible, you know, effort that your staff
12 are going through to have an apples to apples comparison,
13 when you come to those public benefits, each project will
14 be specific.

15 And so I really don't want any kind of highly
16 abstract, prescriptive, idealized set of benefits or
17 requirements about it, because each project will be, you
18 know, unique. So we want to, you know, yes, have more
19 public dialogue, more interest, more clarity on how it
20 will work, how the process will go, but I do not think
21 that it's necessary to have a second round of regulations
22 in order to have all the information we need to move
23 forward.

24 And I would also like to -- you know, we made a
25 lot of recommendations also in our written comments about,

1 you know, simplifying the review process, providing the
2 Commission with a lot more clarity on where their decision
3 making comes in in the review process. And I do think
4 that we're on a better path towards, you know,
5 establishing the resiliency of the benefits.

6 But I think that there are -- once again, the
7 desire to show an apples-to-apples comparison in that
8 water system flexibility measurement, the end of September
9 storage, like, okay, well where? You know, as an
10 offstream storage for Los Vaqueros Reservoir, maybe some
11 of the other projects. There are different ways that you
12 conceptualize your projects than maybe you were thinking
13 about today.

14 And so just really consistently increasing one's
15 flexibility and not getting too overly prescribed in any
16 stage to allow people to describe benefits as, you know,
17 they imagine them for their project.

18 So thank you.

19 CHAIRPERSON BYRNE: Thank you very much, Maureen.

20 MS. ZWILLINGER: Hi. I'm Rachel Zwillinger with
21 Defenders of Wildlife. I also want to thank staff for a
22 lot of the improvements. I can see them in what you're
23 recommending. And a handful of issues that I wanted to
24 focus on.

25 First, the management of public benefits. We

1 continue to think this is a critically important issue,
2 and that the regulations are deficient as they currently
3 exist. So we're encouraged to hear that you're thinking
4 about adding additional language to these regulations.

5 In terms of what you are adding, we're encouraged
6 to hear that you're thinking about requiring adaptive
7 management plans. That's important, as we all know that
8 we don't know what the future will hold. What we think is
9 really important in terms of what these regulations set
10 forth are some details about what the contracts between
11 the projects and the agencies that are charged with
12 managing the public benefits should include.

13 And so we think that's where the adaptive
14 management component should come in, that it's important
15 to have publicly available monitoring data, and that it's
16 important to have a right for the public to have an
17 opportunity to comment on any of these contracts before
18 they are entered into in the beginning and then
19 subsequently modified, because that's how we're going to
20 have a transparent process moving forward.

21 In terms of a second set of regulations, you
22 know, I would much prefer to see a robust set of
23 requirements for management of public benefits in these
24 regulations. To the extent that we can't do that, I think
25 having another set of regulations that addresses the issue

1 is better than not, you know, addressing the issue
2 meaningfully at all, but we would really prefer to see
3 everything in this one set of regulations.

4 On the project evaluation and scoring, we thank
5 staff for removing water system improvement, that we think
6 that's important that it is an eligibility criteria, and
7 an important one, but not one that we can use for ranking
8 of the projects.

9 In the way that you have described moving that
10 into the resiliency component, you know, it's hard to
11 comment on it without seeing specific language, how these
12 things are defined, and what that would actually look
13 like. I think it is a more encouraging approach, and
14 we'll certainly provide additional comments once we see
15 how those terms are defined and what that means. But to
16 the extent that integration and flexibility speak to the
17 magnitude of the public benefits that are being provided,
18 that seems appropriate and useful.

19 And then finally, on the public process piece, we
20 also appreciate that you're adding to make more explicit
21 where there are opportunities for public engagement. We
22 think it's very important that there's an opportunity for
23 public engagement before staff starts their review of the
24 applications, so that public comments can inform, the way
25 that staff is looking at the applications and information,

1 and also, subsequently before the Commission when the
2 Commission is evaluating the applications.

3 There was also language in the draft regulations
4 about an applicant having an opportunity to appeal. And
5 we really think that's important that anybody can raise
6 questions about staff's analysis and not just the
7 applicants.

8 Thank you, all.

9 CHAIRPERSON BYRNE: Thank you very much, Rachel.

10 MR. ORTEGA: Good morning, Chair Byrne and
11 members of the Commission.

12 My name is Ric Ortega. I manage the Grassland
13 Water District. And we are a wildlife refuge water
14 supplier in the San Joaquin Valley. My district, along
15 with 6 conservation groups, submitted written comments,
16 including the Nature Conservancy, Audubon California,
17 Point Blue Conservation Science, Defenders of Wildlife,
18 Ducks Unlimited, California Waterfowl Association. Our
19 organization is working on behalf of restoring and
20 maintaining the last remaining 5 percent of wetland
21 habitat in the Central Valley.

22 As it's specific to this section, we ask that you
23 direct staff to better define the public process for water
24 storage applications to be made public, and for the
25 potential beneficiaries of stakeholders to provide

1 feedback to the Commission before founding these awards.

2 We also ask that you direct staff to ensure that
3 the public benefits implementation contracts with the
4 resource agencies provide an opportunity for stakeholder
5 input. For refuges, the Central Valley Joint Venture, and
6 the Interagency Refuge Water Management team are two
7 really good examples of entities whose expertise would be
8 valuable for successful implementation of these refuge
9 beneficiary projects.

10 Thank you for the consideration.

11 CHAIRPERSON BYRNE: Thank you very much.

12 MS. JAMES: Good morning. My name is Kirsten
13 James, and I'm with Ceres. For those you who aren't
14 familiar with us, we're a non-profit organization, and we
15 work with businesses and investors on sustainability
16 issues such as water scarcity.

17 So to give you a flavor of the networks we work
18 with, we work with many Fortune 500 companies, we work
19 with investors representing 14 trillion in assets. In
20 California, around water issues, we work with 25 companies
21 on a campaign where the companies really recognize that
22 water scarcity is a risk to the economic vitality of their
23 business. And so they're engaging more directly on
24 California water issues.

25 So that's why I'm here today. Back in March,

1 our -- a subset of our coalition submitted a letter to you
2 basically asking that, you know, this is a real
3 opportunity obviously for California to really think about
4 how we can manage our surface water and groundwater
5 together, and more effectively to set us on a path to a
6 sustainable water future.

7 And so what our coalition was asking for is that
8 we really ensure that we give equal consideration to
9 groundwater recharge projects, as well as surface storage
10 projects. So, you know, I actually just came from a PPIC
11 meeting this morning, where Secretary Ross was speaking,
12 along with two water agencies, one the Kern County and one
13 the Colusa.

14 And the points that I really took home are that,
15 yes, financing for SGMA implementation is going to be
16 critical, and, you know, we need really these groundwater
17 recharge projects are going to be part -- a big part of
18 that puzzle.

19 So I'm here before you today to really make sure
20 that when you review and approve these regulations, that
21 you have that filter on your review, that you're really
22 ensuring that both are given unbiased and equal
23 consideration. You know, taking away the pre-application
24 process seems like a step in the wrong direction. Some of
25 the, you know, cost-benefit analysis should really be in

1 the project evaluation to really give that level playing
2 field, so -- and same with some of the climate change
3 impacts really looking at, you know, long-term
4 decommissioning and including all of those.

5 So really just here to ask you to really put that
6 filter on your evaluation in adopting these, so we can
7 ensure that we're giving equal consideration to all of
8 these really great projects.

9 Thank you.

10 CHAIRPERSON BYRNE: Thank you, Kirsten.

11 There is opportunity as well at a later time for
12 additional public comment on other issues as well.

13 MS. JAMES: And I do have a few documents I'll
14 share with the clerk.

15 CHAIRPERSON BYRNE: Give them to staff, yeah,
16 that's fine.

17 MS. CLARY: Good morning, Commissioners.
18 Jennifer Clary, Clean Water Action. I'll keep my comment
19 short.

20 Since you're not using the comments cars, I
21 thought I'd just repurpose mine. And so I want to
22 follow -- I want to follow up and support what Defenders
23 of Wildlife and Ceres said, one, the hole idea of managing
24 public benefits. It's one of the key requirements of the
25 regulations and we want to see some information.

1 It's always so difficult in this kind of forum
2 where we get a good presentation from staff, but we don't
3 actually know what's going to be in the regulation, so we
4 say, "Oh, it's sound fine". But then, you know, does that
5 approval carry-over when we actually see the language. So
6 let's say we're giving provisional approval to some pieces
7 of this.

8 Also, the idea of removing the pre-application
9 process. As I review the regulations, and the technical
10 report, and the -- and all the comments letters, again and
11 again we get this flexibility piece, and alternative
12 methods for determining things like climate change.
13 Well -- and the technical report also has this built in
14 flexibility.

15 Well, if you can't have that built in
16 flexibility, you need to figure out a way to actually
17 incorporate that into the process. Otherwise, are people
18 really going to spend hundreds of thousands of dollars for
19 preparing an application that's -- that uses a process
20 different than what you put in the regulation? Well,
21 that's unlikely. And that's one of the reasons why a
22 pre-application process is a good idea.

23 It's also a reason why having that independent
24 technical review panel was a good idea, because if you're
25 going to have all these different types of projects, using

1 all different types of calculations, it's a good idea to
2 have extra bodies on the ground to compare them. So I
3 know this decision was sort of made back in the summer.
4 But since you guys never vote on anything, you haven't
5 actually made that decision yet. So just saying that it's
6 something that you can revisit.

7 I also want to make very clear the resiliency
8 issue. I would really like to get a definition of what
9 resiliency should be, because this is a scoring item. So
10 that means it must be specific to public benefits. So the
11 resiliency you're measuring should be the resiliency of
12 the public benefits that are being provided by the
13 project.

14 So it's not clear to me that the requirements
15 listed in the PowerPoint really do that, and I'd like to
16 have a better understanding of it.

17 Thank you very much.

18 CHAIRPERSON BYRNE: Thank you, Jennifer.

19 MR. JONES: Good morning. Kyle Jones with Sierra
20 Club California.

21 I just wanted to start by thanking staff by
22 making some improvements that we asked for in our
23 comments, specifically relating to expanding upon the
24 public comment procedures, and making sure that those are
25 being put in there for us, and then also removing water

1 system improvement as a scoring metric.

2 Like Jennifer just mentioned, I think we're
3 concerned about how the details will come out with how
4 resiliency looks, and making sure that what is being
5 supported is limited to resiliency of the public benefits,
6 add not finding some -- you know, not having private
7 benefits being scored, which would violate Proposition 1.

8 And then I also just wanted to, you know, add on
9 support for what Rachel said, from Defenders of Wildlife,
10 regarding management of public benefits. Ideally, it
11 would be something that we could get all taken care of in
12 this round of regulations. But given what time of the
13 year it is, you know, having -- it doesn't look possible,
14 but having something in regulations is important to make
15 sure that those management items are being taken care of,
16 and that they will be adequate for the public.

17 Thank you.

18 CHAIRPERSON BYRNE: Thank you, Kyle.

19 MS. CHRISTIAN-SMITH: Good morning, Juliet
20 Christian-Smith from the Union of Concerned Scientist.

21 I wanted to echo the excitement about the
22 inclusion of adaptive management plans, interest in the
23 definition of resilience. In the past, at least in the
24 proposed revised regulations, it was limited to this kind
25 of, what's now number 3, the uncertain future. And I

1 would like to note that the uncertainty analysis that is
2 required is a qualitative analysis or quantitative, and
3 there is, at this moment, not any modeled results for
4 people to use.

5 So again, this -- the comment we've made in the
6 past that you're being asked to score something that's not
7 quantitatively evaluated, when it does have -- you can
8 quantitatively evaluate seems problematic, and even more
9 so in this rendition.

10 And also, the drought period, I just -- it's not
11 clear what the parameters will be to simulate a drought
12 period, but I wanted to say at this point in time that
13 other State agencies are already working on this.
14 California Energy Commission has commissioned Scripps
15 Institute to develop a drought scenario. And it might be
16 a good idea to look at what these other people are --
17 State agencies are already doing, so we don't recreate the
18 wheel and create something different. That might be very
19 confusing.

20 So thank you.

21 CHAIRPERSON BYRNE: Thank you, Juliet.

22 MR. SELLERS: Good morning, I'm Scott Sellers
23 with the Environmental Defense Fund. I'd first like to
24 thank the Commission and the staff and others here today
25 for all their hard work on developing the regulations to

1 date. We appreciate the opportunity to come here and
2 comment today.

3 I want to discuss 2 concepts that I think would
4 advance the management of public benefits of water storage
5 concept projects, flexibly manage environmental water and
6 leaving groundwater in storage for environmental benefit.

7 I'll start by explaining the flexibly managed
8 environmental water concept. Each water storage project
9 will generate certain public benefits in which many cases
10 will include water for the environment. And while it's
11 invaluable, many of those claimed benefits will be accrued
12 through project operations, such as they occur in a fixed
13 time and place.

14 For example, routine scheduled deliveries of --
15 to downstream water users of water generated by storage
16 projects may increase flows downstream during the delivery
17 months and improve fresh water habitat. The draft
18 regulations provide a framework for evaluating this
19 improvements. But we think it's important to distinguish
20 between these fixed or constrained benefits that are
21 pledged to other uses and those can be used flexibly.

22 So in contrast to flows that are strictly
23 associated with project operation, flexibly managed
24 environmental water is water that can be moved or held in
25 groundwater or surface storage, and withdrawn or released

1 from storage over time independent of how a project is
2 operated for non-environmental water supply and other
3 purposes in order to flexibly provide a range of
4 environmental benefits.

5 We recognize the Commission will require project
6 applicants to quantify both kinds of environmental water
7 that can be generated by storage projects, fixed and
8 flexible, and specify whether flexibly managed supplies
9 could be made available and what times of the year as
10 well.

11 Ultimately, an environmental water manager could
12 assume responsibility for collectively adaptively managing
13 the flexible water supplies that are generated by
14 projects, but -- and a separate quanti -- the separate
15 quantification of flexibly managed environmental water
16 would be an important first step towards this.

17 More immediately, this quantification would help
18 clarify and address the expectations for management of
19 public benefits by providing the Commission with important
20 information on the added value as public benefit resources
21 that could be managed adaptively or flexibly.

22 The second point I'd just like to touch on
23 quickly in the time that I have left is the benefit of
24 ground -- leaving groundwater in storage. Some others,
25 like The Nature Conservancy, have pointed out that there's

1 significant public benefits of groundwater storage
2 projects. And we appreciate also the Commission's
3 inclusion of language to that effect. Today, I would like
4 to emphasize those public benefits related to
5 groundwater-dependent ecosystems

6 Some groundwater storage projects will rely on
7 recharge systems for replenished groundwater levels, and
8 that can benefit groundwater-dependent ecosystems that
9 raise the water table below them enough to sustain them,
10 only so long as that water remains in storage. If the
11 water level falls again, the benefit to
12 groundwater-dependent ecosystems would be lost.

13 So we would ask that all water added to maintain
14 the groundwater storage to support habitats and
15 streamflows be included in the evaluation of public
16 benefits for each project application, even though this
17 means it will not be withdrawn and used in the future for
18 water supply.

19 Thank you.

20 CHAIRPERSON BYRNE: Thank you, Scott. Good
21 timing.

22 MR. WEED: John Weed. I'm the Director of the
23 Alameda County Water District, which is a contractor of
24 the South Bay Aqueduct of the State Water Project.

25 In context, we have a proposal to increase the

1 past water supply's capacity at Del Valle's of over 15,000
2 acre feet to the as-built design of 77,000 acre feet by
3 merely relocating a park that was built in the reservoir,
4 currently operated by the East Bay Regional Park District.

5 Several issues. One, request clarification on
6 the ability under the ordinance to have 100 percent
7 financing for reoperation of reservoirs, as opposed to the
8 50 percent match.

9 Second, that if matches are desired, that
10 non-monetary matches be allowed, such as the contribution
11 of land at fair market value owned by one of the
12 districts.

13 Third, and hopefully an editorial issue, is the
14 definition of a regional surface storage project. In the
15 last context it was a subset of 69 that stated regional
16 storage -- regional surface storage projects are not
17 wholly owned or operated by the Department or the U.S.
18 Bureau of Reclamation, but rather by a local agency or
19 regional entity.

20 In discussions, it's been suggested that we are
21 not foreclosed from proceeding, based on this language,
22 but I would ask that it be clarified that this language is
23 not applied to the applications. That projects owned --
24 solely owned by the Bureau or the Department, DWR, are
25 eligible.

1 Thank you.

2 CHAIRPERSON BYRNE: Thank you very much, John.

3 MR. SWANSON: Good morning. My name is Bill
4 Swanson. I work for MWH, and I'm here today on behalf of
5 the San Joaquin Valley Water Infrastructure Authority.

6 I'd like to make 2 comments on the project
7 evaluation and scoring. The first one has to do with the
8 staff recommendation to remove deliveries as one of the
9 ways of measuring the effective storage on the operation
10 of the statewide systems.

11 While I can appreciate the purpose of storage is
12 not measured simply by looking at water deliveries, I
13 think exempting that may be creating some challenges. As
14 Mario Santoyo pointed out the project that he represents
15 functions with the objective of delivering water for the
16 purpose of putting it in the ground. And so it becomes an
17 operator's choice of where to put the water and when.

18 And so to get a full package or a full
19 understanding of how the projects would operate today, and
20 into the future, it might be more instructive to look at
21 the overall management strategy in combination of water
22 deliveries, as well as the resulting storage and
23 combination of what's in the ground and what's in the
24 reservoir. So I'd encourage staff to rethink removing
25 deliveries as part of the metric.

1 The second point pertains to the movement of
2 non-monetize benefits into the public benefit category.
3 The example that staff gave this morning I thought was
4 very astute in pointing out that loss of life is a
5 non-monetized consequence, or the avoidance of that as a
6 non-monetized benefit of flood control, which is one of
7 the 5 statutory public benefits that you're going to be
8 funding.

9 But there may be other public benefits, or
10 non-monetary benefits, that don't neatly fit into one of
11 those 5 categories. And the example that comes to my mind
12 is we're looking at these storage investments around the
13 same time that we'll be implementing SGMA. And we know in
14 parts of the State, the consequence of SGMA will be pretty
15 profound. It will likely result in significant land
16 retirement, and that consequence will flow then into the
17 sustainability and the cohesiveness of the nearby
18 communities.

19 And so as we start thinking about community
20 cohesiveness or the social fabric of communities, that's
21 clearly a non-monetary effect. And it's not one that can
22 be neatly packaged under one of the 5 public benefit
23 categories of the statute. So I think that there's a need
24 for quantifying the non-monetary effects, or at least
25 maybe qualifying them, but I would urge that it not be put

1 under the 5 public benefit categories, but be held as a
2 category of its own.

3 Thank you.

4 CHAIRPERSON BYRNE: Thank you, Bill. I see just
5 for the information of the public, I see 2 more public
6 comments, and then we're going to have to give the court
7 reporter a break. And I apologize for going on so long.
8 So we'll take a brief break, and then we'll come back and
9 get into some of the meat before lunch, that will probably
10 start around 12:30 or 12:45, I'm guessing.

11 Jim.

12 MR. WATSON: Jim Watson, Sites Project Authority.
13 I'd first off like to echo the comments of ACWA's Adam
14 Walukiewicz, Contra Costa's Maureen Martin, and Upper San
15 Joaquin's Mario Santoyo in terms of concerns with the
16 direction of these regulations.

17 My primary focus is on the second set of
18 regulations that's now being proposed, and the ability to
19 maintain the schedule. I think it's a very high risk that
20 you will be able to meet that schedule. And more delay
21 just will increase costs for all applicants, which means
22 the effectiveness of the bond proceeds for public benefits
23 goes down.

24 Also, I'd like to talk about the -- this is about
25 a contract. We're writing regulations to enter into a

1 funding agreement and then contracts for public benefits.
2 If I were building a house, this would be like trying to
3 specify the window covering in that contract today. You
4 don't need to go that far. The requirement of Prop 1 was
5 how do you enter into the contract, not the specifics down
6 to this level of detail.

7 And that further concerns me in terms of the type
8 of partnership this is going to be needed, especially with
9 an uncertain future. These projects are all going to have
10 to operate adaptively as the future changes, which
11 requires a partnership. The more you prescribe -- the
12 harder you make it in terms of trying to make the
13 requirement, the more it becomes an arm's length type of a
14 contract, not a partnership. We want a contract that is a
15 partnership working with you, working with the fish
16 agencies to maximize the benefits not limit them.

17 Thank you.

18 CHAIRPERSON BYRNE: Thank you, Jim.

19 MS. DENNING: Good morning. Michelle Denning
20 with the Bureau of Reclamation. And I just -- a minor
21 comment on moving out the water -- supply of water
22 delivery concepts, is the regulation, or the law, actually
23 precludes the State from funding the O&M associated with
24 the public benefits. And as such, your project partners
25 are going to be financing that, or i.e. subsidizing, those

1 benefits.

2 And so having strong partnerships and a healthy
3 project where they can afford to fund the O&M associated
4 with the public benefits I think is an important
5 consideration for ensuring that those public benefits
6 endure.

7 Thanks.

8 CHAIRPERSON BYRNE: Thank you, Michelle.

9 Okay. So we'll take a 10-minute break. So then
10 we'll reconvene -- let me get my watch. I can't see the
11 clock. We'll reconvene at 11:35. And I think we'll go
12 till -- try to make the push before lunch, and then we'll
13 take a lunch break maybe 12:30, 12:45.

14 (Off record: 11:24 a.m.)

15 (Thereupon a recess was taken.)

16 (On record: 11:37 a.m.)

17 CHAIRPERSON BYRNE: Okay. I'm going to reconvene
18 the meeting. I think we have a quorum up here. So I
19 think we're going to take lunch around 1:00, maybe earlier
20 if there's a finish, a natural break to the topic. But
21 that would be the plan currently as much as possible.

22 Okay. So, Dave, back over to you. We're going
23 into an easy one.

24 (Laughter.)

25 MR. GUTIERREZ: What I'd like to do now is

1 actually have the discussion between the Commission staff
2 and Commission on the issues we just discussed. And what
3 I'd like to do is kind of go one by one. And I'll
4 highlight some of the issues that I heard that maybe
5 require a little bit further discussion. And what I'm
6 looking for obviously from the Commission is are we going
7 in the right direction with some of these issues?

8 And then things that I don't mention, of course,
9 you know, please bring to my attention, and let's discuss
10 them.

11 So I'll take them kind of one by one. And these
12 are my notes as folks were talking, so hopefully I did a
13 good job of capturing them. But let's start and go from
14 the top down. I think on our list the first thing -- the
15 first on our list actually was managing public benefits.
16 And so I thought I heard pretty much good support of the
17 direction that we're going, that we're going to beef that
18 up a little bit more. And we're going to talk a little
19 bit about what needs to be part of managing public
20 benefits and what's going to be between the contracts
21 between the agencies and the public.

22 But I also kind of want to set expectations. I
23 think there was a few folks there that I think were
24 worried about what's going to be in there. And so in
25 setting the expectations, our vision would be we would

1 outline some of the associated issues that need to be as
2 part of that particular category, managing public
3 benefits.

4 So we would talk about adaptive management and
5 the fact that adaptive management needs to be part of the
6 contract. We would talk about monitoring plans, et
7 cetera. But, also, I think we'd all have to realize we
8 can't go into so much detail and completely tie our hands
9 up. So we're not going to say the types of monitoring
10 plans or the types of instrumentation that are going to be
11 necessary, I think that would be absolutely impossible to
12 implement. It would be impossible to write. And so
13 hopefully the Commission is in agreement that the
14 direction we're going is to put general information about
15 managing the public benefits, but not so detailed that it
16 completely ties our hands or is impossible to write
17 because of the variety of projects that we have.

18 So with that, maybe stop there and see -- a
19 question for the Commission. Does that sound like the
20 appropriate direction and should we go to work and start
21 writing that up?

22 CHAIRPERSON BYRNE: Commissioner Quintero.

23 COMMISSIONER QUINTERO: I mean, aren't there
24 currently existing sort of parameters for what new storage
25 projects, outside of Prop 1, would have to meet with

1 regards to contracts with DWR, and Fish and Wildlife, and
2 State Water Resources Control Board?

3 MR. GUTIERREZ: Yeah. There are examples we
4 could go and refer to --

5 COMMISSIONER QUINTERO: Because it seems to me
6 that if you --

7 MR. GUTIERREZ: -- and we will use that.

8 COMMISSIONER QUINTERO: Yeah, because it seems to
9 me when you talk about second things -- you know, a second
10 set of regulations, that's what we're going to be looking
11 at is like what are the -- you know, what are the standard
12 practices for those agencies and how they deal with these
13 very issues, with regards to reporting requirements and
14 the duration and public process.

15 MR. GUTIERREZ: Yeah. Now, my thinking right now
16 is we would include some of these issues we've talked
17 about, and some of the recommendations actually that the
18 stakeholders have, but it would be, in general terms, not
19 so detailed where it ties us completely down. But I think
20 we can actually -- we can kick the can down the road, in
21 the sense that you can see what we write up, and we can
22 make a decision at a later date, because I heard -- I
23 heard kind of both sides some -- mostly saying maybe we
24 don't even need another set of second regulations, and a
25 few said maybe we should have a second set of regulations.

1 I think we can discuss that later, but that would
2 be those further details of what would be in that
3 regulation at a later time. But for new, we could
4 highlight, in general terms, what should be part of
5 managing public benefits.

6 CHAIRPERSON BYRNE: Commissioners Orth -- or
7 Herrera then Orth.

8 COMMISSIONER HERRERA: I guess for me my
9 preference would be to avoid the second set of
10 regulations.

11 MR. GUTIERREZ: Me too.

12 COMMISSIONER HERRERA: I think given, you know,
13 everything that we have in terms of workload ahead of us,
14 I just don't know how we will be able to, in a feasible
15 way, add an additional, you know, process.

16 It sounds like, you know, there is some sort of
17 consensus out there that, you know, there needs to be more
18 clarity on this particular portion of the current
19 regulations. I understand that it needs to be meaningful
20 language. And I guess, you know, for me, it seems like
21 this is sort of one of those sections where it's worth
22 investing the time now, because in the long run we're
23 saving a lot more work, and just saving -- I think we're
24 going to have to be really focused on reviewing the
25 applications and going through that public process in, you

1 know, the years to come.

2 And we still have some time, I know not a lot of
3 time, between now and November. And so my recommendation
4 would be to try and work through this issue and see if we
5 can end up with better language and have this be part of
6 this set of regulations.

7 MR. GUTIERREZ: Okay. Well, we will do that. We
8 will -- I'm looking to you, Joe, but we will definitely
9 attempt to write language. Again, I would avoid trying to
10 box us in too much, because these projects are going to be
11 wide and varied. And so it won't be so explicit that it's
12 so detailed, but we would attempt to write general
13 language in this order.

14 COMMISSIONER HERRERA: And just if I could add, I
15 think, you know, earlier we talked about potentially
16 doing, you know, an issue-specific meeting, or a very
17 focused meeting, prior to the November 14th or 15th
18 Commission meeting --

19 CHAIRPERSON BYRNE: 15th.

20 COMMISSIONER HERRERA: 15th. I think maybe this
21 is one of those items that warrants that specific meeting,
22 where this is sort of one where we really focus in and see
23 if we can bridge some sort of agreement before the next
24 meeting.

25 CHAIRPERSON BYRNE: Commissioner Orth.

1 COMMISSIONER ORTH: I certainly appreciate the
2 recognition that we need to put more into the current
3 regulations on this issue. And, you know, I'm going to
4 echo the other comments that I'd like us to see. I'd like
5 to see us put enough into this version of the regs this --
6 so that we don't need to do a second draft -- or a second
7 round.

8 I think, you know, you've heard -- we've heard
9 from the public some of the key elements you've identified
10 them that could be added here, adaptive management,
11 monitoring, definition of the public's role in the
12 process. I really see this as a -- you know, the statute,
13 you know, calls for a description of how those benefits
14 are going to be managed. I think you have a process, and
15 maybe in elements of the process conversation, that we can
16 address now without having to define specifically what
17 every element will look like, right?

18 That -- in my mind, that comes out in the
19 contract itself. So I guess, again, I would just
20 encourage that we try to build this up with process and
21 elements as much as we can, so that we avoid a second set
22 of regs, we give the applicants some clarity, and we start
23 looking to the contract process to provide the additional
24 details. And I think by defining the public's role in
25 that, we bridge a gap that we heard about a little bit

1 today.

2 I would also just say that I'm -- I continue to
3 be -- and I raised this issue well over 2 years ago, I
4 believe. The adapt -- maybe it's adaptive management,
5 but, you know, you heard from EDF today, flexibly managed.
6 I still like this concept of trying to figure out how we
7 allow the agencies that are going to have these public
8 benefits, in some instances, think about a flexible
9 benefit - and I realize that creates challenges in how you
10 value flexibility - that's going to recognize that, you
11 know, we're in a very dynamic changing environment, and
12 flows at a point today are likely not going to be a
13 priority 5, 10, 15 years from now. So some adaptive or
14 flexible management component is important, in my mind, to
15 this round.

16 CHAIRPERSON BYRNE: Commissioner Curtin.

17 COMMISSIONER CURTIN: Well, there's a few issues,
18 but I just want to address the last one that David brought
19 up. And it was -- let me see, the gentleman from the EDF,
20 Scott.

21 I don't exactly -- I mean, I agree with that.
22 The first concept 100 percent I've been saying it
23 repeatedly that if we can find a process that allows for
24 adaptive management, but not by the projects. This is a
25 slightly different concept than I think -- we have to

1 understand that the projects need to have an adaptive
2 management program. But use of a certain amount of water
3 that could be put into the hands of, I don't know, some
4 environmental water manager. I know nobody has figured
5 any of that out, but that's where the adaptability will be
6 taken, in a sense, away from the projects and put into the
7 hands of the State, in terms of ecological water use. And
8 I think that's a critically important development.

9 I don't know if you actually have to set up a
10 whole set of explanations for that. It could be a
11 contract. I don't think the State's actually -- I don't
12 think there's a history of an ecological water bank of
13 some kind. I don't know much about it. But I think
14 fundamentally putting restoration of the environment on
15 the hands of the individual projects, even a small portion
16 of it, is an enormous burden that will be difficult to
17 actually meet.

18 But establishing more water that's used -- can be
19 used for ecological purposes, as the dual purpose statutes
20 require, could be possible. And it could solve a lot of
21 problems at the project level. So I'm a big supporter of
22 that.

23 But it's a little different than the flexibility
24 of a project. That's a different type of management
25 adaptive management, which we really need to be sensitive

1 to.

2 I'll leave it at that, because everybody else
3 seems to -- I mean, we're good. I just wanted to make
4 that point.

5 CHAIRPERSON BYRNE: Commissioner Ball.

6 COMMISSIONER BALL: So the answer to your first
7 question is yes, I agree with your statements. I want to
8 get this process done. I think we've been going through
9 it for a long time. There are a lot of valid very
10 different viewpoints that we've heard. We've had a good
11 process. And we've been listening to the stakeholders and
12 to the public.

13 We've reached a point in time where I do not
14 think we should be doing a major rewrite. I don't think
15 we should be coming up with a second set of regs. I think
16 that we should be more general, less prescriptive, more
17 adaptive, more flexible. We should be looking to simplify
18 the process, so that we can actually get to the point that
19 we can start to look at the applications. We should not
20 make it so burdensome, or so expensive, that we're not
21 going to get applications for what could be good projects
22 for us to consider.

23 We shouldn't come up with such a prescriptive
24 formula up front here that we box ourselves in and don't
25 have the real opportunity to look at projects and the

1 merit they're going to provide to the water system.

2 So let's get on with it. Let's try to move
3 forward and make some progress here, so that we can
4 actually look at the projects and judge them on their
5 merit.

6 CHAIRPERSON BYRNE: Commissioner Del Bosque.

7 VICE CHAIRPERSON DEL BOSQUE: I just want to say
8 that I think Andy said just about everything I was
9 thinking of, so I concur with his thoughts.

10 CHAIRPERSON BYRNE: Commissioner Quintero.

11 COMMISSIONER QUINTERO: I certainly agree with my
12 colleagues. And it just seems to me that maybe what we
13 can do, sort of combining all of this, is to state in
14 these regulations the clear objectives that the contracts
15 need to meet and the metrics, that include things like
16 time frame, you know, reporting requirements, and that,
17 you know, basically this in -- that this reflects a
18 promise by the project proponents that they're going to
19 put all that in place, and including, you know, being able
20 to have this available to the public in the regular
21 reporting those kind of things.

22 Thanks.

23 CHAIRPERSON BYRNE: I would -- so my two cents is
24 I would certainly like to do what Commissioner Orth
25 described, which is -- and I don't want to do a massive

1 rewrite, but -- and Commissioner Herrera added some
2 additional information. I think his interpretation is
3 kind of one that I've had the whole time, which is I know
4 there's a lot of detail that potentially can go into every
5 single contract, but I'm not sure that I want to try to
6 anticipate all that.

7 And if it could be handled in a contract, and we
8 could beef up what we have, which I think we've already
9 maybe done a bit of it to add some of the requirements,
10 then I think that would be great. It would be nice to
11 have something that we could have the option of having
12 regs, if we needed to, or not, at a later time, because,
13 you know, if we say we're going to and we're going to
14 leave stuff out because of that, I'd like to have
15 something that we feel good enough about.

16 To Danny's point on the water kind of bank, or
17 whatever you want to call it, an environmental steward for
18 some of the water, I would think that we just want to make
19 sure that however the water is being used, and there's
20 language that says it in the adaptive management, that
21 it's being used for public benefits that we've funded.

22 So -- and I envision this as Fish and Wildlife
23 having the list of a number of different benefits that a
24 project could provide. And there's some language then in
25 our regs that says, you know, part of adaptive management

1 would be Fish and Wildlife, or whoever, working with the
2 project proponent to adjust -- to, you know, fund -- or
3 not to fund, to realize some of the other public benefits
4 that have been identified by the project, or to identify
5 new public benefits, of which there's value.

6 And maybe that new comment gets a little more
7 complicated, but -- so I'm hopeful that in what we come up
8 with next, we can have a number of things in there to make
9 it kind of something that we could live with, and then
10 have an option of whether to do regs with or not.

11 Commissioner Baker.

12 COMMISSIONER BAKER: I guess what I'd like to say
13 is that, you know, I concur with the discussion here
14 that -- you know, in terms of the regs versus no regs --
15 or second set of regs, it would seem to me that as the
16 contracts or as the contracts process is going on, that we
17 would get some sort of status reports as to whether or not
18 it's, you know, heading in the direction that we as
19 Commissioners agree upon.

20 And if it isn't, then I don't know if it's
21 another set of regs, or if it's guidelines. A number of
22 grant programs have guidelines in terms of -- you know, so
23 I'm not -- or I'm not sure exactly what the process would
24 be, but it would seem to me that, you know, this is an
25 important piece, and so this is something that we would

1 more or less keep our -- keep apprised of as to how it's
2 going.

3 CHAIRPERSON BYRNE: Okay. So --

4 MR. GUTIERREZ: Okay. So that's very good. I
5 think we have the direction I think we need to go on this
6 particular one. And the direction is continue going with
7 what we're proposing. We will try to include some of the
8 points that you all have made. I think we definitely
9 agree. Describe the public's role, the adaptive
10 management, and possibly flexibility projects in the
11 future.

12 We all know that that's going to have to happen
13 in the future time frames, et cetera. And we will try our
14 hardest -- without boxing ourselves in, we'll try our
15 hardest to lay this out in the -- in that particular
16 section of managing public benefits with the hope that
17 maybe we don't have a regulation, but we can make that
18 decision later. I don't think we need to make that
19 decision within the next month.

20 So let me move to the next one.

21 CHAIRPERSON BYRNE: Yeah, let's do it.

22 MR. GUTIERREZ: Okay. So the next one I'll talk
23 about is the Commission decision-making process and public
24 participation. In fact, I don't think I heard anything
25 but support in that particular -- in the direction that

1 we're going on that one, so we'll start working on that
2 one right away.

3 Just to make sure everybody is on the same page
4 though, you know, we're trying to develop a -- an approach
5 that is transparent and by being transparent, you do have
6 to have criteria. And we have developed an approach with
7 criteria. It's absolutely the Commission's decisions, and
8 it's going to be up to the Commission staff to explain why
9 they came up with preliminary numbers. And it's going to
10 be the Commission, with the input of the stakeholders, to
11 make those adjustments and move on.

12 But we are bounded by criteria. We have to have
13 certain criteria. Some of it's quantitative, some of it's
14 qualitative. And we'll do our best to make sure that the
15 Commission understands the background of why we're making
16 the recommendations.

17 So unless there's any comments on that, we're
18 going to continue in the direction we're going. I don't
19 think I heard anything but support in the direction that
20 we're going. So correct me if I'm wrong there.

21 CHAIRPERSON BYRNE: No. You're good.

22 MR. GUTIERREZ: Okay. And so the last one is --
23 and this one maybe deserves a little bit of discussion,
24 the project evaluation and scoring. And so there was
25 actually a couple of things I kind of wanted to highlight

1 and get some additional input from you all and also
2 explain the logic of what we're -- where we were coming
3 from.

4 And let's start with -- let's start with the --
5 if you look at the statutes, it talks about how we have to
6 have public benefits within the Delta or its watersheds.
7 And so the difficult part we're going to have is that
8 projects that are physically not within the Delta, or
9 physically not within the Delta's watershed, how do they
10 provide public benefits?

11 And so our approach was to, well, show us
12 contracts or water rights that are going to be associated
13 with that, because you're going to need that in order to
14 actually develop the project benefits that are within the
15 Delta. And by not saying anything at all, there's a
16 possibility that we're going to have projects put into the
17 queue that really don't have a possibility of ever being
18 funded. And that does have a consequence. The
19 consequence is that could block some of the project.

20 And so my thinking currently right now, and I'm
21 looking for input on the Commission on this particular
22 one, is to continue going in the direction that we're
23 going. And that is make those applicants identify either
24 contracts, water rights, maybe there's other things you
25 all can think of, but those are the ones we thought of.

1 And it's -- for the sole purpose is that we don't clog the
2 queue up and have projects there that aren't really real,
3 because they are never going to have project benefits.

4 CHAIRPERSON BYRNE: Commissioner Curtin.

5 COMMISSIONER CURTIN: This one is interesting to
6 me, because I was on a different page when I brought it
7 up. So you're talking about below the Delta or --

8 MR. GUTIERREZ: Somewhere outside of the Delta's
9 watershed how do you show those project benefits? We
10 already asked that question.

11 COMMISSIONER CURTIN: So the idea there was that,
12 you know, high desert water bank will reduce the flow on
13 the Delta, right?

14 MR. GUTIERREZ: Absolutely.

15 COMMISSIONER CURTIN: But it doesn't mean it will
16 ever get to a public benefit, because the flows that
17 you're reducing are already called for by existing water
18 rights. I'm assuming that's your concern, right?

19 MR. GUTIERREZ: It's a concern, but it can be
20 overcome.

21 COMMISSIONER CURTIN: Right.

22 MR. GUTIERREZ: All I'm asking for is let's
23 identify it up front.

24 COMMISSIONER CURTIN: Right, right. And that
25 makes sense.

1 So my other thought though was projects within
2 the Delta that there may be, again, groundwater benefits.
3 So you have surface storage, you release your water into a
4 groundwater blank. It also has water rights associated.
5 I wasn't suggesting that those projects have to
6 necessarily re-define water rights out there. I know
7 that's an issue that's going to come down the road.

8 MR. GUTIERREZ: Yeah.

9 COMMISSIONER CURTIN: So I kind of threw it out
10 there a little bit flippantly, but I'm not saying --

11 MR. GUTIERREZ: I didn't mean that at all.

12 COMMISSIONER CURTIN: Okay. Good.

13 MR. GUTIERREZ: That's a completely different
14 subject.

15 COMMISSIONER CURTIN: That clarifies it for me
16 quite a bit.

17 MR. GUTIERREZ: I'm only talking about the
18 projects that are outside of the Delta's watershed.

19 COMMISSIONER CURTIN: Where they have to show a
20 distinct contractual -- potential contractual arrangement,
21 which we won't fund unless that contractual arrangement --

22 MR. GUTIERREZ: Eventually it has to come.

23 COMMISSIONER CURTIN: Right.

24 MR. GUTIERREZ: But the consequence of not
25 showing it up front is we clog the --

1 COMMISSIONER CURTIN: We're wasting a lot of
2 time. Okay.

3 MR. GUTIERREZ: So that's -- it's up to you
4 all --

5 COMMISSIONER CURTIN: All right.

6 MR. GUTIERREZ: -- and I'm looking for direction.
7 But right now, I'm thinking to continue the direction that
8 we're going on.

9 COMMISSIONER CURTIN: So that sort of answers my
10 question. Thanks.

11 MR. GUTIERREZ: Okay.

12 CHAIRPERSON BYRNE: Commissioner Orth, Commission
13 Quintero.

14 COMMISSIONER ORTH: David, I'm trying to figure
15 out how this lines up with the bigger category of, you
16 know, contracting and management of -- management of
17 through contracts of the public benefits that we're going
18 to fund, right? Because this is one of the pieces that
19 starts to overlap with the public benefits, right? But it
20 tries to address specifically the requirement that a
21 certain amount of those public benefits have to be
22 Delta-centric.

23 So are you -- are you suggesting that the
24 contract -- the timing for the contract or the criteria
25 for approving the Delta benefit is separate and apart from

1 the contracting and improving of the balance of the public
2 benefits or you see --

3 MR. GUTIERREZ: You still now -- you have to
4 quantify the public benefits, so -- otherwise, they're not
5 going to be scored and they wouldn't be in the highest
6 ranks. So they're going to have to do that. What we've
7 added though on top of that is to make it real, we want to
8 make sure you're actually talking to the person within the
9 Delta's watershed that has -- that will -- going to have
10 the responsibility that you've identified as those public
11 benefits, and what is the arrangement you have with them?
12 Do they have a water right? Do have a contract? Just
13 identify it.

14 COMMISSIONER ORTH: You just have to describe
15 specifically --

16 MR. GUTIERREZ: Just describe --

17 COMMISSIONER ORTH: -- what you think --

18 MR. GUTIERREZ: -- the process.

19 COMMISSIONER ORTH: So you don't necessarily have
20 to have that contract --

21 MR. GUTIERREZ: No.

22 COMMISSIONER ORTH: -- all closed out at the time
23 of the award or the application? But a definition of how
24 that benefit is going to be applied, executed, you know --

25 MR. GUTIERREZ: Yeah.

1 COMMISSIONER ORTH: -- committed to over time?

2 Okay. That makes sense.

3 CHAIRPERSON BYRNE: Commissioner Quintero.

4 COMMISSIONER QUINTERO: I appreciated the comment
5 to be explicit about time, these resiliency components to
6 the public benefits. I think that was an important point.
7 And also, when you talk about the scoring and the
8 inclusion of the water system improvement in this item, I
9 mean I really saw that in that you created these
10 categories where each project will be evaluated for being
11 very effective, somewhat effective, or not effective.

12 You know, it sets the framework for the scoring,
13 right? So I like the way you presented that. And it
14 seemed like -- it seemed like we got support from what
15 you've been doing.

16 MR. GUTIERREZ: Okay. Very good. Okay. On the
17 same subject area though before we move on to the next big
18 subjects is there was quite a bit of discussion on water
19 system improvement. I think I heard a split somewhere in
20 support of the direct that we're going. I do want to make
21 it very clear, we're not asking to completely remove 79750
22 consideration of improving the operation of the State
23 water system, but we are trying to figure out different
24 metrics to figure that out to measure that.

25 So that's where we're -- we're putting it in a

1 different category. That's where we're talking about
2 flexibility and integration. And we're going to come up
3 with different metrics in order to accomplish that same
4 thing. We felt that's in a better category.

5 So I don't want to make it sound that we're
6 getting rid of it. We're not. But we are trying to
7 figure out a better metric and put it in resiliency.

8 CHAIRPERSON BYRNE: Commissioner Curtin.

9 COMMISSIONER CURTIN: Yeah. Maybe I'm moving on,
10 but --

11 MR. GUTIERREZ: No, this is the last one and then
12 we get into climate change.

13 COMMISSIONER CURTIN: Okay. Well, I wanted to
14 deal with one thing that I brought up. And it has to do
15 with the increase in system flexibility, storage at the
16 end of September. And what I'm hoping is there can be a
17 flexibility, so that that's not a singularly hard
18 analysis. That the project proponents can say here is why
19 we think it's extremely flexible. And it might not be
20 based on the amount of water in or not in the system at
21 the time.

22 MR. GUTIERREZ: Okay. We'll do it on that one.
23 I understood that comment, and it's a valid comment.
24 We'll try to consider it in some way. On the one hand, we
25 have to figure out a metric, so we have to figure out a

1 metric, and we'll work on that. And that's why September
2 volume of water, that's an easy metric to actually
3 measure.

4 COMMISSIONER CURTIN: What would be an example of
5 a metric so maybe the proponents have more --

6 MR. GUTIERREZ: That's my point. That was an
7 example of a metric. That's the one we chose. We're
8 going to go back and work on that metric.

9 COMMISSIONER CURTIN: Okay. And it doesn't have
10 to be totally prescriptive to that. You could say as, for
11 example, the volume of water in September. Well, if I'm
12 the project proponent say my metric actually worked better
13 in our --

14 MR. GUTIERREZ: Yeah, I get that.

15 COMMISSIONER CURTIN: -- watershed because of
16 project -- of water in March.

17 MR. GUTIERREZ: Right. We'll work on a metric
18 and we'll come back on that issue, but I think we have
19 enough to go on that one.

20 CHAIRPERSON BYRNE: Commissioner Orth.

21 COMMISSIONER ORTH: There probably are more than
22 storage in September metrics.

23 MR. GUTIERREZ: Yeah.

24 COMMISSIONER ORTH: And I would suggest that
25 perhaps you talk to the State Water Project operators,

1 which I know you're pretty close to.

2 MR. GUTIERREZ: Yeah.

3 COMMISSIONER ORTH: And maybe even, you know, CVP
4 operators on what are the things that are now valuable to
5 them? And we've certainly learned a lot in the last 3
6 years relative to significance of storage and conveyance
7 and flexibility, given the Endangered Species Act issue.

8 So I guess I'd encourage that we think broader
9 than just storage. And if we are going to include
10 storage, I think you heard from a couple of people, and
11 I'm not sure you suggested contrary, changes in
12 groundwater storage as a subpart of that is clearly a key
13 metric, right?

14 Back on the improvements to the State water
15 system issue. I think I've been pretty consistent that --
16 and I appreciate all of the conversation and arguments
17 that we're supposed to evaluate public benefits through a
18 competitive process, and fund those public benefits. And
19 improvements to the State water system may not necessarily
20 be limited to public benefits.

21 I don't think anybody is suggesting that we fund
22 non-public benefit improvements to the State water system.
23 But, you know, 79750(b), in my opinion, is pretty clear,
24 that we are to fund benefits associated with projects that
25 improve the operation of the State water system, are cost

1 effective, and provide a net improvement to ecosystem and
2 water quality conditions.

3 It doesn't weight those. It doesn't diminish,
4 you know, one over the other. And we've set up a whole
5 complex scoring system for quantification of the public
6 benefits as they relate to ecosystem and water quality and
7 another components. I don't want us to dilute -- I feel
8 pretty strongly that we shouldn't dilute improvement of
9 the operation of the State water system to some
10 insignificant component of this. That's the foundation of
11 upon which chapter 8 and Prop 1 were created, in my
12 opinion.

13 So, you know, like others who said, you know, the
14 idea of moving it into resiliency seem to maybe make some
15 sense, I'm going to be interested to see how you
16 ultimately do that. But I don't want us to lose site of
17 that critical important component.

18 MR. GUTIERREZ: Great.

19 CHAIRPERSON BYRNE: Commissioner Ball.

20 COMMISSIONER BALL: So I read that exactly the
21 same way, and I think the whole chapter leads off with
22 that. The whole basis for everything that we do, that
23 statement underlies it. And so I completely agree with
24 what you just said. And I think we cannot underestimate
25 the significance and importance of that statement in this

1 chapter.

2 CHAIRPERSON BYRNE: Commissioner Baker.

3 COMMISSIONER BAKER: Well, I guess I read it just
4 slightly different, in terms of I read it as being
5 co-equals, that we have the improvement of the operation
6 of the State water system for the public benefits
7 associated with that, and net improvement of the ecosystem
8 and water quality conditions. So I don't think one trumps
9 the other, I think they go in tandem and together, yeah.

10 COMMISSIONER ORTH: I agree.

11 CHAIRPERSON BYRNE: Any other Commissioner
12 comments or --

13 MR. GUTIERREZ: Okay. I think this is perfect.
14 We have the direction. I think I agree with everything.
15 That's the approach we're going to take. I think we can
16 now move on to maybe one of the more difficult ones,
17 climate change.

18 CHAIRPERSON BYRNE: Okay. Thanks, Dave.

19 --o0o--

20 MR. GUTIERREZ: Okay. Now, let's go to climate
21 change. And I'll start off by first talking a little bit
22 about some introductory issues. Then I'll talk a little
23 bit about the comments, and then we're going to have
24 Andrew Schwarz come up and -- or there, and talk a little
25 bit about the direction that we're going, and to discuss

1 some of the comments and how it relates to our project.

2 So I think we first need to realize the climate
3 change calculations that we're doing, and what has been
4 done, and how they're actually being used. So in the
5 previous section we talked about the complexities of the
6 application process. And there's a lot of discussion
7 about the complexities of climate change as well. And
8 that's absolutely true.

9 But we also need to understand how climate change
10 is being used. And we all need to remember that the
11 climate change calculations that we're proposing are
12 complete. They're done. The applicants don't need to
13 do -- redo that analysis.

14 Instead, these climate change scenarios are
15 embedded within the hydrologic analysis that we're asking
16 our applicants to do, and that's where some complexities
17 come in.

18 And so basically the applicants are going to run
19 hydrologic analysis. Certainly, the bigger projects will
20 be running the hydrologic analysis of the model that we
21 actually gave them, the CalSims model, they'll be making
22 calculations on flows and volumes of water. They will be
23 potentially using additional models to figure out
24 ecosystem benefits, et cetera. And then we're going to do
25 an economic analysis.

1 So that's where the complexity lies. And I think
2 we have to appreciate the complexity in the sense that
3 when you go back to the statutes, remember, they're asking
4 us to quantify the public benefits. And that's where it
5 gets difficult. And that's why we have this difficult
6 process to proceed with, because, one, we're trying to be
7 consistent. And then two, we have to find a metric to
8 make them all equal, so we can actually figure out if the
9 ecosystem benefits are 50 percent. And then we have to
10 actually apply funding to that. And how else do you do
11 that, if you don't do an economic analysis?

12 So climate change is completely intertwined and
13 embedded in everything that we're talking about and I
14 think it's important to understand that.

15 But now, moving on to climate change itself, I
16 think we also need to recognize that climate change is
17 absolutely an evolving science, and we should also realize
18 that whatever we propose today will be different tomorrow,
19 and that's because we are in an evolving science.

20 I think we also have to realize that there are
21 different experts who have different ways of approaching
22 climate conditions, and the analysis that's associated
23 with them. And I think we also have to understand that
24 there's different tools for different applications.

25 And so finally, I think we need to understand

1 that, you know, we actually -- we're very fortunate here
2 in California. We're one of the leaders in climate
3 change, and we actually have climate change experts on our
4 staff who are coming up with these particular
5 recommendations for you. And they used climate experts of
6 their own to come up and develop this particular scenario
7 that we have.

8 Now, I think we also need to realize the
9 importance of climate change. And I don't think anybody
10 disagrees with the importance of climate change. The
11 disagreement comes with how do you actually apply it. And
12 that's where it gets difficult, and that's where we're
13 going to focus all of our discussion today on.

14 And so the question becomes right off the bat
15 with climate change is we're going to have to all agree
16 and admit that there's a lot of uncertainties associated
17 with climate change. We have to understand that the
18 methodologies are evolving, but I think we need to balance
19 that. Do we do a quantitative analysis or do we do a
20 qualitative analysis? And I think that's the question
21 that we have in front of us.

22 And I think we all need to remember though that
23 we're investing well over \$2 billion of the State's money.
24 And the methods of previous -- and if you look at the
25 hydrology before between whenever we're using it, 1940 and

1 2015, is completely different than it is actually today.

2 If we were giving you climate scenarios of today,
3 it's different than that average period that we're talking
4 about, you know, 50 years ago. And so from staff's point
5 of view, it only makes sense to use the best information
6 we have available. And it will affect the results.

7 Now, we also have to keep in mind of what we're
8 actually trying to do here. And this kind of goes back to
9 some of the introductory statements that I made. What
10 we're actually trying to do here is we're trying to make a
11 funding decision. That's all we're trying to do. This is
12 not a feasibility study. This is not a CEQA document.
13 This is a funding decision. And so we're asking our
14 applicants to do things in addition to things that they've
15 actually already had to do, in addition to analysis
16 they've already had to complete. And so we absolutely
17 appreciate the burden that we're actually putting on the
18 applicants.

19 We also need to understand small projects, large
20 projects. The larger projects are going to cover a
21 significant amount of area, and therefore are going to
22 need to rely on these complex hydrologic models. Whereas,
23 potentially small projects could possibly be very
24 localized. And they don't necessarily have to depend on
25 these complex analysis that we have in front of us.

1 So with all that said, I think our idea is to
2 continue going in the direction that we're going, but I'd
3 like to also share some of the comments that we received
4 on climate change. And you'll, I think, appreciate some
5 of the difficulties I think we're having in trying to
6 solve this particular issue.

7 So one of the -- and these are generalized
8 comments. We received over 17 comments just on climate
9 change. And so one of the comments was we are in support
10 of the quantitative analysis of climate conditions beyond
11 the current conditions versus a sensitivity analysis.

12 We also received a comment that the quantitative
13 approach should not be used since the data is too
14 speculative and uncertain and instead a sensitivity
15 analysis or resiliency should be completed. So one of
16 those comments is telling us to take a right, the other
17 one is telling us to take a left.

18 (Laughter.)

19 MR. GUTIERREZ: Climate should be continued well
20 beyond 2080. We certainly have reasons why we picked
21 2080, and Andrew is going to discuss about that.

22 The approach is too uncertain for the types of
23 analysis that we do. We talked about that. I think we
24 should all admit that there are great uncertainties
25 associated with that.

1 The climate approach is too prescriptive and too
2 costly. That kind of goes back to what I said, we have to
3 make this balanced. We're investing well over \$2 billion.
4 Should we apply a climate scenario and should we do a
5 quantitative approach to it.

6 There's comments of we should do a stress test,
7 the wettest and the driest conditions should be
8 considered. And Andrew is going to talk a little bit
9 about that, because, in fact, we are requiring that. But
10 in that particular one, we're actually a qualitative
11 approach and not a quantitative approach, and he'll
12 explain why.

13 And then the general approach, including
14 hydrologic analysis and climate change, does not capture
15 all the variables. That's absolutely true. We can't tell
16 you it's going to be the variables in 2050 and 2060. So
17 the question I think in front us is if we can't do that,
18 should we not do anything. Obviously, staff doesn't agree
19 with that.

20 And then the -- I think that's actually it,
21 because the next are very similar, the approach does not
22 consider other future conditions as potential changes.
23 So, for instance, what's water -- what's the economy of
24 water going to be later?

25 So those are the comments, and I think those are

1 kind of the struggles we're actually struggling with. And
2 what I'd like to do now is kind of turn it over to Andrew.
3 I want him to do 2 things. One, just kind of remind you
4 of the approach, but at an extremely high level. I asked
5 him to just -- you've heard this before, but I want to
6 remind you of the approach that we're actually taking at a
7 very high level.

8 And then he's going to talk to some of the
9 comments here why the approach that we're actually taking.
10 And finally at the end, after we discuss that, we're going
11 to invite our stakeholders up, reiterate their comments,
12 and then we'll have a discussion on that.

13 So with that, I'm going to turn that over to
14 Andrew.

15 MR. SCHWARZ: Thanks, David. All right. Thank
16 you. So I'm going to basically follow these bullet points
17 down that are on slides. I don't have additional slides.

18 In terms of just kind of reiterating what we have
19 done or what we're asking the applicants to do is we have
20 provided 2 -- at this point, 2 scenarios, one for 2030 and
21 one for 2070 conditions of without-project conditions.

22 So basically, what those are -- and this is --
23 this is probably the hardest thing about these climate
24 change analyses to wrap people's heads around is that we
25 often think about climate change as this thing that

1 unfolds year on year. We get warmer. 2036 will be warmer
2 than 2035 with some interannual variability in there, but
3 generally as we go further out into the future it gets
4 warmer.

5 We don't use that kind of scenario here. We use
6 a -- what we're calling, a fixed period analysis. What
7 we're doing is we're taking the historical record, all of
8 the interannual variability that we have seen over the
9 last almost 100 years in California, which we know is an
10 extremely important signal for us to be able to deal
11 with, all of those wet years and dry years. And we take
12 all of that and we move that -- all of it -- first of all,
13 we move all of those years that occurred a long time ago,
14 those years in the 20s and 30s and 40s and 50s. Those
15 have gotten warmer. Those would get warmer. If we lived
16 1932's hydrology again, it would occur at a much warmer
17 temperature.

18 In the long term right now, if we look at the
19 historical record, we don't see a lot of change in
20 interannual precipitation and annual precipitation. So we
21 haven't adjusted those records, but we absolutely see that
22 it has warmed since 1922, since 1950. And we apply that
23 warming to the historical records, so that we get
24 everything up to kind of today's level.

25 And then we take that forward and then we go to

1 the climate models and we get the signal of climate
2 warming and precipitation change that we are seeing out of
3 the climate models and we apply that back to the
4 historical record, so that we get both the climate signal
5 and all of that interannual variability that we need to
6 deal with in the future.

7 Because when we get to 2050, it will be warmer,
8 but we could have to deal with all of these droughts and
9 wet periods and things that we've already had to deal with
10 in the past, right? If we do a climate analysis that gets
11 warmer every year, we essentially get one pass-through
12 each year. We get one, you know, is it wet, is it dry,
13 and then you're left with all these questions about, well,
14 what happens if that drought happens at the end of the
15 century versus if it happens at the beginning of the
16 century. And then it would be hotter than when we get
17 that really bad drought that occurs, you know, earlier in
18 the simulation.

19 And you can't tease out what's really -- it
20 becomes very difficult to tease out what happens -- what
21 is signal and what is noise.

22 Okay. So that's kind of a high level
23 explanation. It doesn't go into all of the details. If
24 you're interested in the details, and everybody else here,
25 we published about a 5-page explanation earlier last week

1 I think it went up on the Commission's website.

2 MR. SOU: Yesterday.

3 MR. SCHWARZ: Yesterday. Sorry. Yesterday,
4 earlier this week.

5 (Laughter.)

6 MR. SCHWARZ: It went up on the Commission's
7 website, and it's also in your packet today. And it goes
8 through and what we hope is kind of general language that
9 everybody can understand. It's still pretty technical,
10 because it's a very technical process. But we did the
11 best we could do to simplify it and really explain it
12 hopefully all of the steps that we've taken.

13 And I hope -- some of the comments I really think
14 that we're addressing here are really driven by a
15 misunderstanding of what we've done, and a suggestion that
16 we're not doing something that we actually are. So I want
17 to go through those things one by one.

18 So let's start with climate change 2030 and 2070
19 requirement is too prescriptive and too costly.

20 So most of the applicants basically would like
21 more flexibility to use climate change analyses that
22 they've done in the past, that they've already completed,
23 or that they -- you know, they plan to complete.

24 And the problem with that is it would basically
25 allow -- it would basically make comparing the projects as

1 apples to apples nearly impossible. Everybody would be
2 looking at different types of climate. You're -- you
3 know, what may be stressful for one project in one part of
4 the state would not be stressful for another project in
5 another part of the state, or would be a really
6 opportunistic kind of scenario for another. It allows
7 potentially gaming the system to select a climate scenario
8 that's really going to look better for your project.

9 So we really want everybody using the same
10 scenario. The only way to do that is to kind of update to
11 a new set of scenarios that really incorporate all of the
12 best science that we have today. There are a lot of good
13 approaches that have been taken in the past, but all of
14 them rely on older science that has been updated. And
15 many of them have a flawed methodology for adjusting that
16 historical temperature that I talked about before, where
17 temperatures have warmed quite a bit over the last 80
18 years, many of those methodologies don't incorporate that
19 warming.

20 And so what you're -- you know, what you're
21 warming is a historical climate that doesn't incorporate
22 the warming that has already occurred. You're just
23 warming on top of what we hope -- what we're expecting to
24 see in the future, but not accounting for what we've
25 already seen. So that's a problem with those.

1 So DWR has gone -- as Dave mentioned, we've gone
2 further than any other State grant program or investment
3 program to make this process as clear and cost effective
4 for the applicants as possible. We've provided all of
5 these scenarios. They don't have to do additional
6 development. They don't have to look at climate data and
7 tease out and create new data sets. They just have to add
8 their project to the -- to the system and run this --
9 these climate inputs through them and hydrology inputs.

10 And we think that that really -- that much is
11 really necessary to justify the State's investment in
12 these projects.

13 Somewhat related to that, there's these two
14 competing questions of support for quantitative analysis
15 versus sensitivity analysis, or, you know, a quantitative
16 analysis is too uncertain and we should use sensitivity
17 analysis. And these comments specifically suggesting that
18 we should move to a sensitivity analysis, basically, the
19 difference here being that, I think, a sensitivity
20 analysis, you would still do the analysis and show what
21 the difference in the performance of the project would be.
22 But under a sensitivity analysis framework, you wouldn't
23 necessarily account for -- monetize the benefits in the
24 same way, and it wouldn't go into the funding decision in
25 the same way. We don't think that that adequately

1 addresses --

2 COMMISSIONER CURTIN: Could I --

3 MR. SCHWARZ: Yeah.

4 COMMISSIONER CURTIN: Because this is sort of
5 fundamental to me.

6 MR. SCHWARZ: Yes.

7 COMMISSIONER CURTIN: I was going to ask a little
8 bit of the difference between quantitative and sensitivity
9 analysis.

10 MR. SCHWARZ: Um-hmm.

11 COMMISSIONER CURTIN: So could you go back over
12 that, because these terms are getting thrown around pretty
13 rapidly here. We're talking about hydrology that the
14 State has developed a climate change hydrology analysis,
15 wet and dry, right? And now we're talking about
16 performing that sort of analysis, either on a quantitative
17 or sensitivity type format.

18 MR. SCHWARZ: Yeah. So I think what is --

19 COMMISSIONER CURTIN: What's the difference? And
20 what's quantitative versus sustain -- I mean, sensitivity?

21 MR. SCHWARZ: Right. They're both quantitative
22 in a sense. I mean, they're both quantitatively --
23 they're not, you know, just qualitative saying this goes
24 there and that goes there, but we're calculating the
25 difference in system performance in both methodologies.

1 Okay. So you're running -- this is my
2 understanding of what I believe that the commenters are
3 suggesting, is that we would -- they would still run the
4 climate change scenarios through the system for a base
5 case or without -- or we've already done that for
6 without-project condition, and then they would compare the
7 with-project condition.

8 Now, what the regulations currently suggest is
9 you have to then monetize those benefits for the current
10 conditions, you know, what your project is able to
11 generate in terms of public benefits, for every year out
12 into the future that you are going to be able to function.

13 A sensitivity analysis would not necessarily take
14 the -- they wouldn't take the climate change analysis
15 information to calculate future benefits. It would just
16 say, well, in the future, those benefits look like they
17 might diminish under a hotter climate or they might be
18 better presumable in -- for some projects.

19 COMMISSIONER CURTIN: So that's a sensitivity
20 analysis.

21 MR. SCHWARZ: That would be a sensitivity
22 analysis where you wouldn't monetize the difference that
23 the climate change scenarios are showing.

24 COMMISSIONER CURTIN: And the quantitative
25 analysis would be where you have to monetize?

1 MR. SCHWARZ: We are actually monetizing those
2 benefits. The benefit that you get currently is set under
3 your analysis of your project under current conditions.
4 At 2030, you have another analysis of your project at 2030
5 conditions. And you would essentially interpolate the
6 value between every year.

7 COMMISSIONER CURTIN: So in 2070, you're going to
8 have a wet/dry?

9 MR. SCHWARZ: It's just -- it's actually there's
10 only one for 2070, and there's one for 2030. There is not
11 a wet/dry.

12 COMMISSIONER CURTIN: There's only one what?

13 MR. SCHWARZ: There's only one climate change
14 projection at 2030.

15 COMMISSIONER CURTIN: So you're not going to
16 suggest that they do a hydrology analysis based on
17 wet/dry? The performance of their project not monetarily,
18 but in terms of how the project would perform in terms of
19 hydrology, is that what you're saying? I'm not clear on
20 that.

21 MR. SCHWARZ: Okay. So --

22 COMMISSIONER CURTIN: I'm a little concerned
23 about the economics, but I thought the impression was
24 you've got a large-scale project, and here's what our --
25 the DWR's analysis, which I think is as good as any we're

1 going to see here --

2 MR. SCHWARZ: Right.

3 COMMISSIONER CURTIN: -- says that the potential
4 hydrology are -- it could -- you know, remember that cone
5 of uncertainty.

6 MR. SCHWARZ: Yes, yes.

7 COMMISSIONER CURTIN: Well, when you start
8 getting past certain areas, it becomes --

9 MR. SCHWARZ: Huge.

10 COMMISSIONER CURTIN: -- a cone of, you know, of
11 infinity. But if you're looking at hydrology sort of a --
12 not necessarily the worst on each side, but how would
13 you have performed if it was a very -- a drier or a
14 wetter?

15 MR. SCHWARZ: So that type of analysis actually
16 is coming in at the resiliency analysis. Okay. That type
17 of if we get a drier future than we expect, then what? If
18 we got a wetter future than we expect, then what? That is
19 coming in at the resiliency analysis, and that can be
20 quantitative or qualitative.

21 COMMISSIONER CURTIN: Oh, jeez.

22 (Laughter.)

23 COMMISSIONER CURTIN: No laughing.

24 (Laughter.)

25 COMMISSIONER CURTIN: This is very stressful.

1 No, I'm kidding.

2 (Laughter.)

3 MR. SCHWARZ: First of all, I want to compliment
4 you on your shirt and tie combination.

5 COMMISSIONER CURTIN: I was going to say --

6 (Laughter.)

7 CHAIRPERSON BYRNE: I was going to comment on
8 that as well.

9 (Laughter.)

10 COMMISSIONER CURTIN: -- there's another
11 individual here who has good taste.

12 (Laughter.)

13 COMMISSIONER CURTIN: And that's why I'm asking
14 these questions, because I trust you implicitly.

15 (Laughter.)

16 MR. SCHWARZ: What the 2030 and the 2070
17 scenarios project is most likely climate conditions with
18 all of the interannual variability and precipitation that
19 we have seen historically --

20 COMMISSIONER CURTIN: Right.

21 MR. SCHWARZ: -- magnified by what climate change
22 will do to that interannual variability.

23 COMMISSIONER CURTIN: But warmer.

24 MR. SCHWARZ: And warmer.

25 Okay. This idea of, well, what if we get a drier

1 hydrology than we expect, or, you know, the middle of that
2 cone? We've kind of taken the middle of that cone and
3 said that's the most likely. We're going to shoot for
4 that, and then we're going to -- at 2070, we're going to
5 ask you to do some resiliency analysis on those kind of
6 what if we actually end up at that edge of the cone or
7 what if we end up at that edge of the cone.

8 COMMISSIONER CURTIN: And so now you're -- I'm
9 losing track of the sensitivity versus quantitative.
10 Quantitative is an economic analysis to some degree.

11 MR. SCHWARZ: Correct.

12 COMMISSIONER CURTIN: You're looking at that for
13 the center of the cone --

14 MR. SCHWARZ: Yes.

15 COMMISSIONER CURTIN: -- in 2070 --

16 MR. SCHWARZ: The economic analysis --

17 COMMISSIONER CURTIN: -- not on the extreme.

18 MR. SCHWARZ: -- is on the center of the cone.

19 That's correct.

20 COMMISSIONER CURTIN: And then the --

21 MR. SCHWARZ: And that will be the quantitative
22 analysis.

23 COMMISSIONER CURTIN: Right. So remember now, I
24 mean, I feel very confident in the hydrologic concerns
25 here, but economics is the dismal science, remember that?

1 MR. SCHWARZ: Yep.

2 COMMISSIONER CURTIN: You don't have to be right
3 to get a Nobel Prize or a Ph.D. in economics.

4 (Laughter.)

5 COMMISSIONER CURTIN: This is really where I
6 think everybody is kind of feeling a lot of uncertainty.

7 MR. SCHWARZ: Queasy.

8 COMMISSIONER CURTIN: Yeah. Okay. But at least
9 I know which one you're talking about.

10 MR. SCHWARZ: That -- I guess that takes me right
11 to my second or third point on this idea of if -- if we
12 don't do the sensitivity analysis -- if we did like a
13 sensitivity analysis approach, we would use those -- we
14 look at those climate change analysis output, and we would
15 not monetize the benefits of future conditions based on
16 that output. We would just say, well, the future benefits
17 continue as we believe that under -- they continue under
18 current conditions.

19 And we would say, well, climate change suggests
20 that this project might, you know, lose some benefits over
21 time. This other project might -- the benefits might
22 actually increase over time, but the monetization piece
23 would be based on current conditions. We don't think that
24 that's really responsive to executive -- the executive
25 order, the legislation on this, or the guidance that we've

1 gotten from you all on past meetings.

2 COMMISSIONER CURTIN: Speaking for myself, I'm
3 not sure whatever guidance I may have given you was based
4 on full knowledge of what you're up to --

5 MR. SCHWARZ: Okay.

6 COMMISSIONER CURTIN: -- so I want to put that as
7 a caveat. This is pretty complicated, and we're looking
8 forward to people talking about it. But there's so many
9 elements under the economics, that, you know, the value of
10 water, just a dollar value, I mean, in 2070, it might not
11 be \$500 an acre foot, it might be \$50,000 an acre foot --

12 MR. SCHWARZ: That's right.

13 COMMISSIONER CURTIN: -- for all I know. And,
14 you know, how that sort of stuff -- but anyway.

15 MR. SCHWARZ: And that -- and we -- and we want
16 to remember also that as we move further out into the
17 future, everything gets uncertain. Everything gets
18 uncertain, as you just pointed out, including the value of
19 these things, how much the benefit of these projects is
20 going to be. But one of the things that the economic
21 analysis does to counteract that is, right, we discount
22 those future benefits as we move them back, because we
23 make a present value analysis calculation of all those
24 benefits.

25 So these benefits that occur out 100 years, they

1 get discounted back to 2016 dollars or whatever the
2 current value is. So I did the calculation yesterday. A
3 dollar's worth of value in 2099 is worth \$0.06, when you
4 present value it back to --

5 COMMISSIONER CURTIN: Are you just talking about
6 inflation or are you talking about hydrology again?

7 MR. SCHWARZ: No, no, no, just -- just discount
8 rate. Just the discount rate, one over one plus the rate
9 to the 86th power or whatever it is, and you get -- so if
10 you can produce a dollar's worth of benefit in 2099,
11 that's worth \$0.06 to us today.

12 So if the difference -- so what we're really
13 talking about here is the difference is -- so we're going
14 to be wrong about what the actual benefits of these
15 projects are in 2099, but we want to be as close as we can
16 given our knowledge today. And we think that this
17 methodology puts us as close to that point as we can get,
18 given all of the uncertainties.

19 I mean one thing to think about is, you know,
20 if -- so the alternative methodology, just using the
21 sensitivity analysis, would just say, okay, we're going to
22 use the historical -- whatever under historical or current
23 conditions. Whatever the benefits are today, we're going
24 to say that this project can continue to produce those
25 benefits over time.

1 That's a pretty bad assumption when you think
2 about -- you look at the GCMs, and there's virtually
3 zero -- or there's virtually certain -- virtual certainty,
4 based on what the GCM data are showing us --

5 COMMISSIONER CURTIN: GCM?

6 MR. SCHWARZ: The global climate models, the
7 climate simulations of the future, suggest that by 2050,
8 we will be at least a degree Fahrenheit warmer in
9 California. So we're much more certain that there will be
10 warming above -- than in the future than we are that there
11 won't be warming. We don't know the degree exactly to
12 which that warming will occur. Will it be 1 degree or 2
13 degrees or 3 degrees?

14 So if you say, well, it's somewhere maybe between
15 1 and 3, let's call it 2. That's our best guess. So
16 that's basically what we've done.

17 Okay. We kind of touched on this. This
18 quantitative analysis should go beyond 2050. So we have
19 provided these two climate scenarios for 2030 and 2070.
20 And several of the commenters pointed out that that 2070
21 is based on climate information from the years 2056 to
22 2085, leaving 15 years at the end of this century, 2085 to
23 2099. That information actually is in the climate models.
24 That climate models all simulate out to 2099. So there
25 were 15 years of data -- climate model data that we didn't

1 use. They're absolutely right about that.

2 We didn't use -- throw it necessarily on the
3 cutting room floor. And it doesn't mean that our
4 simulations stop at 2070, because the way that the
5 economic analysis is to be done is you analyze the project
6 at 2030, you analyze the project at 2070, you can
7 interpolate every year in between those two points, and
8 beyond 2070 you would extrapolate those benefits off.

9 So if climate change is diminishing the value of
10 that project over time, then your extrapolation continues
11 to diminish over time. If climate change is actually
12 making your benefits bigger over time, then the
13 extrapolation continues that trend further out. And so if
14 that climate trend is showing that your project gets --
15 loses value over time, then that continues out to the end
16 of the project, out beyond 2100 into 2120, if the project
17 goes out that far.

18 The reason we chose 2070, and not a point right
19 at the end of the century, is actually a fairly logistical
20 one. And that is that we have the sea level rise
21 projection that corresponded with about 2070. And we
22 didn't have a sea level rise projection ready that
23 corresponded to 2085. And we didn't have the time to
24 develop those with all of the other things that we had to
25 develop here.

1 And it really, we didn't think, would have made
2 that much difference, quite frankly, because of the
3 extrapolation we do get. We absolutely -- we don't just
4 truncate the analysis at 2070 or 2080. It's there.

5 Let's see. Also, within those they're evaluating
6 all of the hydrology within the 82-year sequence that we
7 have historically at 2030 and at 2070. So we get all of
8 those droughts. We get the 30s Dust Bowl droughts, we get
9 '76, '77. We get, you know, '87 to '93 droughts. We get
10 really wet years like '41 and '83 and '98, but those are
11 wetter or drier, according to what the climate models are
12 showing us.

13 CHAIRPERSON BYRNE: We have a question here.
14 Commissioner Quintero.

15 COMMISSIONER QUINTERO: Andrew, are you also
16 looking at the -- I mean, the prediction is that we're
17 also going to have longer droughts, right? And so when
18 you go back 50 years, I think the longest drought is 4
19 years, or close -- 4 to 5 years, and we're already, you
20 know, entering a drought that's longer than anything that
21 we've seen in the past. And so you -- I think there's a
22 level of assumption that going forward we're going to have
23 hotter, longer droughts.

24 And I also want to -- as we all know, that in
25 this drought that we're currently in, we've seen

1 conditions that nobody expected.

2 MR. SCHWARZ: That's right.

3 COMMISSIONER QUINTERO: So, you know, if you can
4 address that.

5 MR. SCHWARZ: So that's a really good question.
6 And I will say that there isn't really a longer drought
7 than has been experienced in the historical record in this
8 sequence. That's a fair critique of this approach, and
9 it's a fair suggestion that that's a weakness.

10 COMMISSIONER QUINTERO: Well, I also understand
11 from what you said, that that is sort of addressing the
12 resiliency sort of test.

13 MR. SCHWARZ: I think it's sort of addressed in
14 the resiliency. All of the -- even the resiliency
15 analysis are mapped onto the historical record as well,
16 and so you don't see much longer droughts. Now, the
17 one -- a couple of things I will say about that is we
18 expect longer droughts and those kinds of things, but that
19 is one of the more uncertain areas of climate science
20 right now.

21 And so we don't really have a great sense for how
22 much longer those are going to be. And the climate models
23 don't do a great job of really simulating historical
24 drought periods for California, and so our confidence that
25 they can really do a great job of simulating future

1 drought periods is not great.

2 COMMISSIONER QUINTERO: Yeah. I also wanted to
3 acknowledge that I've looked at those records and I know
4 that there are long droughts. And in the middle of a long
5 drought, you can have an extraordinarily wet year pop up.

6 MR. SCHWARZ: Yes.

7 COMMISSIONER QUINTERO: You know, so I mean, I
8 understand.

9 MR. SCHWARZ: And, yeah, the other thing that I
10 would point about the system and that we have in
11 California is we don't have huge amounts of storage à la
12 the Colorado River that has 5 years of flows -- the
13 ability to store 5 years of flows.

14 Our system -- you know, a 2-year, 3-year drought
15 is pretty much enough to drain the system, if you will.
16 We don't really need to see a 6-year drought to drain the
17 system. We're at -- you know, as we saw, by the 3rd year
18 of the last drought, you know, we're -- we're, you know,
19 pretty close to the bottom of the reservoirs at that 3rd
20 year.

21 And so the idea that we needed to adjust the
22 historical record and add more droughts in, you know, I'm
23 not necessarily sure that we need to do that to be able to
24 test these projects in a way that's -- that allows us to
25 make a decision.

1 The other thing I would point out is if a project
2 produces benefits over a wide range of highly likely
3 conditions, but fails to produce benefits over a very
4 severe unlikely condition, do you build it or don't you?

5 COMMISSIONER QUINTERO: Yeah, I understand.

6 MR. SCHWARZ: I think that's an open question.
7 And I think that's kind of a question that if you say --
8 if the answer to that question is, no, we don't build it
9 if it can't produce benefits in the most severe outcome,
10 then that's an analysis that we should probably be doing.
11 But if the answer is yes, then I'm not so sure that not
12 having a longer than 6 year drought in the record changes
13 your decision.

14 COMMISSIONER QUINTERO: Yeah, but I guess I think
15 about it in terms of maybe, you know, there could be a
16 project the does function better in the longer drought.
17 That's all. It's more of a comparison between projects
18 rather than do you or don't you?

19 MR. SCHWARZ: I think that's fair, yeah.

20 So we kind of just hit on the should we require a
21 stress test question on there?

22 But I will say that I think we really actually
23 do -- we are doing a couple of different kinds of stress
24 tests. We're maybe not doing every different kind of
25 stress test that you could run à la a longer drought than

1 we've seen historically. But both the 2030 and 2070
2 scenarios have a 76/77 style drought. They have an '87 to
3 '93 type of drought. And then they have the 1930's Dust
4 Bowls in them.

5 So there are very, very dry conditions in each of
6 these scenarios that are warmer. So it's '76, but it's 2
7 degrees warmer, you know. It's nasty. It's not 25
8 percent of snow water equivalent, like we had in '76.
9 It's probably below 8 percent or whatever that we saw in
10 '14 -- 2014.

11 And then we also have these two additional
12 scenarios that we have provided that will be done in the
13 resiliency analysis. So those will not have the public
14 benefit monetization process done to them. They would
15 just be quantitative or qualitative to kind of explore,
16 well, what happens if we get a hotter drier climate than
17 this kind of the middle of the cone? What if we end up on
18 the end of that cone at 2070, or what if it's -- what if
19 it's cooler and wetter? I mean, a lot of these models are
20 actually wetter than what we have seen in the past.

21 COMMISSIONER QUINTERO: Wetter and warmer.

22 MR. SCHWARZ: Wetter and warmer, right?

23 So what if it is wetter and warmer? So we lose
24 snowpack, but there's actually quite a bit of water out
25 there to be able to be captured. I think, you know, some

1 projects should be able to do really well under those
2 circumstance. I think we would want to understand that as
3 well.

4 COMMISSIONER QUINTERO: Yeah.

5 MR. SCHWARZ: So that's what that's there for.
6 We did make that quantitative or qualitative. I guess
7 you'll probably see most of the applicants do a
8 qualitative, you know, if that's something that is worth
9 adding to the laundry list of the things that applicants
10 are -- need to do for their application. We can talk
11 about, you know, changing --

12 COMMISSIONER CURTIN: So qualitative is back to
13 sensitivity, because we're using variable terms here.

14 MR. SCHWARZ: Sure. I'm not -- there --
15 qualitative in that --

16 COMMISSIONER CURTIN: I know, it must be very
17 distressing from where you're sitting.

18 (Laughter.)

19 MR. SCHWARZ: Qualitative meaning they don't
20 necessarily have to run it through all of the models.
21 They could just say, well, you know, these types of
22 changes drive the system in this way, and we think the
23 outcome would be X.

24 COMMISSIONER CURTIN: Okay.

25 MR. SCHWARZ: So we explore both extreme

1 interannual variability, i.e. droughts, okay, and floods,
2 and more stressful climate outcomes. So both of those
3 types of stress tests are in there.

4 And then finally, this idea that averaging is
5 incorrect and doesn't capture the extremes. This, I
6 truly, believe is just a misunderstanding of what we've
7 done. And this, unfortunately, really can't be explained
8 without getting kind of into the technical nature of how
9 we modified this historical record to reflect the climate
10 signal that we're getting.

11 But let's just take an example. Okay. So we're
12 looking at -- we have this historical record, and we
13 are -- we, basically, are looking at each month
14 individually, and each -- the how wet or dry it was, how
15 cool or hot it was.

16 So let's take the driest January in the
17 historical record, what would happen to that driest
18 January at 2030?

19 So what we do is we will go -- we would go to the
20 climate change scenario -- the climate change models. And
21 remember, we're using just a subset of the entire group of
22 climate models that are out there. We're using 20 models
23 that were suggested by the DWR Climate Change Technical
24 Advisory Committee. This is an outside panel of experts
25 that recommended these models. We've talked about that

1 before, I think.

2 So we have 20 projections of future climate at
3 2030. Those 20 models were -- have -- basically have
4 simulations that run from like 1950 through 2099. So we
5 have to take their historical period performance for that
6 model and the future 2030 performance and figure out what
7 the difference is, how much change is each model
8 suggesting will happen between 2030 -- or between the
9 historical reference period and 2030?

10 We take the average of the difference between
11 those models, for the -- for the driest January. Okay.
12 So you're taking the driest January out of each one of
13 those 20 models, the driest January during that simulation
14 period that it saw, and all the other driest January's
15 that all the other climate models projected during that
16 climate period.

17 So one might have occurred in 2024, one might
18 have occurred in 2026, the other in 2037, whatever, and we
19 average out what is the dry -- you know, what is the --
20 what's is driest of the -- of those 20 driest January's,
21 what's the average of them? That's the averaging that we
22 do.

23 We don't do any averaging that smoothes out the
24 hydrologic interannual variability that we've seen in the
25 past. It's absolutely the contrary to that. These

1 factors then go onto our interannual hydrologic
2 variability that we've seen in the past, and make them
3 more extreme in most cases. They make them dry or they
4 make them wet, if they were -- if they were really hot,
5 they get even hotter. If they were really cold, in some
6 cases, they either, you know, don't move much or maybe
7 they get a little warmer, or maybe even they get colder
8 some of them.

9 The things just get more extreme with climate
10 change, right? If they were really wet, they'd probably
11 get even wetter. So this doesn't dull or diminish the
12 interannual variability. It synchronizes the climate
13 signal in a way that is reasonable and that can be applied
14 spatially in a coherent manner across the entire state.
15 We can't pull from a different climate model for this grid
16 cell within this State, and a different model from this
17 grid cell right next to it, because you're getting a
18 climate that really can't happen.

19 It's -- you know, I don't -- it's just -- it's
20 not simple averaging. We don't lose any droughts. We
21 don't lose any floods.

22 CHAIRPERSON BYRNE: Andrew, I was going to say,
23 so -- and I'm just trying to keep the clock in mind here,
24 because we've got to probably pull out here at 1:00 for --
25 yeah. So the last question in sum -- again, obviously a

1 lot of thought has gone into this, a lot of technical
2 analysis has gone into it.

3 So from the previous version that we discussed at
4 the last meeting, or what was put out, I know that you've
5 put forward -- it kind of sounds like a document that
6 explains more of what went into it.

7 MR. SCHWARZ: Yeah.

8 CHAIRPERSON BYRNE: But is it essentially the
9 same thing that it was before?

10 MR. SCHWARZ: Yes.

11 CHAIRPERSON BYRNE: That's fine. I'm not asking
12 for --

13 MR. SCHWARZ: Yeah.

14 CHAIRPERSON BYRNE: Okay. Got it. Okay. And
15 that's the recommendation of you is to move forward with
16 that. Is that -- and I appreciate the explanation of the
17 primary concerns that have been raised, and I'm sure some
18 others will be as well.

19 But with that, why don't we -- if it's okay, why
20 don't we take -- we're going to take a 30-minute lunch.
21 Well, it's 12:53, why don't we come back right at 1:30,
22 because I don't want to break up the public comment,
23 unless there's another comment from Commissioners?

24 MR. SCHWARZ: Can I have 30 seconds to address
25 one more issue?

1 CHAIRPERSON BYRNE: Yeah, sure.

2 MR. SCHWARZ: And that is -- that's not up here.
3 And that is there's several comments that say, wait a
4 second. These climate change projections, especially for
5 2070, are actually wetter than the historical situation.
6 And that is true very slightly on a statewide basis. It's
7 not necessarily -- you know, if you look at an individual
8 region of the State, that may or may not be true.
9 Southern California gets drier, Northern California gets a
10 little wetter.

11 We didn't set out to build a scenario that was X,
12 Y, or Z for the future. We just used the scientific --
13 the data that's coming out of the global climate models to
14 inform these scenarios. If you look at the 20 global
15 climate models that the CCTAG chose, in general, by the
16 end of the century, they are a little bit wetter. And if
17 you look at the larger ensemble, if you don't use what the
18 CCTAG told us, you get a very, very similar result, a
19 little bit wetter by the end of the century, especially
20 for Northern California.

21 CHAIRPERSON BYRNE: Okay. That's helpful. I'm
22 sure there will be opportunities for more input after
23 public comments.

24 Okay. So we'll stand adjourned -- or recessed
25 until 1:30.

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(Off record: 12:54 p.m.)

(Thereupon a lunch break was taken.)

1 A F T E R N O O N S E S S I O N

2 (On record: 1:33 p.m.)

3 CHAIRPERSON BYRNE: All right. Let's reconvene.
4 I hate to break up the party, unless there's no comment,
5 then I guess we could just move on.

6 All right. Well, I'll introduce you, Juliet.
7 Okay. So we're back in session, and we just concluded the
8 presentation on climate change, and I'll open it up to
9 public comment. Again, there's no speaker card, so please
10 feel free to come up and just introduce yourself and we'll
11 get right into it.

12 MS. CHRISTIAN-SMITH: Hi. I'm Juliet again from
13 the Union of Concerned Scientist.

14 So I'm just going to start then with the same
15 thought, which is that I think we're answering a different
16 question than the question that I thought we were
17 answering. And it's really up to you all to decide what
18 the right question is. So I think the question that we're
19 answering through this process is how close can we get to
20 the truth?

21 And the question that I would ask is how can we
22 make the best decision, understanding that we will not
23 know the future, but we can understand some of the risks?

24 So going back to sort of the list of climate
25 change comments, I just wanted to explain a couple of them

1 from the perspective of someone who made some of the
2 comments.

3 First, the 2085 truncation. Every other State
4 process, every other State agency that I know of has used
5 the entire data set out to the end of the century. And I
6 still do not understand why all of the data weren't used.

7 The second issue around uncertainty. So we don't
8 have 100 percent foresight into the future. That's true
9 with pretty much every decision we make. And then -- and
10 there are entire fields that do this professionally around
11 seismic engineering, and nuclear safety. And one thing
12 that unites all of these fields is that they -- they rely
13 on a set of decision-making tools that can broadly be
14 thought of as robust decision making, or stress testing,
15 in that these are tools that allow you to optimize the
16 solution to a range of possible futures. They do not
17 optimize to one potential future.

18 Stress testing was recommended by DWR's external
19 Climate Change Technical Advisory Group. Yuba County, El
20 Dorado Irrigation District, Metropolitan Water District of
21 Southern California, all of them have done in detail
22 stress testing at the local level. It can be done. It
23 has been done.

24 This approach is different than that. As was
25 described, this fixed period approach takes these -- takes

1 one climate scenario, as Commissioner Curtin pointed out,
2 at 2030 and 2070. And there's an interpolation between
3 those. And I think what we heard today was that is what
4 is done for the quantification process.

5 Then when we get outside of that into this
6 resiliency analysis, you know, you can look at a broader
7 range of futures. And the way that the question was posed
8 is how would you perform under drier or wetter conditions
9 than we expect? And I would say therein lies the problem.

10 There is no expectation built into any of these
11 global circulation models. They are all equally likely to
12 occur. We cannot choose a most likely climate condition
13 because we don't know what it is. And therefore, we could
14 prepare very well for what we know won't happen, or we
15 could prepare for what might happen -- prepare well for
16 what might happen, and encompass the driest and the
17 wettest scenarios, thereby stress testing against what are
18 really the failure points that would affect public
19 benefits.

20 Thanks.

21 CHAIRPERSON BYRNE: Thank you very much, Juliet
22 and hang tight.

23 COMMISSIONER CURTIN: I'm not quite clear, first
24 of all, your last statement about we know won't happen.
25 I'm not sure what you're referring to there.

1 MS. CHRISTIAN-SMITH: Um-hmm.

2 COMMISSIONER CURTIN: Do you want to just tell me
3 what you mean?

4 MS. CHRISTIAN-SMITH: Sure. So if we take 20
5 global climate models and average across them, even if
6 we're using the driest of a particular time step, or the
7 wettest, we're still averaging a signal of 20 distinct
8 traces. They -- some of them are drier, some of them are
9 wetter.

10 And what that does, that averaging is actually
11 choosing the middle of that range, rather than the ends.
12 And what the Climate Change Technical Advisory Group
13 suggested, and what robust decision making would suggest,
14 is that you don't try to choose something that's likely,
15 but you try to choose a risk analysis approach that tells
16 you what you might confront. Does that help at all?

17 COMMISSIONER CURTIN: That helps, yeah. My
18 concern is the quantification part of this. I believe
19 we're doing resiliency testing with some wet and dry
20 options here, right?

21 MS. CHRISTIAN-SMITH: I think that's an addition,
22 and I would support it. I don't know what the drought --

23 COMMISSIONER CURTIN: I mean, I'm not sure. Am I
24 right in making that assumption that there is some
25 requirement to show your resiliency as a project?

1 MR. SCHWARZ: (Nods head.)

2 COMMISSIONER CURTIN: My problem is the
3 quantification out to 2070, regardless of the extremes.
4 If you can show that your project has got resiliency to
5 the wet and dry options, my assumption is that you will
6 adapt to the economic questions. And I apologize to the
7 economist. I already insulted him once. I'll try not to
8 do it again, or not him personally.

9 (Laughter.)

10 COMMISSIONER CURTIN: But not in terms of the
11 quantification, because that becomes -- that magnifies the
12 amount of analysis that goes -- I think that the hydrology
13 analysis is important, and people know how to sort of sort
14 that out. But when you start tying that to the economic
15 questions, I really -- I think we just get lost in the
16 weeds. That's my concern, but not -- I mean, I'm assuming
17 we're going to do some resiliency analysis.

18 MS. CHRISTIAN-SMITH: So I don't know what the
19 resiliency analysis is yet, because it was just been --
20 it's been described. But my concern is that the
21 resiliency analysis that will be used could be
22 qualitative. And that was another point that you were
23 asking about. I'm not sure if you got an answer really,
24 which is that you can conduct -- from my perspective, a
25 sensitivity analysis is simply a way of understanding how

1 sensitive something is to something else. So how
2 sensitive is the State Water Project to a lot more rain or
3 a lot less rain?

4 COMMISSIONER CURTIN: Or a specific project in
5 this case or whatever?

6 MS. CHRISTIAN-SMITH: Yeah, exactly. That would
7 be the sensitivity analysis. And you can do that
8 quantitatively. You could actually test -- put in numbers
9 and see what happens to the storage system conveyance all
10 of that, or you could just say, well, theoretically,
11 qualitatively, I think that more rain will mean that we
12 have more water in storage, or something, whatever.

13 COMMISSIONER CURTIN: You're getting to my level.
14 Don't do that.

15 (Laughter.)

16 MS. CHRISTIAN-SMITH: So, you know, again, right
17 now, the regulations only require a qualitative
18 sensitivity analysis. And again, the statement made here
19 was that it's likely that's what you'll get, even if
20 there's an option for a quantitative analysis. Not many
21 people will probably take it if it's not required.

22 So what you're going to get is information about,
23 you know, from broad strokes. It's going to get warmer.
24 There's going to be more rain. That means we're going to
25 be to actually do Y, X, Y, Z ore you we're going to have

1 less rain and we're going to come up with this other way
2 of dealing with it.

3 There will be no numbers attached to it. But
4 then in a following section of the regulations, you'll be
5 required to quantitatively score the resiliency of these
6 projects.

7 COMMISSIONER CURTIN: So a little more
8 clarification.

9 MS. CHRISTIAN-SMITH: Yeah. Thanks.

10 CHAIRPERSON BYRNE: Thank you, Juliet. Jennifer.

11 MS. CLARY: I'm Jennifer Clary. Sorry I have to
12 leave early to catch the train, so I can't stay to hear
13 everything. But again, this is a really difficult piece.
14 I do appreciate everything that staff is doing. They came
15 in late. They're doing a great job.

16 But my difficulty is, is even if we do agree on
17 what the resilience testing should be, it's a really tiny
18 piece of the quant -- of the scoring, because it's in this
19 whole resilient section, and it's one subpart of 1 section
20 out of 3 of the scoring. So it's -- it's not clear to me
21 whether resiliency is actually going to be a tipping point
22 for any project.

23 And that bothers me. As you know, I kind of want
24 you to fund some groundwater projects. And every decision
25 that's being made seems to me to disincentivize

1 groundwater. And if you have a resilience test that
2 doesn't -- that, however it's done, that doesn't
3 provide -- that isn't given enough weight in the scoring,
4 then that means you're once more disincentivizing the most
5 cost effective form, and most drought resilient form of
6 storage.

7 And also, I just -- again, I'm non-technical, but
8 when I look at a historic regard that goes from 1922 to
9 2010, I look at something that sort of bifurcates the
10 longest drought in our history. Because when I look at
11 droughts, I look at the fact that we've only had 3 years
12 this century that have had normal or above normal
13 rainfall. So I don't look at year 6 of a drought, I look
14 at year 16.

15 And that's what I'm looking at now. And I'd like
16 to understand if the modeling they're doing can reproduce
17 current conditions.

18 Thank you.

19 CHAIRPERSON BYRNE: Thank you, Jennifer.

20 MR. JONES: Good afternoon. Kyle Jones with
21 Sierra Club California. And I just wanted to comment on
22 some of the averaging in reference to the comments that we
23 made in written form.

24 And the way I understand it is that the modeling
25 is going to be applied over historical variability from

1 year to year. But the way that I was reading the
2 regulations, the technical reference document, and maybe
3 that just needs to be made more clear in there, is that
4 this average of 4 -- I think from one of the periods, 4.4
5 percent more precipitation would be applied for all the
6 years.

7 And it's not really clear how that's going to
8 take into account that we know that there's going to be an
9 increase in variability between wet years and dry years.
10 The wet years will be wetter, the dry years will be drier.

11 And how just taking -- you know, applying that
12 number straight to those years would then make dry years
13 look better, and, you know, wet years not as potentially,
14 you know, damaging as they could be with regards to
15 floods.

16 And so I just want to -- I guess, I have more
17 clarity that this kind of variability that is endemic to
18 California, and that is something that we really need to
19 take into account is actually being taken into account.
20 And now, the presentation mentioned it was there, but I
21 still just have questions on that.

22 And I, you know, would also like to second the
23 point that Jennifer just made with regards to making sure
24 that this modeling includes data up till, as recent as we
25 can get, and that is just because we were seeing some of

1 the more drastic changes in hydrology already happen and
2 unique -- unique circumstances that we haven't faced
3 before.

4 And given that that is what climate change is
5 supposed to represent rather than more history, you know,
6 if we could move that historical period up as much as
7 possible to capture that, I think that would be very
8 helpful in seeing how this -- providing as clear of a
9 picture as we can get.

10 Thank you.

11 CHAIRPERSON BYRNE: Thank you very much, Kyle.

12 MS. MARTIN: Good afternoon. I'm Maureen Martin
13 from Contra Costa Water District. And I want to speak to
14 some of our written comments that we've made historically
15 about this climate change issue and modeling. And we have
16 continuously advocated that we would be most comfortable
17 with approaching the quantification and monetization of
18 benefits to be consistent with one's environmental
19 documentation, right?

20 So CEQA requires you to compare to the existing
21 condition. And this comes into play really when you're
22 trying to determine and monetize the amount of mitigation
23 you're required for any significant impacts and things
24 like that.

25 And so I know that the staff has gone to great

1 lengths to try to separate those two issues. But for us,
2 it still remains a concern. And as we have all heard a
3 lot about is that these chains of modeling at each step
4 they introduce uncertainty in errors. And so, you know,
5 to monetize on top of the climate change, it really just
6 continues on that added error propagation if you will.

7 But I want to take a step back actually and
8 compliment the staff, because really what I think that
9 they hear is that they haven't done a good job or they
10 haven't explained it. But they've really worked very hard
11 to put out something brand new. And this is why so many
12 of the stakeholders are having such a difficult time
13 understanding it or accepting it is because there hasn't
14 been a lot of time for us to digest it.

15 They've done brand new things, like de-trending
16 the baseline. And maybe that doesn't mean anything to
17 you, but it's something brand new. And typically, when
18 you come up with these scientific advances, and we are in
19 the forefront, you know, you would expect -- or I would
20 expect, you know, maybe some peer reviews, some
21 publications, some kind of verification from other
22 experts, right?

23 So I don't -- I'm hoping that -- and I've
24 continuously advocated that, you know, through the
25 development and the application and implementation of

1 these climate change tools receive a robust -- you know,
2 essentially a peer review or some kind of public review,
3 just so that other applicants -- so that you can be
4 comfortable with them, so that project applicants can be
5 comfortable using them, because, like we say, lots of the
6 benefits and the impacts may be quantified using those
7 tools.

8 And, you know, my justification will be like,
9 well, the Water Commission told me to do it, but, you
10 know, since there hasn't been really enough -- and I don't
11 want to say that there's anything wrong. We have reviewed
12 it, and so far everything looks great. But, you know, in
13 terms of making the requirements for applicants to use all
14 this, I feel like it's maybe just a little premature. So
15 one of our recommendations, I think, might be to strike
16 the, "shall use", as described in the technical reference
17 document from the regulations, and really use the
18 technical regulations -- the technical reference document
19 as more of a guidance, and allow the time between when the
20 regulations are passed and, you know, when the
21 applications are due, to spend more of that time refining
22 the technical reference documents, and to take that
23 opportunity to really kind of showcase the work that has
24 been done to make everybody more comfortable and, you
25 know, have a better understanding of it.

1 And just for the record, I'm also in favor
2 essentially of more of that sensitivity, that
3 quantification of, you know, essentially your benefits
4 without going through the monetization step. And I think
5 that the staff has indicated that they are going to
6 develop, you know, more extreme examples as well. And so
7 that I would envision, you know, being able to have, you
8 know, a Delta between your existing benefits, and then
9 potentially the 2 scenarios they've already done, plus the
10 other 2.

11 So that would kind of give you these error bars,
12 or, you know, a range of 4 surrounding kind of what we
13 already know or we could infer from the existing
14 conditions. So those are my suggestions.

15 Thank you.

16 CHAIRPERSON BYRNE: Question for you, Maureen.
17 Commissioner Daniels.

18 COMMISSIONER DANIELS: Sorry. I didn't catch
19 your last point quite, but I had a question on some of
20 your other points. I have two. So you -- one of your
21 points was that you wanted the analysis to be consistent
22 with CEQA analysis, essentially if I had that right?

23 MS. MARTIN: Yeah, that is correct.

24 COMMISSIONER DANIELS: But CEQA is a much more
25 broadly applicable type of statutory guideline or, you

1 know, framework, and it applies to all sorts of projects,
2 not just water projects. And in this instance, since
3 we've got water projects that are intended for -- you
4 know, to last quite some time, I'm seeing the value in
5 having a different analysis applied to it. But I wanted
6 to get more of your thoughts on that.

7 MS. MARTIN: Right. So -- and the staff has
8 tried hard to, you know, make me feel more comfortable.
9 But what -- essentially, part of it is we're going to be
10 putting out a supplement environmental documentation for
11 the Los Vaqueros Reservoir expansion project coinciding
12 with our application for Water Commission funding.

13 And the requirements for CEQA are to analyze the
14 potential impacts of your project compared to existing
15 conditions, right? And so our baseline for assessing our
16 impacts is going to be relative to existing conditions.
17 And now, we have heard -- and we're going to hear more
18 about potentially how to incorporate impacts into the
19 monetization process, into the benefits analysis, the net
20 benefit calculation.

21 And so from our perspective, it really adds --
22 and when you have to figure out how to mitigate any
23 significant impacts, it's going to be consistent with your
24 CEQA analysis. And so if I have to go purchase land to
25 mitigate for any significant impacts or if I have to

1 change my operations, those are all going to be assessed
2 in terms of being compliant with CEQA.

3 And so I understand that I -- you don't have to
4 do that, right, for this process? But to the extent that
5 you are incorporating impacts or any significant impacts
6 or mitigation for those impacts, you know, you just -- I
7 feel vulnerable about opening myself up to a CEQA
8 challenge on the adequacy of my CEQA documentation, if,
9 you know, the funding -- and you guys will all be a
10 responsible agency as well, you know, if you're funding
11 the project potentially. So that, you know, you want to
12 make sure that you understand that what you're funding is
13 consistent with the CEQA analysis.

14 Does that make sense?

15 COMMISSIONER DANIELS: Well, it sounds like a
16 repeat of what you said, but I want to understand what
17 you're saying then. So you're saying that you want the
18 existing condition analysis to be similar?

19 MS. MARTIN: I would like to have the project
20 impacts and benefits calculated relative to an existing
21 baseline because that is what we we'll be doing for our
22 CEQA analysis. We'll be doing lots of -- we can do --

23 COMMISSIONER DANIELS: Okay. Okay. Good. Good.
24 Good. Thanks.

25 And so then what is different then about -- what

1 do you see is different than about what we're asking?

2 MS. MARTIN: So the difference is that we are --
3 for your analysis, you are using a future projected
4 baseline.

5 COMMISSIONER DANIELS: And you don't think that
6 should apply at all?

7 MS. MARTIN: I didn't say that.

8 COMMISSIONER DANIELS: Okay.

9 MS. MARTIN: I said that I was hoping to
10 incorporate the climate change as more of a sensitivity on
11 top of it. So if you have a hydrology and you're able to
12 calculate certain types of benefits public and non-public
13 benefits, and then you're able to take the tools that you
14 have developed to essentially do this quantitative
15 sensitivity analysis surrounding that. I think that
16 would, you know, not run the risk --

17 COMMISSIONER DANIELS: Okay. I think I get your
18 point then now. Thank you.

19 So the other question I had was about you said
20 you thought it would be valuable to have a public review
21 of this new information. And I wanted to get more of your
22 thoughts on that and the public, in general, or there's
23 certain peer level review that you have in mind?

24 MS. MARTIN: Well, a public review would be
25 excellent, but I do think that there is an opportunity

1 for, you know, people to publish work in peer-reviewed
2 journals. And I know that we previously had a peer-review
3 section. It was taken out to shave off time. And I think
4 even at the time we were making that decision, or you were
5 all making that decision, we recommended that if, you
6 know, a peer-reviewed portion were to remain, that this
7 seems like the most logical place, because, you know, even
8 though Andrew is hand waving is very -- you know, I can
9 understand it. It still seems worthy of, you know,
10 potentially, like I said, reviewing the brand new work
11 that you guys have done and vetting it in a scientifically
12 valid place.

13 COMMISSIONER DANIELS: Do you have a suggestion
14 of who might comprise that peer review?

15 MS. MARTIN: Most of the time if you were going
16 to publish it, you know --

17 COMMISSIONER DANIELS: Any publication you're
18 saying that's --

19 MS. MARTIN: Any peer-reviewed scientific
20 publication would be good, but we could convene a panel of
21 experts if --

22 COMMISSIONER DANIELS: All right. Thank you for
23 your clarification.

24 CHAIRPERSON BYRNE: Thank you, Maureen.

25 MR. SWANSON: Good afternoon. I'm Bill Swanson.

1 I'm representing the San Joaquin Valley Water
2 Infrastructure Authority. It's a long name.

3 I want to talk about uncertainty, because that's
4 what this whole topic is really all about. And I think
5 Dave and Andrew this morning did a really good job of
6 explaining to you all about uncertainty. Sometimes
7 uncertainty and confusion are very closely linked. But
8 the real point that they were bringing out is there's 2
9 arenas of uncertainty that you're grappling with.

10 One is the uncertainty of climate conditions.
11 And your responsibility, if you're investing in a project
12 is to say, well, we can invest in a project based on what
13 we know today, and then what information could we use to
14 get a sense of how that project might perform in a future
15 world that is less certain.

16 And so they've come up with a methodology for
17 climate change variation that applies meteorological and
18 hydrologic changes in a quantifiable way, that would allow
19 the projects to display how they'd perform under different
20 climate conditions. So we have some brackets around
21 uncertainty. And Commissioner Curtin, you talked about
22 the straight line down the Middle versus the kind of the
23 outer fringes of the cone, which would be handled through
24 resiliency rather than the climate change analysis.

25 And I understand all that. It's methodically

1 implementable, and it could give you some good information
2 about how the project benefits you're investing in might
3 deviate over time. But the question I really want to
4 about is the uncertainty on the economics, because in
5 addition to the uncertainty on the hydrology, what the
6 regulations specify is that the applicants would take that
7 hydrology and then also independently, not with guidance
8 from staff, but each applicant would define the
9 population, land use, regulatory infrastructure, and
10 economic baselines in 2030 and in 2070.

11 So then what we would come to you with is a
12 project that's based both on the uncertainty of hydrology,
13 and the uncertainty of economic conditions in 2030 and
14 2070. And that would be the basis by which you would make
15 an investment, not compared to today's economics, or, as
16 Maureen pointed out, not compared to today's hydrology.

17 So essentially you'd be making business decisions
18 on sort of a hard-to-understand economic baseline. It's
19 almost like saying, if you were going to buy a house
20 today, would you buy that house -- and you were to finance
21 it for 30 years, would you buy that house based on what
22 your life needs might be 25 years after your mortgage was
23 paid off and not consider your needs today?

24 So what we talked about in our letter when we
25 used the word "sensitivity", we weren't implying

1 qualitative. We were talking about quantitative
2 sensitivity, and the quantitative sensitivity on hydrology
3 effects, on economic conditions defined on today's
4 conditions, so that you would have a sense of if we
5 invested in a project today, how might those investments
6 deviate over time based on some scientifically supportable
7 changes in hydrology.

8 But all the other conditions that we also have to
9 estimate aren't scientifically supportable because we all
10 have to make them on our own. And the biggest concern to
11 me on that is what you may end up with are a variety of
12 applications -- project applications that have different
13 economic assumptions and are very difficult to compare and
14 rank compared to one another.

15 Thanks.

16 CHAIRPERSON BYRNE: Bill, I have a quick
17 question. So I assume it's mapped out in your comments,
18 but given what staff has proposed, is that easy to
19 incorporate or is it scrapping of what we have or is it --

20 MR. SWANSON: No. What the staff has done is
21 great work. And what they've identified is a lot of
22 models, a lot of techniques, a lot of economic methods
23 that are applicable at any point in time. They could be
24 applied to today's conditions. They could be applied to
25 conditions in 2030. They could be applied to conditions

1 in 2070.

2 But what we don't know are what are the
3 conditions in 2030 and 2070. So what we would suggest is
4 to do the economic analysis based on what we know today.
5 And that way the projects are all kind of comparable to
6 the world we live in today for an economic decision
7 making. And then your climate change sensitivity would be
8 a hydrologic analysis, and how those projects would
9 perform in the future. That would give you the
10 combination of maybe the best of both worlds.

11 You'd have the sense of how do I make economic
12 decision based on Tuesday's economic framework, and how
13 certain am I that those economic outcomes, or my benefits,
14 would hold up over time based on the project operational
15 variation. And models can be run for hydrology, and fish,
16 and groundwater and all the different details that are
17 needed.

18 But the way the method is described right now,
19 it's not just the quantification of the benefits. It's
20 the quantification of benefits, and the cost allocation,
21 and the project operations plan are all based on these
22 speculative future conditions.

23 And so what you're really asking is not just that
24 you make your investment based on that, you're also asking
25 that the project sponsors, who are probably going to pay

1 75 to 80 percent of the project between capital and all of
2 the O&M, you're asking them to make their investment
3 decisions based on an economic condition that's different
4 at not really linkable to today.

5 COMMISSIONER CURTIN: So you're asking what
6 change you might suggest as opposed to what analysis you
7 might suggest, is that what you're asking?

8 CHAIRPERSON BYRNE: I was just saying --

9 COMMISSIONER CURTIN: Or is that clear to you,
10 because it's still not clear to me. What you said is
11 clear to me, but how does -- how do we change the
12 regulations that we're proposing to reflect what you just
13 said?

14 MR. SWANSON: I would decouple the hydrology
15 analysis from the economic analysis, and have the climate
16 change sensitivity and the resiliency based on
17 meteorological and hydrologic conditions, and have your
18 economics and cost allocation based on a common set of
19 economic conditions that are in place today.

20 COMMISSIONER CURTIN: Does -- I forgot her name
21 from the Contra Costa.

22 CHAIRPERSON BYRNE: Maureen.

23 COMMISSIONER CURTIN: Were you saying something
24 similar in terms of the sensitivity analysis being based
25 on today's conditions?

1 MS. MARTIN: Yes.

2 CHAIRPERSON BYRNE: Come on down, Maureen.

3 MS. MARTIN: I'll say yes.

4 Yeah, that is basically where we're talking about
5 the -- we're both in agreement that, you know, we would
6 prefer to see a quantitative sensitivity analysis about
7 the types of benefits that your seeing, you know, kind of
8 adding as bookends.

9 COMMISSIONER CURTIN: Okay. Wait. You did it
10 again.

11 MS. MARTIN: Oh, sorry.

12 (Laughter.)

13 COMMISSIONER CURTIN: Quantitative sensitivity --

14 (Laughter.)

15 COMMISSIONER CURTIN: -- let me go back to my
16 definitions.

17 MS. MARTIN: I'm trying to get the language down.
18 I'm trying to be consistent.

19 (Laughter.)

20 MS. MARTIN: So we -- we're in camp sensitivity
21 over here.

22 (Laughter.)

23 COMMISSIONER CURTIN: Okay. But you just said a
24 quantitative sensitivity analysis, and I was just
25 described 2 different --

1 MS. MARTIN: As opposed to a qualitative
2 sensitivity analysis. So one of the ways that you're
3 talking about resiliency, there is a qualitative option
4 that Juliet was not in favor of, and there -- you know,
5 staff is working on developing extreme modeling, things to
6 do a quantitative sensitivity analysis if people want to.
7 But I think that overall we would prefer to use modeling
8 tools, all of the climate change modeling tools to assess
9 the sensitivity of the benefits to changes in hydrologic
10 variation, and changes in temperature and that's the goal

11 MR. SWANSON: Using numerical information, not
12 just descriptive terms.

13 COMMISSIONER CURTIN: No, I get it.

14 MR. SWANSON: Thank you.

15 CHAIRPERSON BYRNE: Thank you, Bill.

16 MS. ZWILLINGER: Hi. I'm Rachel Zwillinger with
17 Defenders of Wildlife.

18 Just 3 quick points on this issue. The first is
19 that I think the current approach that we are taking of
20 using climate change analysis to monetize public benefits,
21 and making that a mandatory part of the regulations is
22 very important. That to the extent we are trying to fund
23 public benefits that are actually going to exist in the
24 future, accounting for climate change in how we measure,
25 balance, and monetize the existence of those public

1 benefits in the future is important, and that it's not an
2 easy process to figure out how to do this, and it's a new
3 thing, but that it's important, and that in that respect,
4 the regulations have gone in a really productive
5 direction.

6 The second issue that in terms of the time frame
7 of the analysis, we weren't just troubled by the fact that
8 the climate change analysis could have been extended
9 further, but it's the mismatch between the funded public
10 benefits and the climate change analysis. And to the
11 extent that we're funding public benefit with the
12 expectation that they are going to exist out beyond where
13 our climate change analysis is, and we could extend that
14 climate change analysis so it would better match the time
15 frame of the public benefits that we're funding, that
16 makes a lot of sense and is another step towards ensuring
17 that the public benefits we're trying to fund will
18 meaningfully exist in the future.

19 And then finally, and this is an issue that, like
20 Kyle, I came to understand better today in your
21 description of the modeling, but we're really interested
22 in seeing the variability. And so the idea of picking 2
23 average points, the 2030 and 2070, our understanding, and
24 I think my understanding remains, that you lose some of
25 the potential wettest wets and driest dries, and that we

1 would like that to be a part of the required quantitative
2 analysis, because that's going to allow us to better
3 compare projects in the future.

4 Thanks.

5 COMMISSIONER CURTIN: Joe.

6 CHAIRPERSON BYRNE: Mr. Curtin.

7 COMMISSIONER CURTIN: I hate to do this. My
8 concern is about trying to monetize future values or
9 values into the future. I think we all understand how you
10 could do it under the information we have now. And
11 perhaps for another decade or so, we could make reasonably
12 intelligent assumptions.

13 But everything I'm reading is that when you add a
14 economic analysis that includes population to 2070,
15 population growth, land use, water use, water operations,
16 laws, regulations, and other characteristics relevant to
17 the analysis, plus existing infrastructure or
18 non-existing, all of these have enormous variability
19 potential. And every time you throw one in, you're going
20 to get a very -- a large variation on your analysis.

21 The only analysis from my point of view that I'm
22 interested in is will the project and the potential
23 developments that go around this project continue to
24 produce public benefits. The quantity, not the economic
25 value of the public benefits, because I don't know if

1 anybody is really going to know that.

2 So the stress test, or the sensitivity, or
3 whatever the thing we were talking about, the dry and the
4 wet, how will your project respond in those conditions is
5 pretty -- it will be pretty indicative of the economic
6 value of your project, if it can adapt, if it's an
7 adaptable project to climate change. But my concern is
8 that the projects themselves were sort of analyzing them,
9 as if nothing ever is going to happen around them.

10 And the way I see these projects, is there's
11 going to be all kinds of adaptations. Will your project
12 be -- will it be able to be integrated in the adaptations
13 that you're going to need for climate change. So I'm very
14 concerned about throwing out an economic analysis that it
15 seems we've concluded will be extremely uncertain, even
16 whatever our best guess will be. But we are more certain
17 on the potential hydrological analysis or the economic --
18 I mean, the geologic analysis, because they're scientists
19 who -- they get it. They can -- know how to put those
20 inputs in.

21 And if the project is adaptable or if this
22 project can exist and as time -- as climate changes or the
23 changes happen, these changes can happen around it, so
24 that this project is actually sort of, as I say, the
25 anchor tenant for a suite of changes, that we don't know

1 what it will be, that's what I'm interested in finding
2 out. Because I think once we say is it going to be
3 economically feasible in 2070, we're going to get so lost
4 in the weeds, but is it going to be hydrologically or
5 feasible is what matters to me.

6 So does that make -- clarify anything you're
7 saying, or do you think it's not in the same --

8 MS. ZWILLINGER: And I have sort of a big
9 question mark over this conversation, with the fact that
10 I'm not an economist, and don't understand this. But I
11 view these as two different conversations, that there's a
12 conversation about climate change analysis, and how we're
13 going to incorporate that into the monetization of public
14 benefits, and a separate conversation about the
15 monetization of public benefits into the future, and all
16 of those other aspects of future variability --

17 COMMISSIONER CURTIN: Right.

18 MS. ZWILLINGER: -- but that those are two
19 separate conversations.

20 COMMISSIONER CURTIN: Right.

21 MS. ZWILLINGER: And it's not the fact that we
22 are assessing climate change as a part of the monetization
23 that is the issue in and of itself. It's how we are more
24 generally conceiving the monetized future benefits.

25 COMMISSIONER CURTIN: This is my -- I kind of

1 agree with that. What we're going to assess is within the
2 foreseeable future the monetization of the public benefits
3 that we're going to pay for. And then we're going to
4 assess, in the process, is this project going to be
5 resilient in some of these hydrologic changes potentially
6 either way. But then to say, and is those -- are those
7 monetized values going to hold up, I think is well beyond
8 the reach.

9 I mean, the people who are going to invest in
10 these projects for water, for their farms, I mean, they're
11 going to make some hard economic decisions, as are we.
12 But to speculate what it's going to be in 2070, as long as
13 the project is still useful hydrologically and can
14 actually help a region deal with climate change, that to
15 me is -- what those -- what that monetized value will be
16 will find investors -- I mean, they'll sell it on the
17 stock market for all I know. It will be, you know, how
18 much water can you buy off of this project.

19 But, for me, is the project going to hold up in
20 terms of climate change, and is it economically viable
21 now, or feasible now, and are we providing enough -- the
22 right amount of money for the right public benefits?

23 2070, I'm beginning to wonder if we can even come
24 close with an analysis on the economic side.

25 MS. ZWILLINGER: Well, it also strikes me the

1 economic viability of a project is a separate question
2 from the quantification of the public benefits that would
3 exist.

4 COMMISSIONER CURTIN: No, no. Under current
5 conditions, I think we can handle that.

6 MS. ZWILLINGER: Right.

7 COMMISSIONER CURTIN: Under 2070 conditions, I'm
8 not sure we can handle it.

9 MS. ZWILLINGER: And I guess my response would be
10 that it is better to do the best we can to try to
11 understand quantitatively what the public benefits will
12 look like in the future, rather than pretending like it's
13 going to look like today, when that may not be relevant.

14 COMMISSIONER CURTIN: I think we're making an
15 attempt to make a healthy guess at that. But I'm just
16 wondering if what we find out is going to be of value, or
17 are we just going to find out that, you know, if you're
18 resilient, in terms of your hydrological capabilities,
19 you're most likely going to be resilient in terms of your
20 economic value, and your return on your economic value for
21 the public benefit. That would be my assumption.

22 CHAIRPERSON BYRNE: Andrew you want to add
23 something?

24 MR. SCHWARZ: Is it appropriate for me to follow
25 up? I'm just trying to get clarity on it.

1 CHAIRPERSON BYRNE: That's fine.

2 MR. SCHWARZ: So --

3 COMMISSIONER CURTIN: Don't even try. Kidding.

4 (Laughter.)

5 CHAIRPERSON BYRNE: By the way, people who are
6 waiting in line, I think you ought to feel free to sit
7 down between presentations. You don't know have to wait.

8 (Laughter.)

9 MR. SCHWARZ: Because I mean it sounds to me that
10 you're kind of going toward this idea of what they're
11 describing as a sensitivity analysis.

12 COMMISSIONER CURTIN: Yeah, I think that's right.

13 MR. SCHWARZ: And so the question for me is so
14 under that kind of calculation, we would want to calculate
15 what the public benefits of this project are going to be
16 over its lifetime, okay?

17 And let's say that lifetime is 80 years. So,
18 yes, we can figure out what the public benefits would be
19 in 2030 when it might go on-line, which is a pretty close
20 future period that we can kind of wrap our head around.

21 COMMISSIONER CURTIN: And that's the point we're
22 going to make our investment.

23 MR. SCHWARZ: That's the point where you're going
24 to your investment.

25 COMMISSIONER CURTIN: Prior to.

1 MR. SCHWARZ: But then for 80 years after that,
2 this project is going to be out there, how do we quantify
3 what the benefit or what are the conditions underwhich the
4 benefits are being generated at year 55 in that process?
5 Is it just year 2030 over and over and over again, and we
6 assume that those benefits don't change over time, or the
7 ability of that water -- that project to provide those
8 public benefits can --

9 COMMISSIONER CURTIN: No. No, they're going to
10 do the analysis based on your climate change vision.

11 MR. SCHWARZ: Okay.

12 COMMISSIONER CURTIN: They're going to do that
13 now.

14 MR. SCHWARZ: Yeah.

15 COMMISSIONER CURTIN: So what the value of those
16 specific public benefits are going to be are the part I'm
17 having trouble with.

18 MR. SCHWARZ: Okay.

19 COMMISSIONER CURTIN: And I'll tell you, so I
20 don't get too lost here. I go back to the echo water
21 bank. If the project -- if you're talking in hydrological
22 terms, and the project says, well, we can provide under
23 the wet or dry conditions a certain amount of water, which
24 then goes into sort of a echo water bank, well, you don't
25 have to worry about the value of it. You've got a

1 quantity of water, which then is utilized to its highest
2 ecological value by the ecological czar. That's one way
3 to look at it.

4 The other way is, well, let's assume the salmon
5 are so bountiful, because of the public benefit that we're
6 paying for, that they're -- they're no longer
7 endangerment, but there's no farmers left. So, you know,
8 then the question -- the value of that water changes
9 dramatically.

10 So we heard a presentation, Joe and I, I think
11 the other day by one of the congressmen in the valley, he
12 said, well, there's going to be a million to 2 million
13 acre feet of water of productive crop land fallowed. And
14 you know aside from the tragedy that that might ensue,
15 well, maybe there has to be some fallowing, which then
16 allows for more groundwater capture, which then allows for
17 SGMA stabilization, which then changes the whole value
18 proposition for the way that project was configured.

19 But it will be configured adaptively for other
20 projects -- or for other public benefits. That's
21 the -- that's what I want to see, the resiliency there.
22 What that value is going to be, you know what, hell, if I
23 know. I don't know that anybody here knows, but that's
24 what I'm getting at.

25 So I hear you -- I see you guys are chatting over

1 there, so -- does that make any sense though?

2 MR. GUTIERREZ: Yeah, I think it does. Let me
3 get us a little bit on track on a few things though and
4 make sure we're understanding --

5 (Laughter.)

6 MR. GUTIERREZ: -- what we're actually trying to
7 accomplish.

8 COMMISSIONER CURTIN: That's the challenge.

9 MR. GUTIERREZ: So we're trying to accomplish 2
10 things. We're trying to accomplish deciding making a
11 funding decision, and what we're arguing today about is
12 how do we make that funding decision. And so far, every
13 comment I heard today so far from the stakeholders is
14 absolutely true, every single one of those considerations
15 are absolutely a valid point, and we are now struggling
16 with how do we accept those, how do we incorporate them,
17 or should we incorporate them?

18 So we've got to keep in mind we're not
19 necessarily looking for the perfect answer. We're trying
20 to make a funding decision. Now, what we have to ask
21 ourselves, what's the best way to make a funding decision?
22 Remember in the beginning of the talk that I talked about
23 earlier today, I talked about, what we're trying to make a
24 funding decision is based on public benefits, and it's a
25 wide variety of public benefits, so what's the proper

1 metric? How do you compare flood control to ecosystem?

2 What we have selected to do is the best way we
3 can figure out how to do that, the most similar metric
4 that we have is dollars. And so what we've developed is a
5 methodology to figure out the public benefit in terms of a
6 metric that's equal, and that's in dollars. And so we are
7 going to do an economic analysis to figure out that
8 dollar.

9 Now, where climate change kind of comes into this
10 is should we or should we not consider climate change in
11 figuring out that funding decision for the public benefit
12 ratio, which incorporates the economics of it. That's
13 what's in front of us and that's what we have to decide.
14 And what you heard today so far is some folks are telling
15 you, you absolutely should consider the climate change in
16 the economic analysis to make that funding decision.

17 And you've also heard the exact opposite. And I
18 think that's what I presented to you earlier before. Some
19 people are telling you to not do it, some people are
20 telling you to do it, and both are valid. Our difficult
21 part is which way do we go? We've got to take a right or
22 we've got to take a left, or we've got to keep going
23 trait.

24 So what we're going to be looking for you all
25 today is to help us make that decision, but remember

1 that's what it is. Keep in focus, we're not looking for
2 the perfect answer. We're not looking for the right
3 answer. It's what's the best way to actually evaluate the
4 public benefits?

5 Remember, we're grading on a curve anyway. We're
6 not telling you whether the project is valid or not valid.
7 All we're trying to do is we're trying to prioritize the
8 projects. And there are much more ways we can do this.
9 We can come up with other methodologies, if you'd like.
10 We can do what's called a Monte Carlo analysis, where we
11 could actually run thousands of scenarios. Then we could
12 give you an average, and we can give you a standard
13 deviation. Why would we do that? I'm not sure, but I'm
14 telling you we can do that.

15 (Laughter.)

16 MR. GUTIERREZ: So there's a much more --

17 COMMISSIONER CURTIN: Don't throw any more ideas
18 out.

19 MR. GUTIERREZ: -- methodologies we can do.

20 Now, the other thing I kind of wanted to do is
21 there's some economics questions that came up, and I've
22 asked Steve to kind of check those. And, you know, I
23 appreciate the stakeholders. Maybe it might be time to
24 just talk about a few of those, and then let's go back to
25 the stakeholders and finish that up, if it's appropriate

1 for you guys to -- now that they're on our minds, some of
2 these economics questions that have come up. Is that all
3 right, Joe?

4 CHAIRPERSON BYRNE: I think that's fine. Yeah.
5 Or do you -- yeah, good decision.

6 (Laughter.)

7 CHAIRPERSON BYRNE: Steve is going to keep it
8 short.

9 MR. HATCHETT: I will. Dave actually made a
10 couple of the points I was going to make, that the, you
11 know, economics isn't, believe it or not, some magic thing
12 that's different than everything else. It's -- we're
13 doing it because we need to compare very different kinds
14 of things that people value. You mentioned flood control
15 and ecosystem and water quality. And the way that we do
16 that within the context of making a financial decision is
17 to convert them to a common unit of value, which is
18 dollars, because that's what we're comparing on the cost
19 side.

20 So how do we go about doing that?

21 Well, the future is uncertain in numerous ways,
22 which we've all discussed here. So the best way we go
23 about it for purposes of making a funding decision is to
24 try to be as consistent as possible. And, you know, here
25 are the rules. And actually, one of the commenters said

1 that the rules were too broad, and everyone could do their
2 own thing, and we wouldn't have any consistency. And I
3 disagree with that. We have tried to be flexible, but
4 give common guidelines.

5 So, for example, does it make sense to use
6 current population for a project that's going to provide
7 all of these different benefits for the next 50, 60, 80
8 years? I don't think so. So we make reasonable
9 projections. And we've defined how the applicants have to
10 make those projections. They have to base it on
11 Department of Finance or on a local planning agency's
12 published projections. So it's not just, you know, anyone
13 can do whatever they want.

14 And I could go down the list. And we've done
15 that for many things, but tried to leave some flexibility
16 for Applicants, which the Commissioners have asked us to
17 do, and applicants have asked us to do. We could make a
18 different -- you know, we could make that balance in a
19 different way and be more prescriptive, if that's what
20 you'd like us to do.

21 On the question of not being very confident about
22 making important funding decisions about dollar values out
23 into 2070, I completely understand that. One approach
24 that you could consider is changing the scoring
25 criteria -- relative scoring criteria to de-emphasize, to

1 some extent, the monetized part of it, which is the public
2 benefits ratio, and increase the resiliency. So that's
3 something that, you know, you've already been presented
4 with, and there are other ways to do it.

5 But I think for, you know, a consistent approach
6 across, you know, the hydrologic analysis -- and we
7 haven't really talked about the uncertainty of ecosystem
8 modeling, and that's huge. That's independent of the
9 hydrologic analysis. And all of those, yes, build up to
10 the final monetization, and so there's a lot of
11 uncertainty.

12 The staff's approach has been to be consistent,
13 identify the uncertainty, and incorporate, you know, an
14 uncertainty analysis in whatever, you know, you the
15 Commission feel is appropriate in terms of waiting.

16 CHAIRPERSON BYRNE: Okay. Thanks, Steve. I'm
17 going to go back to public comment. And I'll let you
18 folks figure out what order you were all in.

19 (Laughter.)

20 CHAIRPERSON BYRNE: But again, feel free to sit
21 down between comments and pop if you need to.

22 MR. WATSON: Jim Watson with the Sites Project
23 Authority. I would like to show my support for the method
24 of analysis that Bill Swanson outlined. That's exactly
25 the approach that we were looking for, and believe is

1 consistent with providing you with information to make an
2 informed decision. I take -- I would like to take it a
3 little step further, which this monetizing of the public
4 benefits based on a climate change, that then becomes the
5 basis of the contract for those public benefits.

6 If we're looking at long-term ecologic health of
7 the Delta, and we have an interdependent water system that
8 is used to try and make that system happen, the approach
9 that's outlined when you monetize is you're missing how
10 the State's water system will adapt to climate change,
11 which I believe will discount the benefits of an
12 individual project, because it is that leveraging of one
13 project with the other to adapt to achieve those public
14 benefits, it's the value you're looking to invest in
15 projects for.

16 But I do recognize the schedule is tight. And if
17 you're going to proceed with the approach you're on, we
18 don't feel that the modeling that's been done or provided
19 to us as applicants is necessarily complete. It was done
20 through CalSim. There are subsidiary models that are
21 needed to essentially figure out how many salmon are
22 produced that should also be -- incorporate those
23 requirements. And those were included in our comment of
24 October 3rd as Item T3 of concern.

25 Thank you.

1 CHAIRPERSON BYRNE: Thank you, Jim.

2 Adam.

3 MR. ROBIN: Good afternoon, Commissioners. And
4 thanks for this opportunity to comment. I'm Adam Robin
5 with the Association of California Water Agencies.

6 I think it's clear that the Commission, project
7 proponents, and the public have a shared interest in
8 ensuring that these projects provide resilient benefits
9 under a wide range of future climate conditions. In
10 particular though, I think it's key to note that project
11 beneficiaries and cost-sharing partners have a
12 particularly acute interest in understanding how these
13 project benefits are going to be modified -- monetized
14 under the models.

15 So I appreciate Dave and Andrew's presentation
16 today. I thought it pretty clearly laid out how this all
17 came together, and really appreciate the months of work
18 that went into the development of these tools. But from a
19 project proponent's perspective, these tools and the
20 technical reference document that folks are supposed to
21 use when monetizing their benefits have only been
22 available since September 9th.

23 And I work for an association that represents
24 thankfully some of these larger project proponents, but we
25 also have smaller agencies that are taking a look at this

1 program, and might not have the technical capability
2 in-house or the consultants under contract currently that
3 are able to do this type of work.

4 So requiring these really stringent prescriptive
5 climate models to be used will have implications for the
6 program, the types and size of projects that you receive
7 applications for.

8 I'd like to turn to the use of the model as it's
9 presented. You know, as you've heard said, we think that
10 the models will result in an enhanced understanding of
11 project resiliency. We think that there are other
12 elements of the application requirements that speak to
13 that. We'd encourage you to kind of enhance
14 that -- the -- how the program looks at those elements of
15 the project.

16 The draft modeling products define a certain and
17 specific climate future that doesn't reflect the
18 uncertainty that's associated with climate change, nor the
19 potential adaptation measures that project proponents can
20 employ, given future climate uncertainty.

21 And I want to turn briefly to this issue or the
22 idea that these modeling tools can present an
23 apples-to-apples analysis. And I absolutely understand
24 why that would be helpful for the Commission's decision
25 making. What we heard in the presentation today is that

1 these modeling tools provide the hydrology on which
2 projects are required to -- the modeling baseline that
3 they're required to use in terms of hydrology. But as we
4 also heard, each project proponent will be required to
5 determine and incorporate unique assumptions related to
6 infrastructure, population, land use, water use, water
7 operations, laws, regulations, and other characteristics
8 relevant to the analysis of the project.

9 And that's in the technical review document. And
10 as Mr. -- I'm assuming Dr. Hatchett explained, there is
11 some guidance on how applicants make those decisions.
12 That said, if you look into the future and you consider
13 implementation of the Sustainable Groundwater Management
14 Act, what type of assumptions is a project proponent
15 supposed to incorporate into their project for land use
16 under full SGMA implementation in 2070 or past 2040.

17 Moving beyond the establishment of the relevant
18 baseline condition without project, baking all those
19 assumptions into this model, project proponents have to
20 actually run the model, and that takes time, and they have
21 limited amount of time to do it.

22 I'd, I guess, like to close, recognizing that I'm
23 over my time, with just echoing the approach that's been
24 suggested by others here, Mr. Swanson and Contra Costa
25 Water District and Sites Project Authority.

1 Thank you.

2 CHAIRPERSON BYRNE: Thank you. Adam, stay.

3 Questions from Commissioner Daniels.

4 COMMISSIONER DANIELS: I just want to let you
5 finish your statement.

6 MR. ROBIN: If I tried, I probably wouldn't know
7 where to pick up.

8 COMMISSIONER DANIELS: Okay. All right.

9 (Laughter.)

10 MR. ROBIN: I appreciate the opportunity, but I
11 think I hit the high points.

12 COMMISSIONER DANIELS: Okay. Good.

13 COMMISSIONER CURTIN: And where to stop becomes
14 the real question.

15 MS. DENNING: Good afternoon. Michelle Denning
16 with Reclamation. I manage the planning division in --
17 with the Bureau of Reclamation here, and we also have the
18 Decision Analysis Branch. We develop and maintain
19 numerous computer models, including CalSim II. We're
20 developing CalSim III, CalLite. We also have the climate
21 change program and do all the basin studies.

22 And I want to recognize the staff and their sort
23 of cutting edge approach that they have identified for
24 doing climate change analyses, and in trying to respond to
25 concerns about the time and energy taken to do it.

1 They've tried to simplify it. Unfortunately, the
2 simplification is probably undermining some of the unique
3 values that this leading edge approach has. And I would
4 think one approach could be to make an initial selection,
5 based on whatever the project applicants have conducted,
6 and then conduct this analysis on the interim -- after an
7 interim selection.

8 That would give time for a peer review of this.
9 Really best available science has been peer reviewed in
10 order to be available and identified to be best. So that
11 would be one approach is kind of doing it as a second
12 step, and maybe even funded by the State, if the State
13 believes this is analysis is so critical.

14 I do want to note that there's over 130 different
15 climate change models developed by very enthusiastic
16 scientists who are all very committed to their models. So
17 it is difficult to get agreement on this.

18 And I would also encourage you to read the
19 comment letters on this topic. I think the summary of it
20 really simplified the comments, and confused some of the
21 comments to you, for example, sensitivity versus
22 quantitative. A sensitivity analysis is quantitative. It
23 can be done either qualitatively as well. The
24 quantitative that the team is talking about is applying
25 the economic values, so that was a little confusing.

1 I guess that's it, but thank you for allowing me
2 to present.

3 CHAIRPERSON BYRNE: Quick question. Commissioner
4 Daniels

5 COMMISSIONER DANIELS: Thank you, Michelle. I'm
6 interested in your comments and your thoughts about the
7 peer-review process as well. I mean, it's something that
8 I thought would be valuable for us to have as part of our
9 funning review, but it's -- there's still, I guess, some
10 discussion about it. But I'm hearing a couple of
11 commenters talk about the value of peer review,
12 particularly on this point. So I wanted to ask you your
13 thoughts on how that peer review process might work.

14 MS. DENNING: Yeah. The Department of Interior
15 and Reclamation do require a peer review on -- when we are
16 using new information or analysis that's critical to
17 decision making. And we have a directive standard on how
18 to do that. I'd be happy to share that with you as just
19 how we do it, but we contract out for independent,
20 scientific experts.

21 We pose specific questions, and then they come
22 back and give us that. And I know there was sort of a
23 potential peer review of our analysis or the applications
24 considered, but I think if the underlying analysis hasn't
25 had a peer review or been fully vetted, that's going to be

1 kind of -- that would be kind of messy to then evaluate
2 our application on that.

3 COMMISSIONER DANIELS: Right, but you're saying
4 maybe the analysis, just on component of the application,
5 meaning the analysis, itself could have a peer review, or
6 you're saying the model?

7 MS. DENNING: I think the basic analysis required
8 should have a peer review before it's actually applied, so
9 that, you know, you know that you're spending your money
10 on an effective analysis that will be acceptable on the
11 other side.

12 COMMISSIONER DANIELS: Thanks for your
13 clarification. Thank you.

14 MS. DENNING: Thank you.

15 CHAIRPERSON BYRNE: Quick question for staff. So
16 have all the models that were referenced, the 120 or
17 whatever, are -- have they all had some kind of peer
18 review or something? I mean, are we on an island?

19 MR. SCHWARZ: So I would say that the information
20 that we're using, although the models have been peer
21 reviewed, they're part of the, what's called, the Coupled
22 Model Intercomparison Project Phase 5, CMIP5. That's the
23 intergovernmental panel on climate change's kind of
24 technical arm that puts these models together.

25 So we're not pulling from something that's out of

1 the ether. But I think the point that we're applying that
2 information to inform a decision in a new way is a
3 scientific advancement that could be peer reviewed.

4 There's -- but we're not -- you know, we are
5 building on what has already been peer reviewed, and you
6 could make a case that there's a step here that could be
7 peer reviewed definitely.

8 CHAIRPERSON BYRNE: Okay.

9 Mario

10 MR. SANTOYO: All right. Well, you've heard
11 plenty from technical people. You've also already from
12 all 3 CalFed project proponents, and we're all on the same
13 page. So I'm not going to repeat what was said, other
14 than to emphasize that the recommendations being made by
15 all 3 are the same. So I'd hope that you would take that
16 into account.

17 What I do want to talk to you about is more like
18 a project manager. Okay. So I want to start with that
19 this is an investment program. Okay. It's not a grant
20 program. It's an investment program. As such, we're
21 partners. We would be partners.

22 State of California, and the project proponents.
23 Being partners. That means that in order for us to move
24 forward on a project, there has to be value for you and
25 value for us. It's not a one-sided street.

1 So, for us, you know, we have to look at does the
2 project make sense today? Because if it doesn't make
3 sense today, why would we be spending billions of dollars?
4 It wouldn't make sense. We couldn't get financing that
5 way.

6 So what I'm telling you is that what's been said
7 to you is that you have to look at today's conditions as
8 part of the economics and not be projecting some future,
9 because there's no way you can tell. I'll tell you, when
10 I started as an engineer for Bureau of Reclamation, we
11 were selling water for a \$1.50, \$3.00 an acre foot.

12 In 2015, it was at 2000. If you would have asked
13 me in '78 would that have been possible, I would have said
14 heck no, because you have -- you have both hydrology and
15 you have regulations that constantly change. So to
16 predict that out into, you know, some future date, it's an
17 impossibility. You just can't get there.

18 So you've -- what you've done is you have cut out
19 6 months out of our process. Okay. You now have put a
20 layer of brand new analysis that I know that staff is very
21 anchored into that, and I can appreciate. They spent a
22 lot time, so their feet are in concrete.

23 But for us, we don't want to be speculating on
24 something that's untested. We need to know that the
25 investment today makes sense, and we're going to come to

1 you with a project we feel comfortable with, because why
2 else would we come to you. So there was a recommendation
3 that was made that let us do what's normally done through
4 the federal process on climate change. Let -- get us to
5 some ranking.

6 If we make it high enough, then if you want to
7 apply more, then let's do it then, but don't send us the
8 message that, here, spend another \$400,000 or \$500,000 on
9 something that's very speculative, because you're good
10 partners. That's not the right message to send to us. So
11 I'm just talking from a project management perspective.
12 It's hard to explain to potential investors how this makes
13 sense.

14 So all I would recommend is look at this from a
15 practical perspective. Please take into consideration the
16 recommendations that have been made, because they were all
17 excellent points. So again, you are Commissioners being
18 asked to use your business sense and your knowledge, and
19 not just some kind of analysis that staff legitimately had
20 to come up with to throw some scores out there.

21 Thank you.

22 CHAIRPERSON BYRNE: Thank you, Mario.

23 MS. NOLAND-HAJIK: Good afternoon. I'm Lauren
24 Noland-Hajik on behalf of California Cotton Growers and
25 Ginners Association, California Citrus Mutual, California

1 Fresh Fruit Association, Nisei Farmers League and Western
2 Ag Processors Association. So quite a few of the
3 agricultural interests that may actually be investing in
4 some of these projects.

5 I'd just first like to align my comments with the
6 CALFED project proponents. I think Sites and then Bill
7 Swanson did a great job of explaining how some of these
8 climate analysis work, and what the complexities that what
9 staff has proposed would add on to project proponents when
10 completing their application.

11 My clients have been very strong supporters of
12 bond, especially chapter 8, because it's the one place in
13 the water bond that has funding for large surface storage
14 projects like Sites and Temperance. So when we hear from
15 some of the project proponents that this new addition of
16 the climate change analysis could jeopardize some of the
17 work that they've already done through the CalFed program,
18 and not allow the Commission or DWR staff to fully utilize
19 the analysis on climate change and other things that have
20 already been done, we're very concerned at what that does
21 to these applications.

22 And then as Mario said, this goes to some of the
23 timing issues. Our clients have been -- and many others
24 in California want the Commission to get moving on this
25 process, want the money to be pushed out, so that we can

1 see those projects get up and operating, and also have
2 Californians realize the public benefits from these
3 projects as soon as possible.

4 However, if they aren't able to utilize the
5 existing work that they've done, and have to do a new
6 analysis on top of that, the 6 month timing window could
7 jeopardize the completeness of their application.

8 So as we move forward, I would encourage you to
9 adopt what Bill Swanson has presented, but also consider
10 that if you go with what staff has proposed, what does
11 that timing look like, and are you adding additional
12 burdens onto these project proponents that aren't needed?

13 Thank you.

14 CHAIRPERSON BYRNE: I've got a question for you.
15 Commissioner Daniels, then Commissioner Curtin.

16 COMMISSIONER DANIELS: Me first?

17 COMMISSIONER CURTIN: Go ahead.

18 COMMISSIONER DANIELS: Thank you for your
19 comments. I was on the Bay-Delta Authority Board
20 and it -- that whole process sort of wound down in about
21 2009 or so, and I'm wondering what work you're referring
22 to? Was this work that was done up to that point in time?

23 MS. NOLAND-HAJIK: I would have to refer to some
24 of the CALFED to Sites and Temperance.

25 COMMISSIONER DANIELS: Wait, you know what, we've

1 got a court reporter. So you can't answer it, I'll ask
2 somebody else.

3 MS. NOLAND-HAJIK: Yes.

4 COMMISSIONER DANIELS: Thank you.

5 Your turn.

6 VICE CHAIRPERSON DEL BOSQUE: Commissioner
7 Curtin.

8 COMMISSIONER CURTIN: Well, I'm just making a
9 statement, rather than a question. I'm not concerned
10 about adding more work. I am for smaller projects, as
11 Adam pointed out, that at some point it can become a big
12 burden for the smaller projects.

13 But I'm not worried about adding more work. I'm
14 worried about adding more work that doesn't actually help
15 us get to the decisions we need to get to. That's the one
16 concern I have.

17 After all of this analysis, that, you know, I
18 think somebody mentioned that we -- that they shall use
19 this process, so they have to do it. And then they sort
20 of find out that it reflects the resiliency analysis,
21 which is what I think is the critical analysis, how will
22 the project respond - I'll use the word - hydrologically
23 for lack of a better term?

24 But, for me, resiliency is also how will the
25 project -- and I think Jim Watson mentioned this. How

1 will all of the water projects surrounding in the region
2 adapt to climate change, and how will this -- whatever
3 proponents coming in here, how will this help that
4 resiliency, that regional resiliency? I just can't get my
5 head around the economics of it in 2070. I just can't
6 seem to get my head around that.

7 We're going to make an investment on the basis of
8 how that project looks like it's going to pencil out in
9 the near predictable future for us. If it is not
10 adaptable, and if it stops raining, there will be no
11 water. You know, it's dead in the water, whatever you
12 want to call it, or if it's too much rain, it's not
13 useful. I hopefully will find that out in the resiliency
14 analysis.

15 So to some degree, we're going to find out if the
16 project works under the changing circumstances or it
17 doesn't. And can we invest in it wisely knowing that for
18 the near future -- the near term future, the next 10, 15
19 years, it will be an important return, then the question
20 is how does the society in the region at the State level
21 adapt to the continuing change in climate issues. That,
22 for me, is the crux of the problem.

23 And I'm not convinced that the long term --
24 trying to quantify the long-term economic values is going
25 to be accurate enough to be useful, and it's going to

1 require a lot of effort that will distract people from
2 really the point of what the projects are for, from where
3 I'm sitting. That's my only concern.

4 So maybe there's sort of a in lieu of kind of
5 process that could be allowed, as long as it meets the
6 questions that we're trying to address. Will it be useful
7 in 2070 to address the issues we're trying to address now?
8 Whether it's exactly economically the way it's -- we're
9 trying to predict it, I just -- I don't know. I can't get
10 there.

11 CHAIRPERSON BYRNE: Thank you.

12 Thank you very much.

13 MR. FREDRICKSON: Good afternoon. My name is
14 Justin Fredrickson. I'm here today for the California
15 Justin Bureau.

16 And I just wanted to pile on, for the most part,
17 with some of the other things that have already been
18 raised. But it seems to me it's been mentioned by -- I
19 think by this gentleman that there's a -- there --
20 throughout this process, you're hearing from stakeholders
21 2 extremes, you know, there's a right and there's a left.
22 And what the Commission needs to find is something like a
23 middle path. And I think -- it sounds to me like the
24 staff is trying to do that, and it sounds like they -- you
25 know, they've made an attempt at that.

1 And so they've got these two bookends where
2 you -- there's quantification, there's a snapshot, the
3 snapshot has history embedded in it, so it's grounded in,
4 you know, something like reality. But then you've also
5 got the full array of the sensitivity analysis that it
6 sounds like it would be quantitative, and that would give
7 you more of an idea of the extremes.

8 But if you were just to go with extremes without
9 something to base your decision making on, then you're
10 going to end with buckshot and it's not going to be
11 meaningful. You need -- you're comparing very diverse
12 projects, and you need some -- you need to be able to
13 compare apples to oranges, so that's a reality.

14 But at the same time, we're hearing concerns from
15 all of the -- I think you have to -- it's important to
16 listen to the practitioners, to listen to the project
17 managers, the project proponents, because they're the ones
18 who are going to have to deal with this application
19 process. And that sort of feeds back into the broader
20 concerns that have been raised about the length of the
21 application process, the complexity of it, and the cost of
22 it.

23 And so the general comment has been made as well
24 that there is a need to streamline -- to look for places
25 that we can streamline. And then -- and part of that

1 would be -- would include not -- trying to come up with
2 something that is compatible with existing work that's
3 already been done, particularly -- you know, partly on the
4 one side of it, it's these large CALFED type projects,
5 that have millions probably invested and many years
6 invested in them. And each additional thing that they
7 have to do that is some -- is something over and above is
8 going to set them back.

9 And we're getting up against the -- with our
10 backs against the wall in terms of when this -- these
11 applications would be -- begin to come in and decisions on
12 funding would be need to be made. So it has to be
13 something workable, and I think that they're the most
14 knowledgeable folks to listen to, and it's important to
15 listen. A perfect world is one thing, but we need a
16 workable world.

17 And then as for the -- I also think the point
18 that the -- on the difference between hydrology and
19 economics, is important. Economics is less certain. The
20 hydrology you can -- is easier to do in a quantitative
21 scientific way. And I think that the hydrology is going
22 to drive a lot of the economic decision making.

23 And as somebody else pointed out, there are two
24 sides to this. People are going to have to get a
25 checkbook out and write a check on -- for the non-public

1 benefits. The public benefits are going to be more
2 durable really, because they're not monetized. So the
3 need for something that is real -- based in reality
4 for -- is important for decision making on both sides of
5 it, those for the private pocket books and for the
6 Commission and the State of California.

7 Thank you.

8 CHAIRPERSON BYRNE: Thank you very much.

9 Michelle, we have a no double dipping rule here.

10 MS. DENNING: What? Oh, I thought --

11 CHAIRPERSON BYRNE: Is this a quick one?

12 MS. DENNING: I just wanted to respond to
13 Commissioner Daniels' question. Was that -- did you want
14 a response?

15 COMMISSIONER DANIELS: Okay. Sure.

16 MS. DENNING: I know that --

17 COMMISSIONER DANIELS: Michelle, why don't you
18 come forward and respond to that.

19 CHAIRPERSON BYRNE: There we go. All right.
20 Totally appropriate.

21 MS. DENNING: Thank you.

22 Reclamation did continue on with the CALFED
23 studies as we had coordinated with DWR in how we would do
24 it, so we -- and we are still following what's called the
25 common assumptions that we developed with DWR. So that, I

1 believe, is what was referred to, because we are
2 continuing with those CALFED analyses, even with the
3 changes in the State.

4 COMMISSIONER DANIELS: Thank you.

5 CHAIRPERSON BYRNE: I missed the question too, I
6 was out. Sorry.

7 MR. WEED: John Weed, Alameda County Water
8 District.

9 Gentlemen, this is a water storage improvement
10 program. That means capacity. Where the water is or is
11 going to come from will be subject to a number of market
12 conditions, including water marketing.

13 I encourage you to take an emphasis on the
14 capacity of the projects you're developing and not get too
15 tied up on the issue of where the water rights are, where
16 the water rights might be. There's a market there,
17 particularly in the urban areas. They will have
18 extraordinary economic disparities to that of rural. They
19 can buy the water as needed. Many of the higher crops --
20 value crops can acquire their water. Lands may go fallow.
21 But it's really a storage and it's a capacity issue.
22 Everything else is conjecture. And it will change.

23 Thank you.

24 CHAIRPERSON BYRNE: Thank you, John.

25 Commissioner Del Bosque.

1 VICE CHAIRPERSON DEL BOSQUE: Michelle, can you
2 come forward?

3 (Laughter.)

4 VICE CHAIRPERSON DEL BOSQUE: Explain to me a
5 little bit about the CALFED process? I'm assuming that --
6 I mean, you speak for the CALFED process often. You're
7 from the Bureau. But was our Department involved in that
8 and in the studies and so forth? Can you tell me about
9 it, because I never hear from anybody from the State. I
10 only hear from you.

11 MS. DENNING: Yeah. So after the CALFED Record
12 of Decision was signed in 2000, the Bureau of Reclamation
13 and Department of Water Resources organized and developed
14 processes for evaluating each of the 5 CALFED storage
15 projects that were identified. And in 2004, we started
16 receiving federal funding to do those analyses.

17 And we came up with this common assumptions
18 approach, so that projects could be compared apples to
19 apples, and that our assumptions wouldn't undermine each
20 other, and sort of promote one project over another.

21 And the State Department of Water Resources
22 expended a very large amount of money in that process.
23 And we developed the tools that we would use, and the
24 assumptions around those tools and how they would be used.

25 Over the years, the State sort of -- went to the

1 Delta Vision process. And through that, because the Delta
2 conveyance projects weren't coming to fruition as
3 identified in the CALFED ROD. But the federal government
4 still was operating under the federal legislation to
5 implement the CALFED ROD.

6 And so we have continued doing those studies
7 consistent with common assumptions. And we actually still
8 meet monthly with the Division of Planning and Local
9 Assistance to coordinate on the projects. And DWR is a
10 cooperating partner, though not a funding partner on the
11 studies today.

12 Climate change has definitely evolved quite a bit
13 since then, but we have worked with the Division of
14 Planning and Local Assistance on our basin studies to
15 incorporate climate change into not only the Bulletin 160
16 process, but to complete our studies.

17 VICE CHAIRPERSON DEL BOSQUE: So the Department
18 of Water Resources was involved with the process of
19 establishing some of the studies, sensitivity studies
20 and --

21 MS. DENNING: Yes.

22 VICE CHAIRPERSON DEL BOSQUE: -- which other
23 studies were involved in that?

24 MS. DENNING: They have -- they have reviewed all
25 of our Environmental Impact Statements and draft

1 feasibility reports, and have provided us comments on
2 that. So they're aware of those. And then we have
3 partnered and cost shared on the basin study for the
4 Sacramento and San Joaquin River Basins. And that
5 information has gone into the Bulletin 160 evaluations and
6 the basin studies, so -- but there are different ways of
7 doing this. We are up -- we have updated our studies
8 based to incorporate CMIP5, as was mentioned, but I think
9 there is a lot of good work that has been done in the
10 proposal. It's just the ripeness, the readiness of it.

11 And then applying the economic is -- the federal
12 government will view making current economic assumptions
13 as actually being more conservative approach, and that's
14 the way we've taken it. We do sensitivity on hydrology,
15 but not on economics.

16 VICE CHAIRPERSON DEL BOSQUE: Thank you.

17 CHAIRPERSON BYRNE: Thank you, Michelle.

18 Okay. Commissioners comments?

19 Commissioner Orth

20 COMMISSIONER ORTH: Yes. I maybe hoping Dave can
21 bring us back --

22 (Laughter.)

23 COMMISSIONER ORTH: -- because I'm thinking about
24 a commercial that I used to enjoy about some guy getting
25 so much information and he just goes pooh (hand gestures).

1 (Laughter.)

2 COMMISSIONER ORTH: And I feel like I'm pretty
3 close to this point.

4 But it seems that we're -- you know, we've had a
5 lot of conversation. But what our decision is, is, you
6 know, what type of information do we feel we need to
7 support a funding decision that arguably should consider
8 an uncertain future, right? We could -- we could say
9 we're not going to do anything other than look at this in
10 2018 dollars or 2016 dollars, and benefits, and not worry
11 about anything into the future.

12 That wouldn't be a very prudent approach, I
13 personally think. So what you've been trying to do is to
14 present us with some methodology that allows us to
15 consistently and quantifiably, right, not create art, but
16 with some numbers, you know, a common currency, if you
17 will, do some comparative analysis, so that we can look at
18 projects and say this one does better in that type of a
19 world - and it's a fiction, but it's a world - than this
20 project does, right?

21 And we're also trying to create numeric values
22 around these things. It's the conversion to dollars, and
23 I get that. That makes sense to me. And from my past --
24 at some point in my past, I was involved in some federal
25 repayment policy, where you took these projects and tried

1 to Quantify, you know, arguably difficult to quantify
2 benefits into a dollar amount, so that you could then
3 understand whether or not you had a positive investment
4 opportunity.

5 So I guess I'm still struggling with -- and maybe
6 I've had a lot of people say here that they like Mr.
7 Swanson's argument. I'm not sure -- or representation.
8 I'm not sure I even understand his alternative, other than
9 what I think he said was that we should be doing an
10 independent economic analysis kind of consistent with the
11 CALFED common assumptions approach, and disconnect the
12 climate change and, Bill, not monetize it, just use it as
13 a hydrologic analysis, I guess, is what I'm hearing.

14 So --

15 CHAIRPERSON BYRNE: You want bill to confirm nor
16 deny that?

17 COMMISSIONER ORTH: Yeah. Maybe it would be
18 helpful if you'd come up and answer that question --

19 MR. SWANSON: Yeah.

20 COMMISSIONER ORTH: -- because -- and then I
21 guess, you know, it seems that -- I'm trying to -- I'm
22 trying to sift through in this colloquy what are the
23 issues that you want us to decide on. And one is do we
24 need to do something looking into the future? If we do,
25 then what? You've laid out an approach. Should that

1 approach be modified to, you know, arguably split the
2 economic from the climate change analysis.

3 Does that start to flow and make sense a little
4 bit?

5 MR. GUTIERREZ: Yeah, and I'll clear that up, but
6 you've got it.

7 COMMISSIONER ORTH: But, Bill, help me and help
8 us understand, because there seem to be some interest in
9 your approach.

10 MR. SWANSON: Okay. I think what Michelle
11 explained about the CALFED studies is the combined
12 analysis that's been done is historical hydrology, and
13 current economics. And that's how the common assumptions
14 process worked, and it works pretty well.

15 All the projects come but with a consistent way
16 of looking at their performance and their values. But
17 that's not going to be enough for what you need, because
18 you have to look into the future. You've got to look at
19 the resiliency, or durability, or adaptability, or
20 whatever ability you want to apply to the projects, as far
21 as an uncertain future is concerned.

22 The question -- the essential question before you
23 is should your determination be based on looking at
24 today's economic benefits of a project and their
25 sensitivity to future hydrology, or should your funding be

1 based on the combination of future sensitivities to both
2 hydrology and an uncertain economic future?

3 That's the essential question that is being put
4 in front of you. Irrespective of your answer -- of your
5 choice, you do need to look into the future about how
6 durable the project benefits are going to be.

7 My suggestion is for making a rationale decision,
8 you should first make an economic investment based on what
9 makes sense today, and then challenge whether that's going
10 to be a durable investment into the future.

11 And one of the ways of doing that is to look at
12 how the project would perform under different hydrologic
13 conditions, because these are essentially hydrology
14 projects. It's a water management project. It's element
15 is to manage the water.

16 And then as far as the analysis goes,
17 Commissioner Orth, and how far you go, you could stop just
18 looking at hydrology and project performance and say,
19 well, how much water supply is delivered, how much would
20 go down the river, how would that change in different
21 hydrologic conditions. That's probably not enough though,
22 because when we do these evaluations, we begin with that.

23 And then we have 2 additional analyses that go
24 behind it. One is to quantify the effects of a project.
25 And that's quantities like how many fish, or what's the

1 temperature of the water, or how many recreation days
2 might you have in a reservoir, or things of that nature,
3 quantification of the outputs.

4 Then there's a secondary analysis that goes after
5 that and that's the valuation of those outputs. I think
6 the concern that we're hearing in this group is that
7 combining the hydrologic variability with the uncertainty
8 on valuing these future outputs is just too complicated of
9 an outcome to actually make a sensible decision for
10 financing, not just for you but for the applicants as
11 well.

12 So the applicants are -- as I think Mario
13 described, and Jim did as well, the applicants will look
14 at the projects, first and foremost, on today's economic
15 conditions. And then they will say, how much confidence
16 do I have that the benefits I'm paying for today are going
17 to hold up in the future. And benefits can either be
18 monetary benefits, which is what -- I mean, staff has done
19 a remarkable job of putting up a very complex process that
20 tackles all these issues all together.

21 But the difficulty I think that the community is
22 having is keeping them all together, because we're seeing
23 2 different kinds of uncertainty, hydrologic and economic.
24 Does that help?

25 COMMISSIONER ORTH: It does. Thanks.

1 MR. SWANSON: Okay.

2 COMMISSIONER DANIELS: Sorry. I'm sorry. I'm
3 still grappling with it. So I need a clarification. So
4 what -- could you be precise about what you would change
5 in the regulations to make that be different?

6 MR. SWANSON: Yeah.

7 COMMISSIONER DANIELS: Because I want to make
8 sure I understand it. You know, whether I agree with it
9 or not, I just want to make sure I understand it before I
10 make decision.

11 MR. SWANSON: That's fine. Yeah.

12 So the regulations, as they're written, require
13 an economic quantification of the benefits, and the
14 base -- and then that be used for a cost allocation,
15 financial commitments, and the development --

16 COMMISSIONER DANIELS: Yeah, I'm just wondering
17 what specific --

18 MR. SWANSON: I'm just telling you what's in it.

19 COMMISSIONER DANIELS: Right.

20 MR. SWANSON: -- and the development of an
21 operating plan for long-term commitments on the project.
22 But we all know that the future is not going to
23 necessarily be what we predict. So the difficulty the
24 applicants have is using this climate change analysis as
25 the basis for long-term contracts for projects.

1 So what I would recommend changing is to keep a
2 climate change analysis to understand how sensitive the
3 benefits you quantify are, but measure the benefits based
4 on today's baseline.

5 COMMISSIONER DANIELS: Well, I do remember
6 hearing you say that, so thank you very much.

7 MR. SWANSON: All right.

8 CHAIRPERSON BYRNE: Commissioner Baker and then
9 maybe staff can respond.

10 COMMISSIONER BAKER: I'm sorry. I think I'm
11 still grappling here. When you talk about benefits, the
12 bond is for public benefits, and then the other is the
13 non-public benefits. So I don't -- when you're talking,
14 are you talking about benefits collectively or -- and
15 maybe I'm incorrect here, but it seemed like part of the
16 reason why we're trying to monetize under the climate
17 change scenarios to try to help us make a determination on
18 the project for the public benefit side.

19 And so I think I sort of understand what you're
20 saying, but I can't -- but you haven't specifically said
21 public benefits or non-public benefits. Does that make
22 any sense?

23 MR. SWANSON: Yeah. So what the -- as I read the
24 regulations, what I see in there is a computation for all
25 benefits, both public and non-public, and then a

1 differentiation of those that are eligible for chapter 8
2 funding as the 5 public benefit categories. So it would
3 quantifying all the benefits and then separating those
4 that are public from those that are non-public.

5 COMMISSIONER BAKER: But under your scenario, how
6 would it work?

7 MR. SWANSON: It would done based on today's
8 economic conditions, not a projected economic conditions
9 in 2030 or 2070.

10 COMMISSIONER BAKER: Separating the two.

11 MR. SWANSON: So let me try to be clear on that.

12 The economics, whether it's for public or
13 non-public benefit should be done at the same economic
14 baseline. What I'm proposing is that the coupling that we
15 have right now between hydrologic uncertainty and future
16 economic conditions be uncoupled, and that the hydrologic
17 uncertainty should be applied to an economic analysis
18 based on the most identifiable conditions that we know of
19 today, for both public and non-public benefits.

20 Because what you want to know is if you buy a
21 public benefit from a project, the first thing you want to
22 know is will you really get it on day one? And then the
23 second thing you want to know is will it hold up over
24 time, and how will it be affected by changes in climate
25 and what variability does the project itself offer to

1 adapt to those changes?

2 The challenge that I see in the process that's
3 laid out is to respond to that question as it's currently
4 defined of how would a project respond, is the guidelines
5 are asking -- or the regulations are asking for a very
6 precise quantification of how would a project perform in
7 2030, and another precise quantification of how would it
8 perform in 2070?

9 In order for an applicant to come up with those
10 precise quantifications requires an iterative analysis
11 with the -- not just the tools that have been developed,
12 but all the subsequent models, the hydraulic models, the
13 temperature models, the fisheries and other ecosystem
14 effects models, look at the benefits that result from the
15 conditions you assume in 2030. Then revise it, and do it
16 again until you get the optimal fit, and then do the same
17 thing in 2070. That is a very complex, time-consuming,
18 and costly process to do.

19 What I'm proposing is you could accomplish the
20 same amount of information to make a decision without all
21 of that unnecessary precision. You could accomplish it by
22 using an economic analysis based on what we know today,
23 and then looking at the hydrologic sensitivity to that
24 project performance, and taking it through the
25 quantification of the effects, but not the valuation of

1 those effects.

2 The big difference is when you turn it into
3 monetary estimates in the year 2070, it becomes an
4 iterative process for the analyst to optimize the project.

5 CHAIRPERSON BYRNE: I think I'll bring it back to
6 Dave and staff to see what you guys think and whether some
7 of those things are possible in your mind to be
8 incorporated or not or what.

9 MR. GUTIERREZ: So first, I think when I
10 introduced this whole subject, I think I talked about how
11 the climate change scenarios are actually intertwined into
12 the economic analysis. And I think, based on all these
13 comments, I'm sure you all have very much appreciate that
14 now. So that's a good thing.

15 And I think Commissioner Orth did a really good
16 job actually laying out what we're actually trying to
17 accomplish today. It's really, you know, that simple, is
18 the decision that we have in front of us. And there's no
19 right answer, there's no wrong answer, there's just -- we
20 have to pick a direction and move on. But a couple of
21 things I'm going to ask Steve actually to address is kind
22 of the economic types of analysis that we're asking to do.

23 So, you know, we're not inventing anything new
24 here in the sense that when you develop a very complex
25 large project, you have to understand what the benefits

1 are. And the benefits aren't on day one and only day one.
2 They're throughout the life of the project, and you have
3 to understand the costs over the life of the project.

4 And we do an economic analysis to bring all that
5 back to present value to actually calculate whether we
6 have a BC ratio of greater than 1 and should we build the
7 project or not.

8 So I'm going to ask Steve to start off with kind
9 of explaining that -- kind of explaining some of the
10 typical types of assumptions that you normally make, and
11 then he can talk a little bit about I think what Bill
12 presented today. And then we can maybe start a
13 discussions, and frankly try to give us a direction of a
14 possible way where we can kind of take it and run.

15 So I'm going to turn it over to Steve and he'll
16 kind of explain some economics.

17 MR. HATCHETT: Well, I'm not sure how many of
18 those topics I'll be able to cover, but I kind of implied
19 before that, you know, economic projections and
20 uncertainty sort of had the same characteristics as
21 uncertainty in hydrology, uncertainty in ecosystem
22 conditions, uncertainty in water quality. I mean, it's
23 all tied together it's one of the many uncertainties.

24 And so as in any analysis, and any feasibility
25 analysis, and Rob and I worked on the common assumptions

1 process, so we laid out assumptions for how to project
2 these things out into the future for that also. And so,
3 yes, you do need to make some reasonable assumptions
4 about, okay, what kinds of things do we know about that
5 will be in place by 2030 and 2070.

6 What do we think the population will look like,
7 because that drives demand for water and, you know,
8 competing uses, and includes demands for ecosystem
9 services for that matter.

10 You know, we know, for example, that unless
11 something drastically changes, SGMA will be implemented by
12 2070. Well, that has important implications on how you
13 might want to go about valuing water or describing the
14 system.

15 So it's basically the entire list of things that
16 apply to your physical, hydrologic, ecosystem analysis.
17 Would it also need to be thought about for economics. So
18 what we've laid out here is just a consistent approach to
19 all of those things for projecting to 2030 or 2070.

20 I don't know for any particular project
21 whether -- and I'm assuming the applicants may not know
22 yet either, whether restricting an economic analysis to
23 current conditions would be better or worse for their
24 project in terms of financial performance. I don't know
25 the answer to that.

1 I can make some suppositions that population is
2 going to increase. That's probably going to increase the
3 level of benefits in a real sense over time, so you would
4 be giving that up.

5 SGMA is going to radically change the value of
6 water, particularly in areas like the San Joaquin Valley.
7 I know that's going to happen. So giving that up and
8 relying only on a current condition, you know, is going to
9 have an effect on your analysis. So those are some of the
10 considerations.

11 With regard to what Bill was laying out, I sort
12 of heard a number of concerns that were also in their
13 written comments. I'll just talk about a couple of them.

14 One is that concern about having to do not just
15 the hydrologic analysis at 2030 and 2070, but having to do
16 the -- an analysis of ecosystem effects and maybe flood
17 control, and whatever the benefits that are being claimed.
18 I would point out that those aren't strictly economic
19 valuation issues. Those are physical quantification
20 issues that you would be giving up if you accepted only a
21 funding and economic analysis at current conditions.

22 So what I think I heard him suggesting, and maybe
23 I misinterpreted, was that they would like to avoid having
24 to do what admittedly is a complex system or sequence of
25 analyses at each of those future point in times, only the

1 last of which is putting an economic value on it. You
2 would also be giving up, you know, the flood control
3 benefits, which is a complicated calculation, undoubtedly,
4 ecosystem conditions, et cetera.

5 So one other point I would like to make, and I
6 think the -- apparently there's an interpretation of
7 the -- for example, the cost allocation as it's laid out
8 in the regulation. And staff has talked about this in
9 ways to make it clearer or simpler.

10 All we are expecting out of the cost allocation
11 is what you need to lead you to a funding decision. After
12 that, that will determine an amount of money that whatever
13 local -- whatever applicants feasibility study says they
14 need for, let's say, ecosystem and water quality, now they
15 know what a chunk of money that the State taxpayers are
16 going to -- are going to provide for that. And then they
17 can proceed with their own feasibility study from that
18 point on. We can make that much clearer, I think, in the
19 regulation, because clearly that was not understood.

20 So I guess I'll leave it at that.

21 CHAIRPERSON BYRNE: I've got one question, and in
22 effort to not wrap it up, but get you to, I think, where
23 you want to go.

24 So obviously, there's a lot of technical
25 information and there's -- what Bill -- when he says --

1 what he described made sense to me when you guys talked to
2 me. Makes sense to me.

3 (Laughter.)

4 CHAIRPERSON BYRNE: So similar to what Dave was
5 saying. But I guess the one fundamental question I have
6 is, is it really a we're not going to get our application
7 in, if we had to do what staff is proposing right now?

8 I mean that, to me, is a problem, if that's the
9 reality. I get it that it might be a bigger pain. It
10 might be that there's different assumptions and things
11 that maybe we think are important that other people don't,
12 or not important enough.

13 But from a project proponent standpoint, is this
14 information, even though it may be reinvent -- you know,
15 doing some stuff you've already done again, is it possible
16 to do in the time frame in which we're giving people?

17 MR. GUTIERREZ: Yeah, so we -- we actually -- I
18 actually asked staff that about 2 months ago before we
19 embarked on this. And you should also ask the applicants
20 this, because I think that's -- you know, they're the ones
21 that are going to have to do that as well.

22 But when I asked this question, that's why I was
23 in such a hurry to get the model out there, because it is
24 going to take months. It's not days, it's not weeks, it's
25 months. And it is also dependent on the complexity of the

1 project. So remember very big complex projects are going
2 to take longer than very simple and even localized
3 projects would be very simple.

4 But the best answer I always receive from staff
5 is they -- their estimate is they should be able to
6 complete this type of analysis in like less than a
7 4-months period. I'd encourage you though to, don't take
8 my word for that, ask the applicants that question point
9 blank. Can you get it done in less than several months?
10 And that's a fair question to ask them as well.

11 CHAIRPERSON BYRNE: I see Jim queuing up here.

12 MR. WATSON: From the Site's perspective -- Jim
13 Watson, Sites Project Authority.

14 CHAIRPERSON BYRNE: Oh, Jim Watson.

15 MR. WATSON: Sorry

16 Trouble maker.

17 I met with my board yesterday, and they
18 reaffirmed our support for Prop 1. We will do whatever it
19 takes to submit a responsive application. So we're in the
20 process of going through the regulations, understanding
21 what it takes, going back to our members and communicating
22 the impacts, but we are committed to meet the schedule.

23 When it comes to the timeline, as I mentioned
24 several months ago, the critical path is the climate
25 change. And it's not just the modeling, there's a set up

1 of modeling before you can actually do the 4 months. And
2 then there's the post-processing to get it into an
3 application that then can be submitted.

4 So it is a little bit longer process. We based
5 everything on approve regulations by December, submitting
6 an application in June. We're still on schedule to do
7 that, so we're prepared to meet the requirements.

8 CHAIRPERSON BYRNE: Thanks, Jim.

9 Maureen

10 MS. MARTIN: Maureen Martin again from Contra
11 Costa Water District and the proponent of Los Vaqueros
12 Reservoir expansion. And we, too, are also prepared to
13 meet it. You know, we have obviously reviewed the
14 modeling tools provided to date. And, you know, like I
15 said, we haven't found any errors or anything glaringly
16 wrong.

17 And it is in our workplan, and we can do it. It
18 will be tight. It is additional work on top of other
19 things that we're doing at the same time. And all of
20 these projects here are really also partner projects. And
21 so you see just one of us up here, but really, you know,
22 the opportunity to have partners review your applications
23 and evaluate, you know, going forward. And investment is
24 also built into all of our timelines. So, you know, that
25 is another layer of, you know, the schedule. So we will

1 be trying to do all the modeling and all the analysis, you
2 know, in a rapid time frame, so that we give all of our
3 partners the opportunity to review, to evaluate their
4 future investment decisions as well.

5 And so that is also one of those constraints
6 that's facing all of these larger projects, so -- but we
7 are prepared, we're budgeted, we can do it. It's not a
8 problem of we can't, but it's really a preference, and,
9 you know, for simplicity in terms of implementation on the
10 project site.

11 So thank you.

12 CHAIRPERSON BYRNE: Thanks, Maureen.

13 MR. SANTOYO: Well, if you're asking me from a
14 technical perspective --

15 COMMISSIONER DANIELS: Name, please?

16 MR. SANTOYO: Oh, I'm sorry. Mario Santoyo, San
17 Joaquin Valley Water Infrastructure Authority.

18 From a technical perspective, the schedule could
19 be met. It only takes money. Okay. And so what I told
20 you previously is it could cost us \$400,000 to \$500,000 to
21 do. So from our perspective, it could be a deal killer.
22 Okay. And I'm going to be clear about that.

23 So really, if that is the intent is to stop a
24 project, this is a good way of doing it. I'm being less
25 politically correct than the other entities, but I'm being

1 very straightforward with you. You know, if there was
2 great value in this analysis, somehow we would find a way.
3 But you've heard enough from enough people that question
4 the value there.

5 All I would do is just, you know, ask you to
6 reconsider what has been laid out by Bill Swanson, and
7 basically confirm as acceptable by all the CALFED project
8 proponents, so you don't have to worry about whether these
9 projects are being treated differently. We all agree of
10 where we want to go. I ask you to think about that.

11 Thank you.

12 CHAIRPERSON BYRNE: Thanks, Mario.

13 MR. ROBIN: Just very briefly try an -- Adam
14 Robin with the Association of California Water Agencies,
15 trying to channel other potentially interested or
16 prospective project proponents. I think there are 2 real
17 questions, one is technical capacity, and the other
18 relates to financial capacity. There are costs associated
19 with doing this type of work. There are going to be costs
20 associated with doing any type of climate change work, but
21 that's definitely one consideration that agencies will
22 have in mind.

23 Second, technical capacity. Given the tight
24 timeline for turning something like this around, I think
25 to the extent that agencies don't already have consultants

1 under contract who can do this type of work, or have
2 resources in-house that would allow them to do this type
3 of work, there's a real questions as to whether or not
4 they can submit an application.

5 CHAIRPERSON BYRNE: Commissioner Orth.

6 COMMISSIONER ORTH: I guess I have a question
7 that maybe is an extension of this or maybe I'm chasing a
8 different rabbit. But there were a couple of suggestions
9 about tiering this, right, where we do some initial
10 economic analysis to create kind of a short list that we
11 then kind of block up and do the climate change
12 sensitivity analysis.

13 Does staff have thoughts about that approach
14 where, you know, we, the Commission, maybe with staff,
15 maybe with project application process and money -- or
16 applicant process and money run the more complex analysis
17 through after an initial cut?

18 MR. GUTIERREZ: So let's see thinking off that,
19 you know, absolutely it can be done. I think the question
20 you have to ask yourself is consideration of how you're
21 actually prioritizing projects. That's really what it
22 companies down to. And you heard arguments of why it
23 would be better to simplify it and put it on a -- you
24 know, don't go out so far and don't include climate
25 change, make it simpler, and we -- yeah, we can do that.

1 And the question you have to ask yourself is are you going
2 to get the best priority of projects that way, or is it
3 better to take the approach we're taking now?

4 And it's -- it is more work. It's a lot more
5 work. It's significant. And are the priorities of the
6 projects going to change? Is the selection of the
7 projects going to change as a result of some of the things
8 that I think you've heard today?

9 And I really think that's what the question kind
10 of comes down to is is it worth that effort? Will the
11 priority of projects change? Most likely they will be.
12 Some projects are going to do a lot better without sea
13 level rise, and some projects are going to do better
14 without temperature changes, warmer temperatures, et
15 cetera. And there is a possibility of flipping projects
16 around.

17 And so the question that I think we have in front
18 of us, is it -- is it worth it? Is it worth the extra
19 effort, and are we selecting the best projects or not?
20 And so really that's kind of what it comes down to. But
21 can we do it? Yeah, we can. And I'll close up. After
22 you're done discussing, I'll give you some options, and
23 that's one of them.

24 CHAIRPERSON BYRNE: Let me quickly check in with
25 the court reporter.

1 Do you need a 5 minute break or

2 THE COURT REPORTER: That's fine. Five is fine.

3 CHAIRPERSON BYRNE: Okay. So we're going to have
4 to take a quick 5-minute break, or else we're going to
5 have a workers' comp question on our hands.

6 (Laughter.)

7 CHAIRPERSON BYRNE: So we'll be back in 5 minutes
8 and we'll pick up right where we for more discussion.

9 (Off record: 3:18 p.m.)

10 (Thereupon a recess was taken.)

11 (On record: 3:28 p.m.)

12 CHAIRPERSON BYRNE: Okay. We're going to call
13 back to order the meeting, and pick up exactly where we
14 left off, which was concluding this item.

15 (Laughter.)

16 CHAIRPERSON BYRNE: Or getting close to.

17 And, Dave, I know that I had a few comments from
18 Direct -- from Commissioners -- Commissioner Daniels and
19 Commissioner Curtin, and then we'll go back to you for
20 your summation and next steps.

21 COMMISSIONER DANIELS: Okay. Well, I want to
22 apologize, I was talking to Commissioner Del Bosque about
23 my time in Italy and my head just went to this other
24 place.

25 (Laughter.)

1 MR. GUTIERREZ: Oh, you lucky person.

2 COMMISSIONER DANIELS: It took me back there.

3 MR. GUTIERREZ: Let's talk about there instead.

4 COMMISSIONER BALL: How was the climate?

5 COMMISSIONER CURTIN: Dry and hot.

6 COMMISSIONER BALL: Was it changing?

7 COMMISSIONER DANIELS: It was actually quite
8 beautiful.

9 But I want to apologize to everybody before I
10 make my comments, and especially to staff for missing most
11 of the meeting today. I want to -- as I apologize, I want
12 to commend Beth, who has been just tremendous for all of
13 us. Beth Perkins right over there. And I actually
14 think -- aside from the fact that she helped me
15 tremendously this morning when I missed my 725 flight by
16 just a few minutes, because they changed the terminal, and
17 then I tried to get on succession of other flights.

18 So she was tremendously helpful through that.
19 But I want to let you all know that at 7:30 when I called
20 the Commission office, she answered the phone. She was
21 there.

22 (Laughter.)

23 COMMISSIONER DANIELS: So she works pretty hard.
24 And I actually -- I think all of us would probably want to
25 give her a round of applause for all the work she does all

1 the time.

2 (Applause.)

3 COMMISSIONER DANIELS: -- to make sure these
4 meetings go well. Thank you, Beth, for getting us
5 organized, for getting the meetings organized, for
6 everything you do.

7 And I'm sorry that I missed your presentation,
8 because we did have a chance to converse yesterday, but
9 it -- I always find these meetings incredibly helpful,
10 because they're additional dialogue. I find it helpful to
11 hear the questions that my fellow Commissioners, the
12 comments of my fellow Commissioners. I find it helpful,
13 tremendously, to hear the comments from the stakeholders.

14 It always informs whatever decision you might
15 have tentatively arrived at. So I'm sorry I missed all
16 that. But I will say that the thing I remain concerned
17 about, and I think I've raise it before, is I do think
18 it's really important to address climate change. I want
19 to commend you for navigating this very difficult realm.

20 And I think you've done an admirable job in doing
21 so. So all these questions are not to question your
22 judgment, your capacity, your intellectual and
23 professional capacity, because you clearly have
24 demonstrated all that.

25 But again, this is a process, right? And we're

1 all struggling to find the best route through something
2 that's very complicated. And what we're proposing to do
3 is to spend money on projects that will permanently alter
4 the landscape of where they are, unless they're
5 groundwater projects, because groundwater is already
6 existing. Otherwise, the projects will permanently alter
7 the landscape and potentially permanently alter the
8 ecosystem, so it's important to get it right.

9 So with that said, I do feel that this is such an
10 important analysis. I tend to agree with those who will
11 default on the side of being more inclusive, of being --
12 taking more into account, of wanting to have the analysis
13 be consistent with the life -- the other calculated
14 duration of the life of the project, because that, in
15 fact, is what we would be dealing with.

16 The climate change bell has been ringing since
17 1971. And scientists have been ringing that bell that
18 long. And it took us a long time to realize the severe
19 nature of the problem. We're realizing it now. There's
20 no question about it. But I would say, even know in 2016,
21 we realize more about what its impacts are and how complex
22 it is, than we did in 2009 when the Bay-Delta Authority
23 wound down. I'm not saying that that is to dismiss any of
24 the work that CALFED does, but I know that every year we
25 learn more and more, and the science is getting better at

1 actually learning more about it and predicting more.

2 So for that reason I think it's important to take
3 it into account, to have it as you've proposed be attached
4 to understanding how we quantify public benefits, and that
5 I would like to see, and would still like your comment, on
6 why we're using the 2 -- the 2 points -- so I'm sorry if
7 you explained it earlier, but the 2 dates, 2030 and 2070,
8 and have it be more consistent to the life of the project.

9 And one of the points I want to raise here is
10 it's been said that we need to look at this as a present
11 situation. An analogy was made to buying a house. I will
12 tell when I bought my house, this is something
13 Commissioner Orth just commented on as well, you need to
14 take the future into account.

15 My house I bought 5 years after the Northridge
16 earthquake, which was pretty significant in Southern
17 California. And we realized that we were in an area of
18 geologic instability, and we did a pretty serious analysis
19 of the geology of the house that we're owning. We were
20 thinking pretty far into the future when we bought that
21 house. We wanted that to work for as long as we might be,
22 or whoever inherited our place might be, on this planet.

23 So we wanted to think as far ahead as we possibly
24 could. So I -- you know, I would take rhR analogy and say
25 I think that this I think would support looking at it for

1 the longest term. So there's that one point I'm wondering
2 if you could at least help me understand your decision on
3 that.

4 MR. GUTIERREZ: I will, and I'll try to ask
5 Andrew to help me out on this one. But there's -- there
6 is a reason why we picked 2030 and 2070. And part of it
7 Andrew did explain. One of the reasons is there's
8 actually information at 2070 that was valuable for the
9 analysis. And it's not available in other years, and I'll
10 ask Andrew to talk about that.

11 But then also my personal belief is if we go
12 beyond that, it becomes an academic question. And what I
13 kind of mean by that, is because of the discount rates,
14 because of the analysis that we're already doing, and
15 because of the uncertainties associated with everything
16 else we're doing, I don't think it's going to change the
17 answers.

18 Is it going to make it more precise? Yes.

19 Is it going to make it more accurate? I don't
20 think it will.

21 And so that's kind of the logic of stopping at
22 2070. But I'll ask Andrew to -- what were the reasons,
23 why did we pick 2070, what information is available in
24 2070 that isn't available in other places?

25 MR. SCHWARZ: So let's just start with what

1 information did we have and when did we have it?

2 No, but --

3 (Laughter.)

4 MR. SCHWARZ: But what information did we have
5 that we could have used?

6 So we could have -- we could -- we can build
7 these types of scenarios. So what we've built for 2030
8 and 2070, we can build them for any 30-year period from
9 1950 through 2099. So the latest 30-year period in the
10 century would be like 2085, because we'd need those 15 --
11 those last 15 years out to 2099, and then 15 years earlier
12 than that.

13 Okay. So the latest -- so there are 15 years
14 there from 1970 to 1980 -- sorry, from 2080 to 2085 that
15 we didn't --

16 COMMISSIONER DANIELS: 2070 to 2085.

17 MR. SCHWARZ: 2070 -- sorry. 2070 to 2085 --

18 COMMISSIONER DANIELS: Here's that thing with
19 numbers.

20 MR. SCHWARZ: -- that we didn't use, or, you
21 know, from 2085 out to the end of the century. So the
22 reason that we looked at -- that we liked 2030 and 2070,
23 2030, first of all, was when we thought most of the
24 project would coincide with the implementation, the coming
25 on-line of a lot of these projects would be, you know,

1 plus or minus 5 years from that time. So that seemed like
2 a really good time to start with we would want to anchor
3 something in that timeline, because we think that's a
4 really important timeline.

5 We also had a sea level rise model for 15
6 centimeters of sea level rise, which is what we expect to
7 occur between now and 2030. So we need a sea level rise,
8 and then we need a sea level rise model, and we actually
9 only had 3 sea level rise models, 0 rise, 15 centimeters,
10 and 45 centimeters to work with.

11 When that 45 centimeters would, in fact, occur is
12 publish around 2065, 2070 out to the end of the century
13 there, but not much further out than that. So we want --
14 didn't want to -- we wanted to put that second point at
15 2070, and not further out, because we didn't have an
16 appropriate sea level rise model to tie to that. We would
17 have had to build another higher level sea level rise
18 model. That takes time. We didn't have the time to do
19 that. We didn't think it added a whole lot to the
20 analysis. We had 45 ready. It made sense to do that.

21 COMMISSIONER DANIELS: So what if, over the next
22 few years, there's more information available that would
23 help you peg it to a future time? Is this adaptable this
24 model you've created, if you needed it?

25 MR. GUTIERREZ: It is adaptable, but remember, by

1 then, we're going to have our decision made.

2 COMMISSIONER DANIELS: We'll be funded.

3 MR. GUTIERREZ: And so this is kind of what I go
4 back to, whatever we're doing today, it will change
5 tomorrow.

6 COMMISSIONER DANIELS: Yeah. So I appreciate
7 your explaining that for me again. I think you mentioned
8 it when we spoke before, but it's helpful to hear it
9 especially in the context of all these comments.

10 And I -- so I think that it just really
11 emphasizes to me how important it is to build all this
12 information to our initial analysis of how we decide how
13 to understand the public benefits of a project before we
14 even start making initial cut decisions.

15 The other question I had though is about
16 variability. There were some points raised that looking
17 at the model that you're proposing, you're kind of
18 flattening things out or averaging things out. Are you
19 taking into account those extreme variabilities which are
20 likely to be occurring more and more? And how does the
21 project perform against that variability?

22 MR. SCHWARZ: Right. So there's 2 kinds of
23 variability that we probably don't want to conflate here.
24 There is the interannual variability, these swings from
25 wet years to dry years that we see in California already

1 all the time, and those are expected to get worse, right?

2 And then there is kind of, I wouldn't call it,
3 variability, but maybe some folks confuse that term,
4 right, that we see the uncertainty in the climate models
5 going out showing more extreme kind of climate outcomes.
6 Okay.

7 COMMISSIONER DANIELS: Thank you. Better term.
8 Okay.

9 MR. SCHWARZ: That type of uncertainty or
10 variability.

11 COMMISSIONER DANIELS: Yeah.

12 MR. SCHWARZ: The 2030 and 2070 projections, if
13 you like -- Commissioner Curtin, we talked about -- last
14 time I was up here, I showed a graph of kind of a cone of
15 uncertainty extending out into the future, where here at
16 the beginning --

17 COMMISSIONER DANIELS: I kind of remember that,
18 yeah.

19 MR. SCHWARZ: -- it's very narrow. And as you go
20 further out, that cone gets bigger, right? And you
21 can -- you can be at the edge of that cone or you can be
22 right in the middle. So the projections -- the 2030 and
23 the 2070 projections that we've presented for the economic
24 analysis that we're proposing here are kind of the middle
25 of that cone of uncertainty. We are not really probing

1 those extreme climate change outcomes, those hotter, drier
2 scenarios that are possible, yet we think are less likely.

3 COMMISSIONER DANIELS: Okay. So the bottom line
4 is you think it's less likely. So your suggestion is
5 since it's less likely in your view, why --

6 MR. SCHWARZ: Well, to make a funding decision we
7 have to kind of choose something. Most likely seemed
8 like -- it seems like a good way to do it. Okay. But we
9 don't stop there. We have the resiliency analysis that
10 provides 2 more scenarios that are the edges of that cone.
11 And we ask each project to do, and analyze their project,
12 what if we get that extreme climate change outcome that is
13 hot and dry? What if we get that extreme climate change
14 outcome that is cool and wet?

15 What happens to your project benefits then? Do
16 they get better? Do they get worse. Does the whole thing
17 fall apart? And that's additional information, but you
18 know, we have to choose one thing -- you know, essentially
19 one thing to monetize, if you're going to make a monetary
20 decision on what the values of these projects are.

21 COMMISSIONER DANIELS: All right. Well, those
22 are my --

23 MR. SCHWARZ: So the most likely is what we --
24 what we have proposed.

25 COMMISSIONER DANIELS: Thank you. Thank you for

1 clarifying that. I'll maybe have more comments after.

2 CHAIRPERSON BYRNE: Commission Curtin.

3 COMMISSIONER CURTIN: Thanks. So my concern is
4 similar to yours, Dave, only it's the opposite conclusion
5 to some degree. I'm concerned that if we adopt the
6 proposal the way it is, we won't have enough projects to
7 prioritize, particularly the small projects. I really
8 don't share the fears that were expressed about the cost
9 or the time -- well, the time, because of the timeline.
10 But the large projects that are investing hundreds --
11 billions of dollars, another half a million, you know,
12 \$500,000, while not insignificant, for a project of that
13 size is it's worth the analysis.

14 My concern is that we're going to pre-prioritize,
15 and I go back to the language, infrastructure, population,
16 land use, water use, water operations, laws, regulations,
17 and other characteristics relevant to the analysis of the
18 project. I think we're scaring some of these smaller
19 projects out of their wits.

20 And I know you've mentioned, and I think you're
21 going to -- it would be nice to clarify how the smaller
22 projects could handle this more easily. I mean, it's a
23 logical conclusion that the larger the project, the more
24 input you're going to have. But I'm really interested in
25 getting some small projects out the door, particularly

1 ground water, and I don't see them here anymore.

2 I think they've kind of looked at this thing as
3 it's a mountain they can't climb. I believe the large
4 projects can climb this mountain, but it still doesn't
5 answer the question for me that -- and I think you just
6 sort of explained it on the sea level issue. It's going
7 to take them time, and it may not be that useful. Because
8 of the phraseology here, the resiliency analysis that
9 we're requiring them to do on the basis of hydrology, then
10 it's a conclusion if they can -- if they're -- if they can
11 adapt to the hydrology, then their usefulness, in terms of
12 their public benefits, which will still be contracted,
13 should be almost self-evident, rather than go through this
14 pretty complex and sort of frightening process to find
15 out -- we may find out that we just can't pin those
16 economic values down.

17 And I see you just came back actually, I meant to
18 comment, Mr. Weed from Alameda, I think his point was well
19 taken. You know, there's going to be water markets
20 developing. There's going to be all kinds of perhaps
21 different governing procedures in 20 years integrated
22 regional water management that we can only hope for. But
23 the only thing that we really can deliver is the ability
24 to hold and store and move more water, because
25 fundamentally adaptability of climate change is going to

1 be those 3 concepts.

2 The water markets will develop, but capture,
3 move, store, and transfer water around the State to best
4 adaptive to climate change, and that's where I see us
5 going.

6 I'm not sure how much the 2070 economic
7 evaluation is going to move me if there's a really solid
8 project that is going to play a major role in the region,
9 making it sort of independent of the Delta, so to speak.
10 I'd rather role the dice -- and I shouldn't say that
11 because it's not the right analogy -- that 2070 will work
12 out if that management is adaptable and that region is
13 adaptable.

14 As long as the project makes sense -- I don't
15 mean right now, but on the analysis we're doing to 2030.
16 Nobody is evening going to have these built till 2025,
17 2030. So they're certainly doing climate change and other
18 analysis, and SGMA is fundamental. I don't see how you
19 get more water in the ground without more storage above
20 the ground. So that's my final comments here for the time
21 being.

22 CHAIRPERSON BYRNE: With that, Danny, where do
23 you want to land?

24 COMMISSIONER CURTIN: You know, there's an ACWA
25 proposal. I'm not sure how that sort of -- it's sort of

1 almost -- it gives an option for if you don't want to use
2 the methods you're proposing, you can use something that
3 is conceptually sound and adequate, but then, of course,
4 nobody is going to use your proposal.

5 So whether it's the sensitivity off of -- the
6 proposals that come in have to have this analysis, let's
7 say, for the 2030 period, but then there's a sensitivity
8 analysis beyond that. That might be somewhat out of this.
9 I don't know. That's --

10 MR. GUTIERREZ: And let me just respond to one
11 thing that Commissioner Curtin said. So I think you got
12 it. You're hitting the right targets. You're asking the
13 right questions. On the smaller projects, the answer is
14 it kind of depends. So let's -- when we talk smaller
15 projects, I'd rather actually use the word, "localized
16 projects".

17 So if it's an extremely localized project,
18 meaning the public benefits are not associated a long
19 distance away, the reason we're using something like
20 CalSim is because we have to understand the complexities
21 of hydrology all up and down the Delta watershed. And
22 these large projects are going to be affecting large
23 masses of land and large masses of area. If it's a
24 localized project, that's not going to happen, and I don't
25 think we expect them to use something as complex as this.

1 They would do a much more Simplified analysis
2 using the same concepts, but certainly not nothing like
3 this. Where we can get into trouble though if it's a
4 small project that actually is trying to get public
5 benefits throughout the Delta, then your point is
6 extremely valid, because it's a small project, yet it's
7 trying to get public benefits, and we're going to have to
8 prove that out. The only way you do that is through a
9 complex analysis. So that's a valid point.

10 COMMISSIONER CURTIN: So if we go back to the
11 ecobank. A small project could contribute significantly,
12 even if it were small, if they were -- a portion of that
13 water was always available to put into the system and we
14 had the plumbing to move the water.

15 MR. GUTIERREZ: And it will and we would track
16 that and we can calculate that. And we can figure that
17 out at the point of the project. My point would be if
18 it's such --

19 COMMISSIONER CURTIN: If we get the proposal.

20 MR. GUTIERREZ: If it's such a small volume of
21 water, by the time it gets to the Delta, we can't track
22 that water anymore.

23 COMMISSIONER CURTIN: Plus, it would be in loop
24 stuff, right.

25 MR. GUTIERREZ: Yeah.

1 CHAIRPERSON BYRNE: Commissioner Quintero and
2 then back to Daniels.

3 COMMISSIONER QUINTERO: You know, for all the
4 partners in these projects, we're all interested in the
5 economic success of the projects. For the partners on the
6 private benefit side, they're looking at their business
7 models making sure -- wanting to make sure, or assure,
8 that they -- that it's a successful project. And for us,
9 we need to make an investment that assures that it relates
10 to the amount of money we give to the project.

11 And I'm just reminding us that that's what this
12 is tied to in part is understanding the value of the
13 return on our investment. And I absolutely agree with the
14 mention and what you were saying about small projects, and
15 figuring out a way to help them, and encourage them to
16 apply for this.

17 And I also -- I'm not sure if it was said out
18 loud, or if it was in other conversations where we talked
19 about a stepped process. It was -- we did talk about
20 that, and I think that there may be some real value in
21 looking at that as a way of making the initial application
22 something that's really useful and us being able to judge
23 the merit, and then do additional work, perhaps even with
24 some assistance.

25 CHAIRPERSON BYRNE: Commissioner Daniels and then

1 Commissioner Orth.

2 COMMISSIONER DANIELS: Yeah. I was only going to
3 agree that I think I would feel concern about the small
4 project as well, but I think -- I didn't feel that this
5 process would necessarily disincentivize them. And I
6 think Mr. Gutierrez responded that -- to that point as
7 well.

8 But what I was also going to raise then is this
9 question about should we have a separate process, which
10 has been raised before? So Commissioner Curtin's question
11 raises that question for me. If we're worried about
12 smaller projects, then maybe we need a separate process
13 for them altogether.

14 I think we do also want to see groundwater
15 projects, and they have much different considerations at
16 play, but that's -- we're not raising that question right
17 now, but I think it does invoke that question as a
18 response.

19 CHAIRPERSON BYRNE: Commissioner Orth.

20 COMMISSIONER ORTH: I was sitting here trying to
21 figure out what it is that we do agree on. And I would
22 say that it's important for us to recognize that whatever
23 we're doing here this is a tool to help us in making the
24 decisions that the chapter 8 requires, which is this
25 return on investment analysis for public benefits

1 provided, right?

2 So we have to quantify in some way the benefit
3 that a project proposes to give us. I think I've already
4 made my point that that isn't a snapshot in time when you
5 push the start or the go button for that project. That is
6 a -- that is an evaluation over the life of the project.
7 So we have to look at in some way, shape, or form, you
8 know, the benefits that are being provided and the
9 economics that they generate.

10 I do think, and we've had -- you know, we've had
11 some suggestions that perhaps we let the applicants define
12 their benefits under their own metrics. I don't like that
13 approach, because we're -- we don't have comparability at
14 that point. I don't know how we get our job done if, you
15 know, there are 5 different currencies brought to the
16 analysis. So I think consistent metrics that are
17 quantifiable, not qualitative, are important for us.

18 And I agree equity, you know, for large and small
19 projects is important. I'm not compelled by your argument
20 that, you know, a localized project will have a lower
21 threshold. They still have to prove, you know,
22 environmental benefits are going to preferably want to
23 prove environmental benefits in the Delta, to meet, you
24 know that component of the chapter 8 requirement.

25 And so that's going to necessitate a little bit

1 more complex climate change analysis, if we're going
2 there. But I do think we need to have equity. I'm not
3 sure I agree that a separate process is necessary. In
4 fact, I'm not even sure chapter 8 allows us to have that
5 distinction. I think we still have to figure out how to
6 fit all these different sized things into the same
7 process.

8 But I'm hoping that as you consider, you know,
9 the discussion this afternoon that, you know, you look for
10 simplification, you look for something that works, but
11 meets kind of these basic objectives of we have to look
12 into the future. We have to be able to quantify it, and
13 there's got to some type of consistency in the way we look
14 at these various projects.

15 MR. GUTIERREZ: Okay. So let's see -- so this is
16 a difficult thing. And we do need some direction on this.
17 It may not be fair to ask you exactly what do you want us
18 to do? And you may need to think about that, but we're
19 also at a point I think where we've talked it to death. I
20 mean, there's nothing else we can tell you. We've tried
21 to explain it. We've laid it all out. Now, we just have
22 to make a decision, and that may not be today, but it has
23 to be fairly soon.

24 And so just to kind of layout some options, and
25 I've kind of laid out maybe four options just to give us

1 the gamut of types of options that I think that I see in
2 front of us. And I think you all have given us actually
3 an explanation of these already. So I just actually
4 copied them down.

5 So the first -- I'll start from the first, which
6 would be the easiest on the applicant, and I think one of
7 the things that we've heard. And that would be to just
8 allow them to do their own economic analysis based on
9 whatever they did in CEQA, which doesn't necessarily
10 consider climate change, but it also -- it's simple to do,
11 because they've already completed that.

12 The disadvantages of that, of course, is that
13 it's not necessarily going to be consistent. We're going
14 to be comparing different projects with different
15 assumptions, and it's not comparing it to the future. And
16 it certainly doesn't consider climate change. But the
17 advantage to that is it's simple, it's easy, it's not
18 going to cost anybody anything, because they have to do
19 that anyway. So that would be maybe option number 1.

20 Option number 2 would be do just a 2030 analysis.

21 COMMISSIONER CURTIN: Before you go to 2.

22 MR. GUTIERREZ: Yes.

23 COMMISSIONER CURTIN: Is there a way for us to do
24 any analysis on the basis of the proposals about climate
25 change adaptability?

1 MR. GUTIERREZ: Well, yes. So what we could do
2 is we could have them -- we -- as Commissioner Orth said,
3 we still need an economic value on the project benefits.
4 And so they have to do an economic analysis. But
5 supposedly they would either have already done that or
6 they could already fit it in to what they've already
7 completed.

8 In addition to that then, we would have to do
9 either a -- sorry about this Commissioner Curtin, either a
10 quantitative or qualitative sensitivity analysis on top of
11 that to consider climate change. And we could do either.
12 But if you do a quantitative, it gets us back to -- it
13 gets us right back to what -- why wouldn't we do that
14 anyway, because we'd still require them to do some kind of
15 modeling that we've supplied them with. So I'm not sure a
16 quantitative would get us anywhere with option number 1.

17 Then option number 2 would be just do a 2030
18 analysis. You know, assume the economics don't really --
19 things don't really change, but at least -- at least get
20 us out of the 1950s and get us to the current climate
21 scenarios that we have of today. And it will be a little
22 bit more realistic. Disadvantage of that is we're still
23 going to require these folks to actually do an analysis of
24 the hydrologic analysis, which is still complicated, it's
25 still going to be time-consuming to them, but at least it

1 gives us a number that's at least a bit more consistent.

2 And then we would have to do some kind of either
3 quantitative or qualitative climate change analysis on top
4 of that to factor in the resiliency of the project. So
5 that would be number 2.

6 Number 3 would be just go with what we've already
7 proposed. I won't repeat that.

8 And then number 4 would be let's add more. Let's
9 go beyond 2070. Let's do some further economic analysis,
10 so let's just don't do a resiliency calculation with the
11 methodologies that we have, but let's do an economic
12 analysis on the most extreme situations, both wet and dry.
13 And let's do what an -- what are the numbers come out with
14 that economic analysis.

15 The disadvantage of that is we're piling on even
16 more work. But probably more important, now we've got 3
17 numbers, and I'm not sure what we're going to do with
18 them. What are we going to do? Are we going to average
19 them? Are we going to do a standard deviation? Exactly
20 what are we going to do with those numbers? So that would
21 be the 4th, but it would give us all the precise answers
22 that I think we need.

23 So we can probably go in between any of these 4.
24 I think we've given you all the information at this point.
25 I'm not sure if you all need to think about this a little

1 while, but I don't think there's anything else we can
2 bring you.

3 I think it's time to kind of either now, or in
4 the very, very short future, give us a direction, and
5 we'll take it, and we'll implement it.

6 CHAIRPERSON BYRNE: Thank you, Dave.

7 I'm seeing figure being pressed.

8 COMMISSIONER CURTIN: I just have a question on
9 you mentioned in number 2, you include hydrologic
10 analysis. I'm assuming that's on the 2030, 2070 dry/wet?

11 MR. GUTIERREZ: Just the 2030 is what number 2
12 was, just do a 2030.

13 COMMISSIONER CURTIN: Okay. Then when you add in
14 climate change analysis, that would be a hydrological
15 analysis 2030, 2070?

16 MR. GUTIERREZ: We could do that or we could
17 do -- yeah, we could do kind of I think what Bill kind of
18 recommended and do more of a resiliency calculation on
19 that.

20 COMMISSIONER CURTIN: Yeah. Okay.

21 MR. GUTIERREZ: But again, the disadvantage of
22 that is we're still asking folks to do a hydrologic 2030
23 analysis, but you're not having to deal with all the
24 spread of uncertainty out there in the 2070 realm.

25 COMMISSIONER CURTIN: But that's my major

1 concern. So number 2 more, you know, appealing to me.

2 MR. GUTIERREZ: But it's still going to require
3 the same amount of work, or close to it.

4 COMMISSIONER CURTIN: Not quite the same amount
5 of work.

6 MR. GUTIERREZ: Not quite, but pretty close.

7 COMMISSIONER CURTIN: Because you're not doing
8 the economic --

9 MR. GUTIERREZ: Well, you still have to do and
10 economic analysis because we need that number.

11 COMMISSIONER CURTIN: For 2030.

12 MR. GUTIERREZ: Yeah.

13 COMMISSIONER CURTIN: But not for 2070.

14 MR. GUTIERREZ: That's correct, but you're just
15 not bringing it back to the present value. It's not
16 saving that much work.

17 COMMISSIONER CURTIN: So at least you have more
18 confidence in the answer --

19 MR. GUTIERREZ: That's exactly correct.

20 COMMISSIONER CURTIN: -- in 2030 as opposed to
21 2070.

22 MR. GUTIERREZ: That's right.

23 CHAIRPERSON BYRNE: Commissioner Daniels and
24 Commissioner Ball.

25 MR. SCHWARZ: You do lose the information about

1 their trajectory of change over time. So you now --
2 you've got one point, so one point --

3 COMMISSIONER CURTIN: In terms of economics.

4 MR. SCHWARZ: In terms of economics and
5 hydrologic change, both.

6 COMMISSIONER DANIELS: Yeah, I mean --

7 COMMISSIONER CURTIN: Not climate change, because
8 you're asking for the hydrology in 2070. You're asking
9 for the wet and dry hydrologies, the options -- that's
10 your climate change analysis in 2070. You're just not
11 attaching the economic analysis to it.

12 MR. GUTIERREZ: Right.

13 COMMISSIONER CURTIN: So then we have data that
14 says the project is not really very adaptable to a climate
15 change, not an economic adaptability, a -- okay. That's
16 what I'm thinking.

17 MR. GUTIERREZ: Yeah.

18 MR. SCHWARZ: Um-hmm.

19 COMMISSIONER DANIELS: You can let others speak
20 first.

21 CHAIRPERSON BYRNE: Well, I have you and
22 Commissioner Ball. If you want to defer to Commissioner
23 Ball, you're more than welcome to.

24 COMMISSIONER BALL: So I think the most important
25 thing here is to have predictability first and

1 consistency. I think the further out you go, the more
2 likely it is to be subjective, as opposed to objective. I
3 think that picking the 2030 date is a good date. I'd lean
4 towards 2, because I think that 2030 is a good compromise,
5 and it allows you to take a look at what the economic and
6 hydrologic benefits are going to be at the point in time
7 that the project is going to be introduced, which is
8 really probably the most critical point in time.

9 So looking at in present dollars is important,
10 but looking at it -- at what it's going to -- projected to
11 deliver at the point in time it first comes -- the first
12 time it's completed, I think it's the most important date.

13 So like the idea of doing the 2030 analysis. I
14 think it -- hopefully, it's less expensive. It's easier
15 to do. It provides us a great deal of information. It's
16 a good reference point. So that's what I would lean
17 towards.

18 CHAIRPERSON BYRNE: I was -- I'll -- go ahead,
19 Commissioner Daniels, then I'll jump in too.

20 Commission Orth. Commissioner Daniels and then
21 Orth, the Byrne.

22 COMMISSIONER DANIELS: Well, it probably will
23 come as no surprise to my fellow Commissioners that I'm
24 thinking about Proposals 3 and 4.

25 And I do understand staff's point about their

1 proposal, and I'm, in my, mind turning over how much more
2 work it would be to go toward Item 4, and I'm not clear
3 that I fully understand that.

4 But I think that 4 being, you know, look at the
5 most extreme events is the type of thing that I think we
6 need to be cognizant of as we think about climate change,
7 because we are facing incredibly extreme events throughout
8 our world right now.

9 I mean, in -- just ask the people in Haiti, or
10 Florida, or in the islands that are sinking under sea
11 level rise.

12 What I'm not clear on, and I did hear what staff
13 said about that, is if making the analysis toward those
14 extreme events really gives us any more information that
15 would be useful in terms of calculating public benefits?
16 So I understand what you're saying.

17 So, to me, it's somewhere between 3 and 4. I
18 think stopping our analysis at 2030 when it would cost the
19 applicant to run that analysis and only in -- you know,
20 it's a small increment more, from what I gather, to add in
21 to 2070. I think not taking into account something much
22 closer to the life of the project would be irresponsible
23 on our part, and actually quite reckless, given what we
24 have to plan for with these public monies in terms of
25 paying for the public benefits associated with the

1 project.

2 So I can live with the current proposal. I'm
3 still interested in seeing what it would mean to the
4 applicants, because I'm concerned about that too. I'm not
5 trying to unduly put work on applicants if it wouldn't get
6 us anymore or better information about going to direction
7 4.

8 CHAIRPERSON BYRNE: I would say, for me, I'm
9 probably leaning towards the staff recommendation, just
10 because I'm not sure I totally understand 1 and 2 well
11 enough, at this point. But I would -- I would -- what I
12 would think would -- for me would be -- the best case
13 scenario would be if we can take everything that we've
14 gotten here from today and staff could -- I mean, if
15 there's ways to make some edits, to make some change, make
16 some clarifications, then that would be more of maybe it's
17 like a 3.1 of what I would support.

18 Because 3. -- 4 sounds to me more complicated.
19 The idea of 2030 sounds okay to me. I don't quite
20 understand it enough to know how much different it makes
21 it or -- or not different, how much less complicated it
22 makes it or not. And I'm thinking about the overall cost
23 for folks. And, you know, it's going to be a pain, I
24 think. But the only thing I see is potentially being a
25 good alternative is allowing people to do kind of what

1 they want to do. And I understand the difficulties of
2 doing that, as far as judging the projects against each
3 other.

4 So I don't know what I didn't get from the
5 conversation enough is whether there's some opportunity to
6 improve upon what staff has that is still kind of the same
7 thing, but incorporates some of the comments we heard or
8 not. That would be my hope, but I'm not sure if it's a
9 all-or-nothing proposition or not, but I'd probably lean
10 more in that direction.

11 Commissioner Orth.

12 COMMISSIONER ORTH: I tend to agree. I mean, I
13 don't think option 1 works, because I think we need more
14 consistent data. And, you know, for us to do our work, I
15 think, relying upon independent applicant based analysis
16 isn't going to be helpful to us, as helpful as it needs to
17 be.

18 My earlier comment suggested that the staff
19 proposal, if we could simplify it, you know, make it
20 efficient as possible and applicable to large and small
21 sail projects, that it probably meets those criteria of
22 consistency, and the objectives that I think we have under
23 chapter 8.

24 Option 2, I fear, potentially falls short,
25 because we're going to again have to make a decision. So

1 I'd need you to help build a bridge for me, if we were
2 going to seriously look at Option 2, because I think we're
3 going to have to quantify and fund public benefits far
4 beyond 2030.

5 So if we're going to do a quantification stop at
6 2030, then we have to figure out what we're doing with the
7 balance of the project performance in terms of quantifying
8 that benefit, and that becomes a little bit more
9 subjective again.

10 So for all those reasons, I'm kind of leaning
11 toward staff proposal with the asterisk that you try to
12 make it more efficient.

13 CHAIRPERSON BYRNE: Commission Quintero.

14 COMMISSIONER QUINTERO: You know, I agree with
15 what David just said, but I also am thinking about how for
16 the other investors in these projects, the ratepayers, the
17 folks who are going to be doing bond issuance, the
18 investors, this climate information is going to be
19 absolutely critical for them too. And so that's why I
20 also am interested in the -- what you're calling as a 3.1.
21 You know, this effort with your good minds put to it would
22 be really great.

23 CHAIRPERSON BYRNE: Commissioner Baker.

24 COMMISSIONER BAKER: I concur with Commissioner
25 Orth, and Commissioner Byrne, and Commissioner Quintero.

1 But I, too, am in favor of sort of simplifying the
2 process. And I really would like to see some of the
3 smaller projects, groundwater projects, feeling welcome to
4 apply with their projects. So if there's a way to spread
5 that eye of the needle that would, I think, very good.

6 CHAIRPERSON BYRNE: Commissioner Del Bosque.

7 VICE CHAIRPERSON DEL BOSQUE: Well, I think
8 that -- yeah, thank you for giving four options to us.
9 That makes it a lot easier than to try to think up
10 something ourselves.

11 I kind of tend to think that Option 2 is kind of
12 a halfway point between what the applicants are thinking
13 is reasonable and what your proposal has been. So I think
14 that it's a doable thing that will probably make it more
15 feasible for small projects and large to be able to
16 achieve. I think it would make it less onerous, as far as
17 costs go, and time, and just -- I think it's a reasonable
18 approach.

19 CHAIRPERSON BYRNE: I think we may want to vote,
20 yeah. But I was wondering, I mean, I like what Dave said
21 about the bridge. So, I mean, I would like to -- I mean,
22 I'm happy to have somebody make a motion to move forward
23 with a recommendation. This is just a recommendation of
24 what you include. It will come back. But we will have
25 limited opportunity potentially to change it.

1 But with the recommendation, it would also be
2 nice to have an exploration, I think, of a little bit of
3 option 2, and whether there is a bridge, and maybe there's
4 some epiphany in that process that allows it to be -- you
5 know, contemplate what some of those considerations were
6 that were brought.

7 So with that, I think -- I mean, we can do some
8 unofficial, but maybe we should have a quick motion and a
9 vote on the direction to staff, based upon what we just
10 heard.

11 Does anyone want to make that?

12 COMMISSIONER DANIELS: Vote per option?

13 CHAIRPERSON BYRNE: Well, I'm happy to formulate
14 a motion myself, yeah.

15 I would move that we adopt Item -- Option 3.1.
16 In addition -- in addition, that it include some staff
17 thought and contemplation to Option 2 and whether a bridge
18 can be built between 2030 and 2070 to address that concern
19 that was raised.

20 So I think -- is that enough direction?

21 MR. GUTIERREZ: Perfect, yeah.

22 CHAIRPERSON BYRNE: Okay.

23 Is there a second?

24 COMMISSIONER ORTH: I'll second that.

25 CHAIRPERSON BYRNE: All right.

1 COMMISSIONER BALL: Can I get a clarification.
2 So when you say 3.1, you're not pushing it further to 4.
3 You're actually coming up with a 2.5.

4 CHAIRPERSON BYRNE: No.

5 (Laughter.)

6 COMMISSIONER BALL: Yeah, I mean it's --

7 CHAIRPERSON BYRNE: It's simply staff
8 recommendation plus the direction to try to simplify and
9 find, you know, information that was helpful today to make
10 the process less onerous and easier for people.

11 COMMISSIONER BALL: So is a way to look at
12 simplifying it relative to moving it closer to 2.

13 CHAIRPERSON BYRNE: To 2.0. Okay.

14 COMMISSIONER BALL: So I would support that.

15 CHAIRPERSON BYRNE: 2.8 or 2.9.

16 (Laughter.)

17 COMMISSIONER DANIELS: Discussion on the motion?

18 CHAIRPERSON BYRNE: Sure.

19 COMMISSIONER DANIELS: I would have voted -- I
20 would have voted for Option 3. So I just want to let you
21 know that, but I don't feel I can support a backsliding to
22 this other direction.

23 So I think I will not vote for the motion, but
24 it's not because I don't appreciate what staff has done
25 with respect to the current proposal.

1 COMMISSIONER BALL: Are you abstaining?

2 COMMISSIONER DANIELS: No, I'm going to not vote
3 for the motion.

4 COMMISSIONER BALL: You said you're not going to
5 vote.

6 COMMISSIONER DANIELS: I will not vote for -- in
7 favor of.

8 COMMISSIONER BALL: Okay. That's part
9 clarification.

10 CHAIRPERSON BYRNE: All right.

11 ACTING EXECUTIVE OFFICER RAVAZZINI: So just for
12 my edification and clarification and for Dave, I just want
13 to confirm that this would be that staff has the ability
14 to move forward with the option 3 language, which was the
15 current proposal, but altering language, making a proposed
16 language that comes back to the Commission that will
17 allow -- perhaps remove some onerousness to the current
18 proposal. Is that -- I mean, I just -- I need -- I want
19 to make sure that Dave is -- like they know what -- when
20 they leave this building, that they know what they're
21 doing.

22 CHAIRPERSON BYRNE: I'm seeing Dave nodding here,
23 yeah.

24 MR. GUTIERREZ: Yeah. So we'll -- we're going to
25 go in the same direction, and we're going to look for --

1 as hard as we can, we're going to look for any ways we can
2 actually simplify the process.

3 COMMISSIONER CURTIN: So can I just comment,
4 because onerous doesn't work for me, either way. You laid
5 out 2 proposals. Option 3 we've been discussing. Option
6 2 was relatively clear, because there wasn't many details.
7 You do an economic-based analysis on 2030, and then sort
8 of a -- what's the word we use again -- resiliency --

9 MR. GUTIERREZ: Resiliency.

10 COMMISSIONER CURTIN: -- analysis from 2030 on.
11 So anything you would alter would be to see if there was
12 any way to bridge that last piece, is that correct?

13 CHAIRPERSON BYRNE: (Nods head.)

14 COMMISSIONER CURTIN: So onerous doesn't work,
15 but if it's -- if that's what you're looking at and
16 there's a way you can do that, then that's what we'd be
17 asking, or some of us would be asking. But if you can't
18 you, can't.

19 MR. GUTIERREZ: If we can't, we can't. We're
20 going to look.

21 CHAIRPERSON BYRNE: Did that make sense, Dave?

22 MR. GUTIERREZ: I think we get it.

23 CHAIRPERSON BYRNE: Okay.

24 COMMISSIONER DANIELS: I don't want to belabor
25 this. I'm just sort of not clear on this, so that's why I

1 just probably won't vote for it, because I'm not clear
2 what they're going to come -- what you're asking them to
3 do actually. So it's not that --

4 COMMISSIONER CURTIN: Should we put it to a vote?

5 COMMISSIONER DANIELS: Yeah, you can do it.

6 COMMISSIONER BALL: Let's put it to a vote.

7 CHAIRPERSON BYRNE: Okay.

8 ACTING EXECUTIVE OFFICER RAVAZZINI: Commissioner
9 Baker?

10 COMMISSIONER BAKER: Aye.

11 ACTING EXECUTIVE OFFICER RAVAZZINI: Commissioner
12 Ball?

13 COMMISSIONER BALL: Aye.

14 ACTING EXECUTIVE OFFICER RAVAZZINI: Chairman
15 Byrne?

16 CHAIRPERSON BYRNE: Aye.

17 ACTING EXECUTIVE OFFICER RAVAZZINI: Commissioner
18 Curtin?

19 COMMISSIONER CURTIN: Aye.

20 ACTING EXECUTIVE OFFICER RAVAZZINI: Commissioner
21 Daniels?

22 COMMISSIONER DANIELS: No.

23 ACTING EXECUTIVE OFFICER RAVAZZINI: Commissioner
24 Del Bosque?

25 VICE CHAIRPERSON DEL BOSQUE: Aye.

1 ACTING EXECUTIVE OFFICER RAVAZZINI: Commissioner
2 Herrera not here.

3 ACTING EXECUTIVE OFFICER RAVAZZINI: Commissioner
4 Orth?

5 COMMISSIONER ORTH: Yes.

6 ACTING EXECUTIVE OFFICER RAVAZZINI: And
7 Commissioner Quintero?

8 COMMISSIONER QUINTERO: Aye.

9 CHAIRPERSON BYRNE: Okay. So now we have one
10 more issue left to talk about, and then any other issues
11 that the public wants to raise afterwards.

12 --o0o--

13 MR. GUTIERREZ: Now that we got that simple one
14 out of the way, let's get to the more difficult one.

15 (Laughter.)

16 CHAIRPERSON BYRNE: The court reporter is all
17 right?

18 THE COURT REPORTER: (Nods head.)

19 MR. GUTIERREZ: This is the last issue in front
20 of us. And it's issue that you all have actually talked
21 about for quite some time. Yet it still generated quite a
22 bit of comments. And it's a fairly divisive issue as
23 well. It's regarding compliance obligations and
24 mitigation compliance obligations.

25 Kind of the interesting thing about this project

1 is I've been trying to catch up with all -- what all this
2 means over the last several months. And, in fact, over
3 the weekend I started developing my talking points. And
4 then I was -- I was pointed to a meeting that you all had
5 in December, so I watched your video. And I wish I would
6 have watched that right at the beginning, because I
7 basically am now stealing all of your talking points that
8 you've already done.

9 And so what we're left with on compliance
10 obligations -- mitigation and compliance obligation is
11 first of all, the statute itself. The statute is not
12 completely clear exactly whether we're supposed to be
13 paying for existing compliance obligations or not. The
14 way the statute reads, I think it could be read in several
15 different ways.

16 But what I also appreciated, especially when I
17 reviewed your all tape or webcast from December, you
18 actually had made some pretty good decision -- or I should
19 say decisions and gave the staff very good direction on
20 how to develop this approach. And so you are trying to
21 balance the legal interpretation of compliance obligations
22 with the policy implications, but you also were actually
23 talking quite a bit about the practicality of implementing
24 this particular issue. And so I kind of really
25 appreciated that in listening to that.

1 Now, I think that kind of goes, when I talk about
2 the practical aspect of it. What the problem is, is again
3 we're going right back to these models, and what we can
4 and can't do. What we all need to realize is we can't
5 track a water molecule that accurately.

6 And so this kind of goes right back to this. And
7 I think what we heard -- what I heard from the Commission,
8 and we'll start with this as kind of a starting point.
9 And I hope I'm interpreting what I heard from December,
10 the direction that you gave staff. And that is that
11 pretty much everybody on the Commission, based on what I
12 heard, felt that we shouldn't pay for existing compliance
13 obligations.

14 But I also kind of heard most of the Commission
15 members were concerned about trying to track that water
16 molecule and the incidental compliance obligations that
17 come along with it. There could be some consequences --
18 unintended consequences if we're not careful with the
19 language.

20 And kind of what I mean by that is if we -- if
21 we're too across the Board with just saying we're not
22 going to pay for any existing compliance obligations, that
23 could get us to a point where we can't build any project,
24 because we can't decipher it. We can't track that water
25 molecule very well.

1 So as a result of that, we're taking that to
2 heart and we're actually trying to craft language, based
3 on what I think I heard you all say in December. But
4 that's actually not that easy, and I think it's not that
5 easy. And, in fact, in the end of December, after you
6 talked about it for about 50 minutes, I was listening for
7 about an hour last night on what you all talked about at
8 it, at the end of it you said, oh, we'll get to that
9 incidental thing at a later time.

10 And that's about where we're at right now. So we
11 have to actually struggle with this particular issue right
12 now. And so we set up kind of a proposal for you of how
13 to kind get through this issue. But maybe I'll start with
14 that basis, and maybe hear from the Commission before.

15 I'm going to go to Rob Leaf next. And Rob is
16 going to tell you a little bit about the issues of trying
17 to track that molecule and the difficulties that that's
18 going to have, and some of the unintended consequences
19 that could possibly have if we go that way.

20 And then Joe is going to wrap up and show you,
21 okay, here's our first stab at trying to deal with this.
22 And again, it's difficult to write down. We've been
23 struggling quite a bit with how to write this down. We
24 think we know what you want, but it's not always easy to
25 actually come up with the language.

1 So maybe I'll stop right there first and just ask
2 you all, do I got it right? Do you -- most of you had
3 agreed that we're not paying for this existing compliance
4 obligation, but we can't follow that water molecule and
5 we've got to be worried about the incidental compliance
6 obligations, and we can't track it, nor should we.
7 Otherwise, we'll never build anything if we go down that
8 route.

9 So maybe I'll stop there and just -- does that
10 sound appropriate? Is that what you all were saying in
11 December?

12 CHAIRPERSON BYRNE: You listened to it last
13 night.

14 MR. GUTIERREZ: That's why I heard. I sure did.

15 CHAIRPERSON BYRNE: So I'd -- yeah, I would trust
16 you. I think we had indicated that there's a
17 reasonableness to it, where it becomes frustrating to any
18 project if you were to, you know, look for every single
19 possible implication.

20 So, yeah, I think we were struggling with how to
21 put some parameters around it that made it possible.

22 MR. GUTIERREZ: Well, then that's good. And I
23 think the other thing we have to worry about is if we go
24 down that rabbit hole of those unintended consequences
25 that I worry about, that's actually going to discourage

1 integration of projects, and that's what we don't want.
2 So we've got to keep an eye on that.

3 So with that, I'm going to first ask Rob to just
4 kind of let's -- let's kind of discuss the issue, the
5 technical aspect of it, of why we got to worry about these
6 unintended consequences, and the modeling. So, Rob, if
7 you want to start.

8 MR. LEAF: Okay. So I'm going to speak
9 specifically to the practicality of modeling existing
10 compliance obligations and evaluating the benefits of a
11 project above existing compliance obligations.

12 And I'll speak -- some of this will be in general
13 terms, because applicants need to apply more models than
14 just CalSim and DSM-2, but I also want to speak
15 specifically to the product that was published on
16 September 9th, and the capabilities of tracking and
17 understanding compliance obligations, and how they fit in
18 with the operations of the system in CalSim. And so I
19 might get too technical for you. So just keep me pointed
20 up if I go down into the weeds.

21 So the models are limited in scope. And CalSim
22 was developed for evaluating the coordinated operations of
23 the State Water Project, the Central Valley Project and
24 how they meet obligations in the Delta. And it includes
25 some other large watersheds. But it, by no means,

1 encompasses all the complexity, all the waterways in the
2 Central Valley that contribute flow into the Delta.

3 And even in that, there's the long list of
4 compliance obligations on State Water Project and Central
5 Valley Project operations. Not all of them are included
6 in the CalSim model, simply because that would be a huge
7 endeavor, and for the purpose of looking at long-term
8 operations of the projects and the trends in those
9 operations with various different proposals.

10 Not all compliance obligations drive the
11 operations. A number of key compliance obligations do.
12 And oftentimes, the flows that are required to make --
13 make these major, those key obligations cover many small
14 obligations. And so the model just has the most important
15 pieces, and that we understand, and that we can track
16 compliance force.

17 These include obviously the D-1641 water quality
18 control plan for the Delta. These compliance obligations
19 also include the biological opinions, the 2008 Fish and
20 Wildlife Service BiOp reasonable and prudent alternative,
21 and the NMFS 2009 BiOp RPA as well.

22 There's some limitations of the models that you
23 need to be aware of in evaluating how water moves, and is
24 controlled subject to these compliance obligations. The
25 model is monthly in its time step, so we only know the

1 flows each month for an 82-year hydrologic record that's
2 simulated. Many of the compliance obligations have a
3 3-day, 15-day running average type of condition or
4 instantaneous requirements, the number of days of
5 compliance at a certain location for the X2 position, et
6 cetera that occur on a finer resolution in time than the
7 monthly time step.

8 Also, there's only specific key locations that
9 are accounted for in CalSim, probably just a few hundred
10 physical locations, rather than the thousands of locations
11 that compliance obligations govern. So we have temporal
12 and spatial limitations in our ability to understand how
13 compliance obligations met by this CVP/SWP operations in
14 the model.

15 We do have a more detailed model of the Delta
16 that works on a 15-minute time step that incorporates
17 title dynamics, and that's the DSM-2 model. That's also
18 part of the product that was published on September 9th.
19 So that gives us some data to look at how compliance
20 obligations -- you know, compliance with salinity
21 standards at specific locations in the Delta how those
22 work as well. But that simulation is driven by flows that
23 are governed by monthly decision structure of the CalSim
24 II model.

25 And so even though we have a lot of detailed

1 information, water is not being controlled according to
2 those details, but it is governed by the understanding of
3 the control of water from CalSim.

4 We also don't have all the parameters in these
5 models, so CalSim provides us information on flow, what's
6 in storage at different locations, diversions, Delta
7 exports, those kind of things. And DSM-2 provides us with
8 flows, stage, salinity conditions. We don't have
9 temperature. We don't know where the fish are. We don't
10 what the habitat condition might be.

11 That takes additional analyses beyond these
12 models in order to evaluate the ecological condition that
13 oftentimes is the basis for a compliance obligation. The
14 models also are structured for long-term simulation
15 purposes for looking over the long horizon.

16 It's a macro-scale landscape type of approach.
17 It doesn't -- we don't have the incremental details of
18 what triggers what. We know the bulk movement of water
19 subject to all the conditions. And those are determined
20 through a generalized set of rules that apply to every
21 month of every year.

22 In our practice of operating the State Water
23 Project and Central Valley Project, I'll just use the last
24 few years as an example, the RPAs have been in place the
25 last few years. We've faced a historic drought condition.

1 And the hydrologic conditions have constrained how the
2 projects perform in meeting those compliance obligations.
3 And that's been a subject of consultation across the
4 regulatory agencies.

5 And, you know, the projects operated subject to
6 those consultations in meeting the RPAs to the extent that
7 they could. But describing that compliance obligation for
8 the future, for looking forward to 2030, 2070 conditions
9 is beyond our ability to really understand and I would
10 say -- I would put it this way. It's an administrative
11 issue. We don't -- when we work on improvements of the
12 CalSim II model, we go out -- we go off of authoritative
13 documents. We go off of records.

14 This is an agreement between this agency and that
15 agency. This is a -- you know, a proposal -- you know, a
16 coordinated operation agreement. This is a written
17 standard. We don't apply any kind of discretion. We
18 don't have a consultation module that tries to decide the
19 real-time prioritization of regulations when all
20 regulations cannot be met.

21 So two points there. The major two points I want
22 to make that all these limitations lead to is that the
23 models in a long-term plan scenario will meet the
24 regulations that are specified in the model by the people
25 who develop the model to the extent possible. Something

1 like a temperature condition is met through specifying
2 flow requirements in the model that we believe flows would
3 lead to temperature.

4 You know in interpreting specific language in the
5 RPAs about where smelt are in the Delta, we don't know
6 that, so we assume a certain pattern of smelt behavior.
7 And that's the same every year, and we develop a
8 consistent set of rules based upon that. We don't know
9 exactly what that compliance obligation would be in
10 practice.

11 So there's this ambiguity and uncertainty about
12 what rules should be followed in order to comply with
13 obligations. In addition, we have one -- a very important
14 value that we get from these models is understanding how
15 the -- the interactions of different project facilities,
16 how things work together. And that makes it difficult --
17 the inter-tying of operation's decisions, the complexity
18 of the system makes it virtually impossible for us to
19 assign one specific purpose for why water might exist in a
20 river.

21 It usually is there serving multiple purposes at
22 once. It may be there, because it served a purpose
23 upstream or it's serving a purpose downstream. And it's
24 very difficult to disentangle these things.

25 So when we put a project into the CalSim model, a

1 new action based upon a project description of a project,
2 will get a change. And this model is not comprehensive
3 and not precise enough for us to understand in detail how
4 anything but these major aspects of the CVP/SWP operations
5 function, but we believe it's a reasonable tool yet to do
6 so.

7 It has limitations in the sense that a small
8 project it's not in the model. It's compliance
9 obligations would not be there say for up on some
10 tributary. But if it interacted with CVP/SWP facilities,
11 we believe that the model would be a good tool to
12 characterize changes in the system and benefits above
13 existing compliance obligations to the extent that their
14 met by the hydrologic conditions.

15 So that's the practicality of using the CalSim II
16 and DSM-2 model. These same challenges exist for every
17 other model that's out there. We are -- models are a
18 simplification of a real-world condition. We don't have
19 all the information that we necessarily would like to have
20 in order to govern operations of the project. There's
21 many uncertainties. We have to make decisions and
22 choices.

23 The basis for representing the compliance
24 obligations for the CVP and SWP in the Delta in the models
25 that we published in September 9th is a delivery

1 capability report that was prepared for the State Water
2 Project in 2015. And it was published in July of 2015.
3 That is a -- it is based upon a peer-reviewed CalSim II
4 model. There's been a peer-reviewed process going over
5 the last, I think, about 6 or 7 years. And that is the
6 latest published model from the Department of Water
7 Resources. It is current.

8 And we took the climate modifications and applied
9 those climate modifications to this model. So what that
10 means is that this model shows us a future that we
11 don't -- we haven't fully grasped, we haven't fully
12 understood. That point has been made by some of the
13 commenters today in regard to climate change.

14 But as it is, it's still our best most
15 comprehensive approach to see CVP/SWP compliance, and we
16 believe it's the best available tool for assessing
17 benefits over existing compliance obligations.

18 And Dave and Joe, I'll turn it back to you.

19 MR. GUTIERREZ: So I'll run the computer while
20 Joe just wraps up the staff direction on this particular
21 one.

22 MR. YUN: So the staff recommendation is really
23 two-fold. So the first piece I think is to try to use the
24 tools that we have and to build the boundaries for the
25 applicants. So if you're -- essentially, if you're using

1 CalSim --

2 --o0o--

3 MR. YUN: -- we'd say, if it's good enough to
4 quantify your benefit, the compliance obligations are in
5 CalSim I think we're okay, let's just take that. So you
6 utilize that model run. And we want to keep kind of the
7 picture on the larger level, so give somebody some bounds
8 as to not dig down too deep.

9 We would also have to, I think, include some of
10 the non-flow related obligations of the SWP/CVP, because
11 CalSim won't have those things built into it. So we'd
12 have to build some language around here's kind of the
13 boundary for everybody who's using CalSim.

14 The other piece of it, if you want to flip the
15 slide, Dave --

16 --o0o--

17 MR. YUN: -- is really doing some -- using the
18 process that we talked about earlier, the public process
19 that the Commission uses, to really make sure that we're
20 fully vetting things. So there may be some projects who
21 are up on a trip, as Rob was saying, that aren't using
22 CalSim don't have that kind of big view coverage, and they
23 may need to disclose some compliance obligations that
24 affect their benefits.

25 So everybody needs to do -- we're going to

1 require a disclosure. And I think the easiest way to do
2 that is we've -- we have a benefit summary, as part of the
3 application. We can add the compliance obligations that
4 you've considered juxtapose to that -- to those benefits.
5 So there's an easy for the Commission, for staff, for the
6 public to kind of see what people considered.

7 And then that falls into kind of the review
8 process. And we'd look at -- and so we'd run the review
9 just like we've said in the regs. We have DFW and State
10 Water Board on the review staff, they would be also
11 interested in making sure that existing compliance
12 obligations were not mistakenly considered or are not
13 considered in the public benefits.

14 So we may be -- and that might result in a change
15 in the public-benefit ratio. If we disagree with somebody
16 claiming a benefit, we've already said in the regs we
17 might change that public-benefit ratio. That goes out to
18 the public.

19 The public has the opportunity to -- or the
20 applicant has an opportunity to appeal those changes with
21 the Commission. There's a whole public process that is
22 built around the Commission hearing -- hearing the story
23 of did they consider then the appropriate mitigation and
24 compliance obligations or not?

25 So then the public -- general public has also

1 opportunities -- and we talked more -- I talked more about
2 this in -- earlier when we were talking public process.
3 We'll make it clear where the general public has time and
4 opportunity to come in and comment on these things.

5 So everybody has a chance to look at this. So
6 let's use the whole system that's already built, and do
7 the disclosure, and allow applicants, the public, and
8 Commissioners to sit down and say did we get this right
9 when they quantified the benefit?

10 But I think we want to hold -- try to hold it and
11 build bounds around the compliance obligations kind of in
12 a larger realm for folks, because we don't want people
13 digging. We've given them a tool. We've built a tool.
14 We should use the tool, and maybe this is a way that we
15 could make this process less onerous.

16 The other thing that's important here is if we
17 allow folks, I think, to dig too deep, then the review
18 becomes much more complex, because we have to figure out
19 how deep did they go? Did they go deep enough? And so
20 this is a way to kind of bound the process, but not stop
21 the conversation that may need to occur from proponents or
22 from the public in terms of what should the Commission
23 really be considering and did they consider everything
24 they should have in quantifying the benefit?

25 The last bullet I have up on that slide simply

1 said, you know, it's not -- it's just not confined to the
2 public benefit ratio. And that's just to point to there's
3 a lot more public process that you have. I just think
4 that that's likely where the discussion would really take
5 place is when you're talking about public benefit ratios
6 and did they properly quantify and value the benefit?

7 CHAIRPERSON BYRNE: Questions from Commissioners?

8 I have one, Joe. The language on except as, you
9 know, provided -- you know, the language says, "Except for
10 those associated with providing the public benefits as
11 described in this section", so that would be contemplated
12 in the identification of what the compliance obligations
13 are?

14 MR. YUN: What we'll have to do, depending on
15 directions, we still have to go back and draft -- Dave
16 said that, that some of the language wasn't quite right in
17 the regs, I think. And it's that 6004 language that
18 everybody commented on. That's really what we're talking
19 about. And so based on direction, we can go back and
20 recraft that language.

21 CHAIRPERSON BYRNE: Okay.

22 MR. YUN: I think the definition of existing
23 compliance obligations is something that we don't need to
24 go back and revisit, based on the assumption that the
25 Commission does not want to pay for existing compliance

1 obligations.

2 CHAIRPERSON BYRNE: Yeah. Okay.

3 Do we want to do -- if there's no -- yeah, no
4 Board comment, then we'll go to public comment.

5 So I would invite members of the public to come
6 up at this time on this issue. Again, feel free to sit in
7 your seat until there's an opening. But if you want to
8 queue up, that's fine, too.

9 Hey, Jim.

10 MR. WATSON: Jim Watson, Sites Reservoir Project.

11 So I guess I'd like to first start off with kind
12 of procedurally that the January 11th version that the
13 Commission approved to release to the Office of
14 Administrative Law included language on this subject that
15 we felt met Prop 1 requirements. And it was only in the
16 September 2nd draft that was released that there was a
17 change. And I have not been able to find anything in the
18 meeting minutes or records that indicate a Commission
19 action to staff to make a change in the regulations on
20 this topic.

21 But more importantly, I think you have to -- we
22 have to look at a couple things with this process. As Mr.
23 Leaf indicated CalSim is very complicated. It's a
24 comparative model, so it can tell you differences between
25 a no-project, or a with-project, or an option-with, an

1 Alternative A and Alternative B. We're trying to apply it
2 in a qualitative basis as if we were doing a permit. So
3 you're extending beyond what the model is intended to be
4 used for.

5 We also have operators that have gone on record
6 at the State and federal projects saying they do not
7 operate to CalSim. They operate to real time. So when we
8 talk about not being able to account for the molecule in
9 this compliance, is it going to be based on public
10 benefits derived from a model or real-time operations?

11 I think it's the operations that you really want
12 to focus on. I think that's the intent, not a model that
13 people will debate the merits of right or wrong.

14 And as we know that the State's water system is
15 highly interdependent, especially what it comes to the
16 Delta, can you really know where that molecule goes? The
17 State Board gave up. They basically have a temporary
18 urgency change petition process that allows for when
19 there's variations in the inability to meet existing
20 compliance and an obligation -- excuse me, obligation
21 requirements, to use an existing process to find a
22 compromise to keep the system working.

23 Similarly, there's a reconsult process with the
24 fishery agencies on the biological opinions and permit
25 conditions. So there are methods in place that allow for

1 variation, because we know and we're learning, we can't
2 deal -- we can't understand all the range of uncertainty
3 that can happen. We know normal years. We know above and
4 below normal. But when you get into the very dries and
5 criticals and back-to-back dries, these systems begin to
6 breakdown. That's why we have these additional processes
7 to allow changes to occur.

8 And I'd also like to say that, you know, by
9 having this environmental mitigation as it's written in
10 Prop 1, which doesn't differentiate between existing or
11 future really allows the Commissioners the discretion to
12 make a decision on what should be or should not be funded.

13 And I've racked my brain trying to think of what
14 would be a compliance that would not be potentially
15 eligible for Prop 1. And the only example I could come up
16 with was an in-river or in-Delta diverter. They've got
17 permits for screening water to put to beneficial uses. I
18 think in most cases you would argue that compliance with
19 those abilities to divert, that is their -- that is their
20 responsibility on they're permit. That should not be
21 considered an obligation of Prop 1 funds to be used for.

22 So that's an exception or an area I can see the
23 merits. But when you get into the Delta with water
24 quality and ecosystem, they're so over -- interrelated,
25 how do you define what is making a contribution or public

1 benefit?

2 When I look at -- an easy example of Shasta with
3 cold water pool benefits that are being looked for.
4 Today, it's being met 10 out of 10 years. With future
5 climate change, it drops to 7 out of 10 years. If my
6 project can restore that to 10 to 10 every year making it,
7 is that a benefit that the State is looking for in terms
8 of ecosystem to achieve the co-equal goals.

9 So we're getting in an area where I think the
10 discretion is going -- the Commission needs the discretion
11 to look at an individual application and decide on a
12 case-by-case basis does it meet the test that you have for
13 being something the State should fund?

14 Thank you.

15 CHAIRPERSON BYRNE: Thanks, Jim.

16 I could address the procedural question quickly.
17 So we -- I do remember we took a vote, and I think I was
18 one of the ones who was arguing for a few different
19 changes that weren't adopted. So this is staff's
20 recommendation to us. And until it's final, I mean, we
21 can -- anyone can make a motion to bring that language
22 back. So even though we're voting on things, it doesn't
23 mean that it can't be changed later. But we did -- I've
24 had that discussion with staff too and indicated that we
25 did vote on certain things. So they're coming back with

1 something, which is slightly different, and I acknowledge
2 that.

3 MR. WATSON: I apologize. I missed that between
4 January and September.

5 CHAIRPERSON BYRNE: No, no. That's a valid
6 question. There's been a number of questions about
7 procedure. And we're kind of informally trying to reach
8 consensus and conclusion on things, knowing that at some
9 point in time, anyone can still bring up an issue and try
10 to change it, if they'd like to.

11 MR. WATSON: Yeah. I only found a change to
12 eliminate the 2-step process, which this seems to be
13 either a casualty or linked with that -- with those
14 changes.

15 CHAIRPERSON BYRNE: Right.

16 MR. WATSON: So there was not -- I did not find a
17 separate answer or a separate motion to change the
18 language that affected those sections of the regulations.

19 CHAIRPERSON BYRNE: Got it. Okay.

20 MR. WATSON: Thank you.

21 CHAIRPERSON BYRNE: Thanks, Jim.

22 MR. SANTOYO: Mario Santoyo, San Joaquin Water
23 Infrastructure Authority.

24 Well, I just wanted to reemphasize the importance
25 of this issue. This is an important issue that has to be

1 dealt pretty carefully. Certainly, the volume of comments
2 will reflect that. I'm not going to reiterate what Jim
3 said, because I think Jim said it well. And so I'm just
4 here to let you know that we're in full support of what
5 Jim is saying, and that this is a really important issue.
6 It could have significant consequences on the viability of
7 projects. So thank you.

8 CHAIRPERSON BYRNE: Thank you, Mario.

9 MR. ROBIN: Good afternoon, Commissioners. Adam
10 Robin with the Association of California Water Agencies.
11 Really appreciate the opportunity to comment on this
12 issue, because we think it's a critical one. We've talked
13 about it a fair amount in the past, and we think it really
14 cuts to the heart of what it's going to take for the Water
15 Storage Investment Program to be successful.

16 I want to focus -- a lot of what we talked about
17 today isn't the language that's currently in the regs with
18 the September changes. I want to focus specifically on
19 what's in the regulations and why the new provisions that
20 were included in the September regulations advance an
21 approach to dealing with this issue that's inconsistent
22 with chapter 8. And I just want to give you a section of
23 the statute and a section of the regulations to kind of
24 provide some context for my comments today.

25 Water Code section 79753(b), as you know, says,

1 "That funds shall not be expended for the..." --
2 "...pursuant to this chapter, for the cost of
3 environmental mitigation measures or compliance
4 obligations, except for those associated with providing
5 the public benefits".

6 The regulations then define compliance
7 obligations -- existing compliance obligations extremely
8 broadly, as quote, "Legally enforceable requirements or
9 conditions in existing statutes, regulations, permits
10 contracts, licenses, or grants, or orders and decisions
11 from courts or State agencies intended to protect the
12 human or natural environment".

13 So what's new in the regulations is a restriction
14 that would prohibit funding of a project's public
15 benefits, if they're associated with an existing
16 compliance obligation. This introduces a distinction
17 that's not found in the statute, and would include not
18 only obligations that run to an individual project
19 proponent, but also, as Jim Watson was describing, Highly
20 interconnected and commingled system-wide compliance
21 obligations. They're all captured in that expansive
22 definition.

23 As written, this new restriction will limit the
24 ability of the Commission to fund the public benefits of
25 storage projects that provide real, meaningful,

1 system-wide public benefits, particularly when they're
2 most needed in dry and critically dry years, as we move
3 into an uncertain climate.

4 And as an example of the impact that this might
5 have, the first 5 water quality priorities incorporated
6 into the regulation, as provided by the State Water
7 Resources Control Board, are specific types of water
8 quality improvements for different parameters in
9 waterbodies that are currently not meeting regulatory
10 standards, not meeting a established water quality
11 standards.

12 Under the current approach, the language that's
13 in the regulation, projects that contribute public
14 benefits consistent with those water quality standards,
15 which are existing compliance obligations would not be
16 fundable as public benefits under the Water Storage
17 Investment Program.

18 To be clear, I do want to acknowledge the
19 interest that the Commission has expressed in the past, as
20 well as members of the public, that basically responsible
21 parties shouldn't let off the hook using Water Storage
22 Investment Program dollars. We think that's consistent
23 with the requirement that these investments be cost
24 effective and provide net improvements, real improvements
25 in water quality and ecosystem conditions.

1 The approach in the current draft regs, however,
2 goes too far and restricts the Commission's ability to
3 fund public benefits that relate directly to chapter 8's
4 goal of improving the operations of the State's water
5 system, and providing net improvements in ecosystem and
6 water quality conditions.

7 If I could just have 45 seconds more, I think I
8 could Summarize my comments.

9 So we'd encourage the Commissions to return to
10 the approach that you directed in the January draft
11 comments. And while it's been noted that that was, in
12 some ways, a kicking the can down the road, I think it was
13 actually clear recognition of the fact that the
14 development of these regulations, and the terms of the
15 regulations isn't the end of the process. So we'd agree
16 with the 2nd staff recommendation that was included above,
17 the application review process at the technical level, the
18 application review process at the public level.

19 And the contracts that these applicants and
20 projects are ultimately going to have to enter into with
21 Fish and Wildlife and the State Water Resources Control
22 Board are intended to ensure that real benefits are being
23 delivered.

24 If somebody is getting let off the hook for
25 something they're going to do anyways, it's going to be --

1 it's going to be sorted out in that process. But keeping
2 the reg -- the language in the regulation the way it is
3 now, will prevent you from finding real benefits that are
4 consistent with the goal of chapter 8. So our approach is
5 a 2-part one. Number 1, do what you did in December and
6 direct that the statutory language be reflected in the
7 regulations. And the second part of the recommendation is
8 consistent with what staff have said, and that's let the
9 process play out, let the applications in the review
10 process in the consideration process deal with existing
11 compliance obligations that you don't want to fund on a
12 case-by-case basis.

13 The regulations don't say you have to fund public
14 benefits associated with compliance obligations. They say
15 you can.

16 CHAIRPERSON BYRNE: Thank you, Adam.

17 Commissioner Curtin.

18 COMMISSIONER CURTIN: I wasn't clear on what -- I
19 was clear on what you said, but then you said the
20 regulations as they exist now are what you're proposing or
21 your regulations as they existed in January?

22 MR. ROBIN: As they were in January. We don't
23 support the current language that was introduced.

24 COMMISSIONER CURTIN: Okay. Because that's what
25 I thought you said that the existing language now. You

1 want to go back to the language that was reflected after
2 the December meeting in January --

3 MR. ROBIN: We want to go back to that approach.

4 COMMISSIONER CURTIN: -- which included the
5 statutory language with the exception.

6 MR. ROBIN: Correct. And we think one way to do
7 that in subsection (a)(4) is to add the language from the
8 set statute, "Except for those associated with the public
9 benefits", and then to strike (a)(5), because it
10 introduces this distinction between new compliance
11 obligations that we don't even -- as you know they were
12 saying, there's a lot of complexity when it comes to these
13 things, and we're not even sure what that means.

14 Thank you.

15 MR. FREDRICKSON: Good afternoon again. Justin
16 Fredrickson with the California Farm Bureau Federation.

17 I -- so -- what staff is proposing assumed a
18 decision is -- has already been made as to the larger
19 issue though, the one that has been addressed by the last
20 2 commenters, and that is the sort of the threshold issue
21 of what the statute says versus what regulation currently
22 says.

23 And staff stated that the statute is less than
24 clear, or that it's ambiguous. I don't believe it's
25 ambiguous. I think it's quite clear. And that's been

1 argued ad nauseam. I think we've -- I could go back and
2 count the letters that our organization alone did,
3 something like 5, arguing that over and over again. ACWA
4 a lot of the project proponents, most of the water users,
5 everybody has rehashed the same argument over and over
6 again. And it's just a straight statutory construction
7 issue. It's a legal issue. It's a policy issue. That's
8 the threshold issue that needs to be crossed before we get
9 down into the weeds of looking at whether you can trace
10 every molecule and so forth. You know, that's the lesser
11 issue. And actually, I think that's more in the realm of
12 discretion that you might bring to looking at a question
13 of what is a fundable public benefit or not.

14 But as to the -- you know, the threshold issue,
15 it's clear. It says, "Environmental benefits shall not be
16 expended except for those associated with providing public
17 benefits". Clear as day. And there are 2 other sections
18 where it says the opposite. And some of the stakeholders
19 have argued because it says something different elsewhere
20 in Proposition 1, therefore it just wasn't said here, and
21 we can infer that it was intended to say what it says in
22 these other 2 sections.

23 And it's actually under statute -- rules of
24 statutory construction, it's just the opposite. If there
25 are 2 sections that say something different, and then

1 there's one that says if there's a difference, it's
2 presumed to be intentional.

3 And so I think there's a concern, I guess,
4 that -- as best I can understand it, that there's -- that
5 you would be privatizing a public benefit -- or calling a
6 public benefit something that is -- it's -- there's a
7 privatized benefit. It's privatizing, you know, a water
8 user, and therefore you can't do it.

9 But I think that all that Proposition 1 is
10 looking for and all the voters thought they got when they
11 voted in improving it, is that they would get a net
12 benefit. There would be a net improvement, and there
13 would be -- projects would be sorted out on -- based on
14 the magnitude of a statewide benefit, period.

15 So there was -- there was a staff memo at one
16 point that got it right, and then we veered away from that
17 several times. It feels like pushing the bolder up over
18 and over again, and I can't understand why. And it's
19 never been explained.

20 Actually, I want to play the tapes back from
21 December, because a number of us were left with The
22 impression based on that extended discussion that was had
23 at that time that a majority of the Commissioners had --
24 gave the direction that we were going to stick with the
25 statute -- the language in the statute and allow some

1 discretion.

2 And then I think someone else has also made
3 that -- can I go on? Can I just wrap up? Someone else
4 has made the -- someone has said a regulation should not
5 just restate the statute, it should add something.

6 Well, that may be the case, but it also -- a
7 regulation also cannot be inconsistent with the statute.
8 At a minimum it has to be consistent. And if there's
9 something that needs to be added, maybe that's something
10 is how the Commission's discretion would look in sorting
11 out what is a public benefit that's going to be sorted or
12 not, but not, you know, prejudging that statutory
13 construction issue that's a real threshold question.

14 And this really is important. It's the only
15 thing I think we've commented on. Many others have
16 commented on it. It's never been explained why we're in a
17 different place.

18 CHAIRPERSON BYRNE: Thank you for your comment.

19 MR. ORTEGA: Hello again. Ric Ortega, Grassland
20 Water District. My district, along with 6 conservation
21 groups, submitted written comments on the proposed
22 regulations. We ask that the Commissioners direct staff
23 to work with the Department of Fish and Wildlife to
24 clarify the regulations or technical document that
25 ecosystem priority for wetland waters supplies must be

1 incremental level 4 supplies for those refuges already
2 receiving level 2 supplies. This is consistent with the
3 assumptions used in CalSim, as they account for level 2
4 supplies and deliveries.

5 These 19 refuges have worked for decades to
6 obtain reliable water supplies. You know, this is the
7 last remaining wetlands in California in our minds. This
8 clarification would help the State identify and support
9 projects that create net water supply benefits to refuges.
10 That is, by far, a most important concern and request, and
11 it is not controversial amongst -- amidst this broader
12 conversation. So we're hoping that this direction can be
13 given by the Commissioners today to their staff.

14 Thank you.

15 CHAIRPERSON BYRNE: Thank you very much.

16 MS. NOLAND-HAJIK: Good afternoon, Mr. Chairman,
17 members of the Commission. Lauren Noland-Hajik on behalf
18 of California Cotton Ginners and Growers Association,
19 California Citrus Mutual, California Fresh Fruit
20 Association, Nisei Farmers League, and Western Ag
21 Processors Association.

22 I want to align my comments with Justin and Adam,
23 because I thought they did a great job of explaining what
24 we've been dealing with when it comes to this part of the
25 regulation. I remember sitting with Justin and Adam

1 during the stakeholder advisory committee meetings, and we
2 wrote multiple letters and had conversations with staff
3 during that process on this portion, and finally got what
4 came out of the stakeholder advisory committee meeting to
5 reflect the language of the statute. And then as Justin
6 said, we've sort of been redoing it again and again and
7 again.

8 Our concern with the regulation right now in that
9 section 6004 is that it says that the Commission shall
10 not -- that it's cost share cannot be associated with the
11 existing environmental, mitigation, or compliance
12 obligations. So it precludes what's plainly laid out in
13 the statute that the Commission can fund all mitigation
14 and compliance obligations, as long as they're associated
15 with providing the public benefits as described in chapter
16 8.

17 So what we're requesting is that the actual
18 regulation reflect what's in the statute. I understand
19 that as Dave said there may be some hesitation on the
20 Commission to actually fund existing mitigation and
21 compliance obligations, and that is something that may be
22 in your discretion once these projects are up and eligible
23 for funding. But as to what the regulation says that you
24 can fund, we would request that it actually reflect the
25 language that is in section 79753(b) of chapter 8.

1 Thank you.

2 CHAIRPERSON BYRNE: Good timing. Always
3 appreciated.

4 MS. ZWILLINGER: Hi. I'm Rachel Zwillinger with
5 Defenders of Wildlife. So I think I will start with this
6 basic issue as you've heard from several commenters,
7 rather than the specific staff proposal, which I will
8 hopefully get to second.

9 On this fundamental issue about the ability of --
10 the language in the regulations with respect to existing
11 mitigation and compliance obligations. I think contrary
12 to what you are hearing from several contractors, the --
13 sorry, commenters, the language in the statute is very
14 clear.

15 And I can walk through the statutory
16 interpretation to the extent that would be helpful, but I
17 think this language is very clear that chapter 8 funds
18 cannot be used to pay for existing mitigation and
19 compliance obligations, and that the language in section
20 6004 of the regulations as currently drafted is the only
21 legally defensible interpretation.

22 And so I think this is something that has changed
23 over time and that has improved, and with the Commission's
24 direction has gone in the right direction, and would hate
25 to see and be very concerned about any backsliding on this

1 issue, among other reasons, because what we are supposed
2 to be seeing is public benefits and ecosystem improvements
3 from this funding. And to the extent we're using the
4 funds to pay for existing mitigation and compliance
5 obligations that we should be doing anyway, the public
6 isn't getting any benefit from that.

7 With respect to the specific approach to modeling
8 and doing this sort of iteratively with public comment
9 that has been proposed today, I think you know it would be
10 helpful to see the language. And to the extent you're
11 actually suggesting changing the language in 6004 with
12 respect to sort of how you would define the existence of
13 mitigation and compliance obligation, you know, I think we
14 would be interested and concerned to see that and look
15 forward to working with you on the issue.

16 One of our concerns was that reading through the
17 technical reference document there were some suggestions
18 that we found that not all of the RPAs from the biological
19 opinions, for example, would be considered existing
20 mitigation and compliance obligations, based on project
21 operations in certain years. And that was a concern. So
22 I think walking through some of those details could be
23 helpful.

24 But generally wanted to reaffirm on the broader
25 issue that the current draft of the regulations is more or

1 less correct and certainly going in the right direction.

2 Thanks.

3 CHAIRPERSON BYRNE: Thank you, Rachel.

4 MS. MARTIN: Maureen Martin again from Contra
5 Costa Water District. And we would like to just basically
6 say me too, voice support for some of the comments made by
7 others, including ACWA, and also for those made by
8 Grassland, you know, including clarification on the level
9 4 benefits for refuges, and so we're very supportive of
10 that addition as well.

11 And I do think that there is something
12 potentially in conflict just throughout the regulations.
13 You know, as Adam pointed out, the water quality
14 priorities from the State Board are already existing
15 obligations, but some of the language that you guys have
16 all voiced that you're really interested in, in terms of
17 integration, system flexibility, really rely on the
18 evaluation of meeting existing obligations.

19 And so that's what the CalSim tool is basically
20 set up to do. That's what all the operating rules are
21 doing. So it becomes very unclear how you disentangle,
22 you know, the way you are evaluating the projects separate
23 from meeting existing obligations.

24 And so just to give yourselves, you know -- and
25 we can be more nuanced in terms of what you choose to fund

1 and how defined it, and how you sliced it, and evaluate
2 it. But I just would urge you to be cautious and provide
3 yourselves flexibility for the tools you're promoting for
4 the priorities that you've set in other places to make
5 sure that you don't end up, you know, making it, you know,
6 inconsistent within your own set of regulations.

7 So thank you.

8 MS. DENNING: Good afternoon. Michelle Denning
9 with Reclamation. And I did -- I wanted to agree with Jim
10 Watson that CalSim is a planning model and it represents
11 at the scale that it can, what obligation -- existing
12 obligations are, but it does not define what anybody's
13 obligations actually are.

14 And we haven't reviewed the model run to really
15 confirm or validate that it represents the Central Valley
16 Project obligations in the way that we would agree. And
17 one part of your process could involve -- this you're
18 thinking that an application does sort of tread on or
19 incorporate a federal obligation, sort of a check with the
20 federal government as to whether we agree that that's an
21 obligation or not just to validate before you decide yea
22 or nay might be helpful. It might be good for other
23 people with -- or entities with obligations too.

24 ACTING EXECUTIVE OFFICER RAVAZZINI: Mr. Vice
25 Chair, if we could just check in with the court reporter

1 just to see -- do you need a break or are you okay.

2 THE COURT REPORTER: I'm okay.

3 ACTING EXECUTIVE OFFICER RAVAZZINI: Excellent.
4 Sorry. Thank you.

5 VICE CHAIRPERSON DEL BOSQUE: All right. Okay.

6 COMMISSIONER ORTH: I have a question. Do we
7 have at hand the language that came out of the December or
8 January meeting that was proposed? Do we have -- yeah,
9 okay. Could you read that? Would you mind reading that?

10 GENERAL COUNSEL STOUT: And if I have the wrong
11 section, I'm sure someone will correct me. The January
12 regulations, what they said under allocate costs to
13 beneficiaries specifically in subsection (7)(a)(4) said,
14 "Shall not be associated with existing environmental
15 mitigation or compliance obligations, except for those
16 associated with providing the public benefits." And then
17 I believe subsection (5) remains unchanged.

18 COMMISSIONER ORTH: So we have had the word
19 "existing" in the regulations back to the January draft.

20 GENERAL COUNSEL STOUT: Yes, that's correct, and
21 I need to --

22 COMMISSIONER ORTH: Some parties raised issue or
23 raised concern with respect to, but that word has been in
24 as a result of some of our previous conversations and
25 interpretation, right?

1 GENERAL COUNSEL STOUT: Yes. And I do need to
2 clarify, there were a couple of changes to subsection (5)
3 as well from the January version. And that subsection (5)
4 in January said for the same allocation of costs, "Shall
5 consider the cost share of environmental mitigation..." --
6 there's no existing in there -- "...or compliance
7 obligation costs associated with the proposed project
8 component, which shall not exceed the percentage of the
9 public cost allocation for the related public benefit
10 category." I believe in the next -- in the version that
11 we released in September there's a "new" that was inserted
12 before "environmental".

13 COMMISSIONER ORTH: Okay. Thank you.

14 CHAIRPERSON BYRNE: So are we at --

15 MR. GUTIERREZ: Let me try to make a --

16 CHAIRPERSON BYRNE: Yeah, you want to get in
17 there before have at it.

18 MR. GUTIERREZ: -- try to adjust a few things and
19 then you could all give us some direction.

20 So first, I'll start off by saying we believe
21 that the language that we have in the current draft needs
22 some work. We have to change it. So let me explain what
23 we're actually trying to intend to do. And this is the
24 problem that I think I introduced, and that is it's been
25 very difficult to come up with language that actually

1 tries to say what we're trying to accomplish here.

2 And so I think what Adam had indicated is what
3 we're trying -- what we're trying to do is -- based on
4 what we heard in December is we're trying not to let off
5 the hook these compliance obligations that are obliged by
6 somebody else already. That's basically what we're trying
7 to accomplish.

8 And so we're also trying to figure out a way
9 where we can actually practically apply that. How do you
10 practically apply that? And our idea of -- right now is
11 to, well, just practically apply that through the model,
12 because a lot of the compliance obligations are already
13 driven in there.

14 So whether we go that way, or whether we change
15 the wording yet again, you know, we're certainly okay with
16 that. But what we're trying to do is we're actually
17 trying to figure out a way to just, you know, on the one
18 hand, not let others off the hook, but on the other hand,
19 let's not get wrapped into trying to track down these
20 incidental compliance obligations along the way.

21 So I'm not sure we're too far off from what I've
22 heard today, but we're having a really difficult time
23 crafting language to actually say that, and that's part of
24 the problem.

25 CHAIRPERSON BYRNE: I'm quickly just going to

1 give my recollection on the issue of the language. And I
2 appreciate that, Dave, and I think we're not too far off
3 either. And I appreciate the effort to put some practical
4 parameters around it.

5 I'd always thought of it as they'd give us a list,
6 and then in the -- maybe it was -- I forget who had said
7 it. Maybe Jim had said it, in the operation of the
8 project you would be obligated to not interfere with
9 whatever was in the list or something like that. So I
10 still like that idea, the operational aspect. And, I
11 mean, the model is, I guess, important for figuring out up
12 front. And maybe I don't understand it enough, but I
13 would think we'd want to have some practical application
14 as well as things are happening in real time. I imagine
15 this contract and management of the benefits is going to
16 be something that's needed to be coordinated.

17 But on the language itself, and I do remember the
18 more we're having this discussion, the more I'm
19 remembering what we talked about. And I remember it being
20 painful.

21 (Laughter.)

22 CHAIRPERSON BYRNE: But anyway, it says -- so it
23 does say, "Compliance obligations, except for those
24 associated with providing the public benefits as described
25 in this section." So I had always interpreted that. And

1 contrary to what everyone said, it is obviously not
2 crystal clear, because people think it's crystally clear
3 in different directions.

4 But, "Associated with providing the public
5 benefits as described in this section." So I had thought
6 of it as anything to mitigate any compliance obligations
7 that you're creating as a virtue of the footprint of your
8 projects. And I think I used that exact terminology back
9 in January. So I haven't shifted on that or changed on
10 that. And that was my understanding of that. I think
11 broadening that to mean any public benefits that are being
12 provided you don't have to -- you know, you can just, you
13 know, go right on top of -- or not even on top of, you can
14 replace what maybe water is supposed to be provided for
15 whatever purpose.

16 I don't remember ever going down that road. So I
17 was a little surprised when I saw some of the comments,
18 not because I'm not sympathetic to them, but I didn't
19 think that that was what we had discussed in the past.
20 Although, it could be just my recollection.

21 So I don't know -- I mean, ultimately the model
22 concept is a little confusing to me, but it does make
23 sense to try to wrap some parameters around it. And I
24 think -- my impression is I think we're heading as you're
25 going and trying to create some kind of iterative process

1 in the right direction is something I'd be more
2 comfortable with -- or comfortable with.

3 Commissioner Daniels.

4 COMMISSIONER DANIELS: You know, I do remember
5 the discussion in December. And I made reference to the
6 points of the provisions of the statute that I thought
7 made it clear that you wouldn't pay for existing
8 compliance obligations. I recognize that there's
9 different interpretations, but I also recognize that
10 there's different interpretations of practically every law
11 on the books, and including our Constitution and the Bill
12 of Rights. So there's lots of difference of opinion. I
13 gave my opinion at the time, and I'll just refer to that
14 again, because I know it's in the record.

15 The question I have for you is about the point
16 from the Grassland's District. So the level 4 water I was
17 interested in that point. It seemed a reasonable point to
18 me, and I wanted to get your reaction.

19 MR. GUTIERREZ: We're going to try to address
20 that, probably not in regulation, but I think we're going
21 to try to address that in the technical reference
22 document. I don't think we disagree.

23 COMMISSIONER DANIELS: Okay.

24 MR. GUTIERREZ: It's how do we -- how do we fix
25 that in the TRD.

1 COMMISSIONER DANIELS: All right. Thank you.

2 CHAIRPERSON BYRNE: Mr. Orth.

3 COMMISSIONER ORTH: I appreciate that you're
4 going to try to clarify that. I wonder if it might not be
5 part of the relative environmental values section of the
6 regs, but I'll let you decide that, you know, as perhaps
7 clarification, because it is addressed there now. I mean,
8 the refuge water is addressed there without specific
9 reference to the level 4.

10 I guess I wonder -- what I recall in this
11 conversation -- I know we all have perhaps different
12 recollections, and I find my memory fading more rapidly
13 these days -- was that, you know, we did try to clarify.
14 We discussed this unwillingness to get caught in a trap
15 where we were funding somebody's existing obligations as a
16 benefit from a new project.

17 On the other hand, I think where we've ended up
18 with the current regulation is we've eliminated a
19 critically important exception, which comes right out of
20 the statute. Because in the January draft, we had,
21 "Except for those associated with providing the public
22 benefits," and now we've dropped that so that it reads,
23 "Shall not be associated with existing environmental
24 mitigation or compliance obligations."

25 I think we have to put back in the except -- the

1 exception.

2 CHAIRPERSON BYRNE: I agree.

3 COMMISSIONER ORTH: I mean that's straight out of
4 the statute. That's not creating anything. It gives us
5 the guidance and the ability to make a determination down
6 the road whether or not a benefit that's being offered to
7 us is existing or associated with providing the public
8 benefit.

9 CHAIRPERSON BYRNE: Dave, you want to -- you'd
10 indicated to me that that was something you thought was
11 just left out, because I agree with Dave.

12 Dave Dave.

13 MR. GUTIERREZ: Okay. So we would agree, but it
14 kind of depends on how we end up crafting the language.
15 So we agree this language has to change, because I
16 think -- I don't think it was purposely changed to make it
17 different than what we had it. But we're -- but what
18 we've been trying to do is trying to provide a practical
19 approach for it.

20 And I think based on comments, based on review of
21 our staff, we have to completely rearrange this -- this --
22 these 2 sections. So I would agree with Commissioner
23 Orth, but it kind of depends on the direction that we go,
24 in terms of are we -- you know, can we figure out a
25 practical approach to this, or maybe the answer is we just

1 can't. I mean, our approach was to try to use models, so
2 that it's just -- it just happens. You just calculate it
3 out and it's done, so we don't have to argue about it
4 later.

5 But that may not work, and that's I think what
6 we're trying to understand from Commission, if there's a
7 better way to do it. Otherwise, it leaves discretion
8 without too much criteria, and that's what we're worried
9 about, to give you a little bit of guidance, so we all
10 remember what we're trying to accomplish.

11 CHAIRPERSON BYRNE: Just to follow it up, and
12 I'll -- so in the model you're talking about, and the
13 method we're talking about, is there a way to contemplate
14 that exception, because clearly it is an exception that --
15 or are you saying that if --

16 MR. GUTIERREZ: We think it's already built in to
17 the model. I mean, remember, what we're trying to do is
18 we're trying to figure out these project benefits in
19 advance of anything even being built. So when we talk
20 about the operations, absolutely the operations are going
21 to change everything, but we don't know what those
22 operation are.

23 CHAIRPERSON BYRNE: What's known at that time
24 would be all that would be what's put in.

25 MR. GUTIERREZ: It's going to be different when

1 the actual project gets built, and it starts getting
2 operated, and the project benefits won't perfectly line up
3 what we thought, you know, 10 years prior. But we have to
4 have something now, because we have to make all these
5 calculations on project benefits, et cetera.

6 So our initial thought was to try to use this
7 model to do that. And again, we're trying to figure out a
8 practical approach to avoid getting caught up in this
9 incidental issue, because I don't think anybody wants
10 that. We could go down that rabbit path, and then we'll
11 never -- we'll never fund anything, if we do that.

12 CHAIRPERSON BYRNE: Commissioner Curtin and then
13 Daniels.

14 COMMISSIONER CURTIN: And so I think that's the
15 fundamental issue. The language can be interpreted many
16 ways, but it is in there. And if you take it out, it
17 begins to look like we can't fund anything.

18 MR. GUTIERREZ: Yeah, I don't think that's what
19 our intention is, so we have to work on that.

20 COMMISSIONER CURTIN: I would recommend that you
21 put the language back in, and then we'll figure out how we
22 can be flexible. I don't think anybody here wants to pay
23 for a mitigation, let's use the Sacramento water
24 situation. They have to spend billion, billion and a
25 half, \$2 billion to clean up their water treatment. And I

1 don't want to be able to say, well, Sites Reservoir is
2 going to clean the water that they should be cleaning,
3 therefore it's not going to be a public benefit.

4 I mean, we could figure that out as a flexible
5 issue to discuss at the board. But if you don't put that
6 language in there, you tie our hands. We have no ability
7 to do it. And if I were an attorney, I'd have a field day
8 with this. And I'm assuming the attorney hopefully will
9 agree with me, but it's in the statute. And if we take it
10 out, then we cannot fund our existing -- it doesn't even
11 say existing obligations and mitigation.

12 I agree with Joe's point that, well, there is a
13 question about the mitigation. If you're building a
14 project, a large scale project, Sites, Temperance, you
15 have mitigations that you're going to do. Now, do we get
16 to say, we're not going to fund those mitigations.

17 Well, maybe we do. I mean, that's the discussion
18 we're going to have. And frankly, I think we're going to
19 have a lot less concern about this than everybody else is
20 having about it, if that language is in there. If it's
21 not in there, then I think they're absolutely right.

22 CHAIRPERSON BYRNE: Commissioner Del Bosque.

23 VICE CHAIRPERSON DEL BOSQUE: You know, to me, I
24 think that the regulations -- I just have to state, you
25 know, this, that. The regulations have to be consistent

1 with the statute. And if we omit something, then we're
2 not with the spirit of the law. And I think that if that
3 was put in there by our law makers, we have to figure out
4 what it means. And whatever it means has to be in the
5 regulations.

6 Commission Quintero.

7 COMMISSIONER QUINTERO: But, you know, in the
8 end, we get to decide what percentage of the public
9 benefits we're going to fund, you know, and so this
10 doesn't obligate us to fund preexisting obligations. And
11 I also really think when we're looking at the whole
12 package of all of these projects and all of the public
13 benefits, if it's weighing -- we're going to be weighing
14 different types of benefits. And I have a feeling that
15 preexisting -- you know, preexisting obligations are not
16 going to be at the top of the list.

17 CHAIRPERSON BYRNE: Commissioner Daniels.

18 COMMISSIONER DANIELS: I just -- I appreciate
19 staff's attempt to find a way through this because it is
20 complicated no matter how you write the language. And
21 I -- when we talked about it before, your idea sounded
22 definitely interesting to me. So I feel like it's worth
23 exploring what they're proposing, at least as a -- a set
24 of direction. I already made my point about what should
25 or shouldn't be in the language back in December. I'm --

1 I still fee the same way for the same reasons.

2 But in terms of how you navigate it, regardless
3 of whether that phrase is in there, you still have that
4 problem, and it sounds a reasonable approach. So I just
5 wonder if there's a way to -- is there a way to sort of
6 demonstrate how it might work for the Commissioners?
7 Would that be worthwhile or what would you need in order
8 to be able to go forward with that, or what do the
9 Commissioners need in order to be able to go forward with
10 letting staff try that approach?

11 MR. GUTIERREZ: Commissioner Daniels, to make
12 sure I understand your question, your question would be
13 the approach of just using the model?

14 COMMISSIONER DANIELS: Using the models, which is
15 what you're proposing today.

16 MR. GUTIERREZ: Okay. So maybe I'll have Rob try
17 to --

18 COMMISSIONER DANIELS: Because it sounds like
19 we've talked about other things just now. We've talked
20 about language, but we haven't talked about that.

21 MR. GUTIERREZ: Okay.

22 COMMISSIONER DANIELS: So I feel like you need
23 direction on that, and it seemed like a way to go.

24 What --

25 MR. LEAF: So just to be clear on the question is

1 how -- what the process or procedure we'd follow to use
2 the model as the basis for --

3 COMMISSIONER DANIELS: Yeah.

4 CHAIRPERSON BYRNE: You might want to move your
5 microphone a little --

6 MR. LEAF: -- evaluating --

7 CHAIRPERSON BYRNE: -- closer there, Rob.

8 MR. LEAF: Yeah, I'm sorry.

9 So the one way to approach this -- I mean, the
10 model has its limitations that I just went through. So
11 we'd have a simulation with -- without the project, a
12 simulation with the project, and we would assume that the
13 model is keeping compliance in that simulation process
14 with everything that's included.

15 And so then the difference would be the net
16 effect. And any benefit that's claimed by the applicant
17 would be based upon that change, without -- without regard
18 for -- you know, without addition of information to the
19 model -- you know, without -- you know, separating out
20 that that -- half of that difference is due to some
21 compliance obligation that is not already in the model.

22 Now, the technical reference document and the
23 other -- and the language in the quantification step where
24 the applicant creates that with-project simulation,
25 they're asked to -- we recognize that the CalSim II model

1 has not been developed for these proposed projects. It's
2 been developed for valuing State and federal operations.

3 So one of the things that the applicant would
4 have to do to make the model reliable for this purpose
5 would have to incorporate in the without-project
6 condition, and therefore the with-project condition,
7 compliance obligations that they disclose.

8 COMMISSIONER DANIELS: That they're aware of.

9 MR. LEAF: Right.

10 COMMISSIONER DANIELS: Yeah.

11 MR. LEAF: So really the intent then of this
12 approach is -- you know, is that we would -- you know, the
13 model right now has a State and federal operations
14 requirements. We would say that's good. That complies.
15 Even though there are times where there's hydrologic
16 conditions are such that there's just not enough water to
17 go around. And something -- in reality, something else
18 would happen. There would be a consultation process, and
19 there would be a -- you know, a management of that
20 compliance when those conflicts exist.

21 But for the purpose of the benefit
22 quantification, we would -- for State and federal, we say
23 the model is good for that. Now, your project, if there's
24 something that you're disclosing that you're aware of that
25 you need to disclose as part of your benefit evaluation,

1 you need to put that in the model, along with -- you know,
2 in the without-project condition and the with-project
3 condition, so that that baseline condition is established
4 for your evaluation.

5 COMMISSIONER DANIELS: It seems like a way to go,
6 because I see the problem they're trying to solve. And I
7 am sympathetic. I hope the applicants understand this,
8 that I am sympathetic to what they have to go through.
9 The only reason I didn't vote for the last motion was
10 because I didn't understand what it actually meant.

11 But I -- if it meant that let's try and make it,
12 you know, more streamlined, that makes sense. So it
13 sounds like this might be a way to streamline things. So
14 it kind of makes sense to me. I'll just make that point.

15 CHAIRPERSON BYRNE: Commissioner Baker.

16 COMMISSIONER BAKER: Well, I wasn't here for the
17 December meeting, but I did several times look at the
18 video. And, you know, I concur with the other
19 Commissioners here in terms -- and staff's approach. And
20 so I just kind of want to make that, in terms of my
21 position.

22 And then just as a matter of clarity on the -- on
23 the wildlife refuge language, Dave, when you said that
24 you're going to be working on it, that means you'll be
25 working with the Department of Fish and Wildlife on that

1 language?

2 MR. GUTIERREZ: (Nods head.)

3 COMMISSIONER BAKER: Okay. Thank you.

4 MR. GUTIERREZ: I think we're already doing that,
5 and I think they're proposing some language for us.

6 COMMISSIONER BAKER: Thank you.

7 CHAIRPERSON BYRNE: Okay. I think I agree with
8 Danny and the others. And I think the exception language
9 should be put back in. I think -- and I think Danny hit
10 the nail on the head, the real discussion about the
11 language is what's the scope of it or not, and whether
12 we -- you know, how do we tackle that now, or is it
13 something that is tackled in the process?

14 But is there a pleasure of the Board at this time
15 on the issue? Is it --

16 COMMISSIONER CURTIN: Do we need a motion to put
17 that in or do you got that?

18 MR. GUTIERREZ: No, I think we have that. And I
19 think we had realize that already anyway.

20 CHAIRPERSON BYRNE: It's consensus.

21 MR. GUTIERREZ: I think what we need now is --
22 and it doesn't have to be definitive, because we're still
23 working on it. It was an idea that we brought to you.
24 Option number 1 would be should we continue to pursue
25 trying to come up with a practical approach of just using

1 the model. And the only reason we're trying to do that is
2 just to make it a simple yes/no answer when we get down
3 there later on whether it's a compliance obligation or
4 not, or do we fiddle with the language a little bit more
5 trying to address the issue of -- we all agree we're not
6 trying to let folks off the hook, but on the same time we
7 don't want to go down that rabbit hole of trying to track
8 every incidental compliance obligation.

9 So option 1 would be we do it with the model
10 mostly. And then option 2 is we skip the model and try to
11 craft language to try to say that. And then you're going
12 to get at a point later when you have to make these
13 decisions, you're going to have -- you're going to have to
14 make the decision, and we're going to have to somehow make
15 sure we don't follow down those rabbit holes of incidental
16 compliance obligations.

17 COMMISSIONER CURTIN: So I have a question about
18 that.

19 MR. GUTIERREZ: Yeah.

20 CHAIRPERSON BYRNE: Yeah.

21 COMMISSIONER CURTIN: Are you talking about the
22 ability to identify existing obligations --

23 MR. GUTIERREZ: Yes, yes.

24 COMMISSIONER CURTIN: -- so that we know about
25 them?

1 MR. GUTIERREZ: Yep.

2 COMMISSIONER CURTIN: So do we really need to
3 craft a regulation to figure out that or can we indicate
4 that, you know, to the degree that the information is
5 available, or can be made available, or we do -- I mean,
6 is there --

7 MR. GUTIERREZ: There is that, but there's also
8 the point where we don't want to be challenged at every
9 step of the point because we -- this compliance obligation
10 that the applicant is proposing could potentially conflict
11 with somebody else's obligation, and it's so difficult to
12 figure out. We don't want to get into that argument
13 later, at some point in the future.

14 COMMISSIONER CURTIN: But if we know, we'll get
15 into it before, is that what you're saying, before we
16 decide as opposed to after we decide?

17 MR. GUTIERREZ: Yeah, right.

18 COMMISSIONER CURTIN: Then we find out, oh, there
19 was an existing obligation we need to revisit it.

20 MR. GUTIERREZ: Right.

21 COMMISSIONER CURTIN: Oh. Okay. That's a little
22 different. If you have a tool to look into it, that would
23 make sense.

24 MR. GUTIERREZ: And we could pursue it, and look,
25 and find out maybe it's just not going to work or we could

1 pursue it and bring it back and say, yeah, we think that
2 is going to -- it could work.

3 CHAIRPERSON BYRNE: So is the model then it's
4 putting parameters around what those -- the list --

5 MR. GUTIERREZ: It's basically trusting the model
6 to give you the answer of whether it's a project benefit
7 or not, realizing all these other things that Rob had
8 indicated of all these other things it's not going to do.
9 And also realizing it's just a planning tool, and we're
10 just trying to calculate a project benefit, realizing in
11 the real world later, when the project actually goes, the
12 operations are going to change so much. But we need a
13 number now to be able to judge and to prioritize projects.

14 CHAIRPERSON BYRNE: So what's your preference,
15 Danny, as you're walking out? No pressure. No, that's
16 fine.

17 COMMISSIONER CURTIN: No.

18 CHAIRPERSON BYRNE: Commissioner Orth.

19 COMMISSIONER ORTH: Yes, my --

20 CHAIRPERSON BYRNE: Yeah, you can go, Danny.
21 That's fine.

22 COMMISSIONER ORTH: My understanding of this is
23 that the model assumes that all the existing obligations
24 are filled. So you run a model as if everything is
25 filled, and then you put the project on top of it to

1 determine whether or not it adds public benefit, right?
2 And so I can see it as a decent evaluation tool with the
3 qualification that was noted by Mr. Watson that that's
4 really not the way we run the projects, right?

5 MR. GUTIERREZ: Right, that's true.

6 COMMISSIONER ORTH: And I think you just observed
7 that when you get to the practical application of the
8 project, it may very well provide, you know, benefits in a
9 different way. And so I don't want the model to be
10 restrictive in the decision-making process. I mean, if
11 you want to use it as an indicator but allow, you know,
12 the applicant, the public, and even the Commission to, you
13 know, consider those model results against other factors,
14 or whatever -- however you want to do it, I don't want to
15 get put in a box here.

16 Because when we get -- we get put in a box when
17 we start trying to trace the molecules. And that -- and
18 that's -- we've already acknowledged that that puts us in
19 a place where we can't fund anything, and I know that
20 wasn't the intent of chapter 8.

21 MR. GUTIERREZ: That's correct. Okay.

22 CHAIRPERSON BYRNE: Would there be consensus
23 amongst the Commission that that would be a good path to
24 pursue?

25 So --

1 COMMISSIONER BALL: I would agree with
2 Commissioner Orth on that point, yes.

3 CHAIRPERSON BYRNE: Commissioner Baker.

4 COMMISSIONER BAKER: I would agree also, and I
5 put special emphasis on public review and public
6 participation in whatever comes out of the model.

7 CHAIRPERSON BYRNE: I agree too. And I'm
8 sympathetic to the operational real-time analysis that
9 seems to me. That's how I've always kind of thought of
10 it, but -- everybody good? Dave, are we good?

11 MR. GUTIERREZ: Yep, I get it.

12 CHAIRPERSON BYRNE: So at this point, we need to
13 talk kind of calendar.

14 MR. GUTIERREZ: Where there was the last item,
15 just which is so, did we miss anything that the Commission
16 wants to talk about?

17 CHAIRPERSON BYRNE: I saw that item --

18 (Laughter.)

19 MR. GUTIERREZ: Were you trying to avoid it?

20 CHAIRPERSON BYRNE: -- and I was blowing through
21 it.

22 COMMISSIONER ORTH: The next meeting.

23 MR. GUTIERREZ: We think we covered everything.

24 CHAIRPERSON BYRNE: I don't want --

25 MR. GUTIERREZ: Commission staff thinks we

1 covered everything.

2 CHAIRPERSON BYRNE: Well, is there -- is there a
3 public comment on some item that we haven't addressed?
4 I'd be happy -- we don't want to cut that short, so don't
5 feel bad, Rachel. Come on up.

6 (Laughter.)

7 MS. ZWILLINGER: And I'm fried, so I'm going to
8 try to make this coherent. I'm Rachel Zwillinger with
9 Defenders of Wildlife.

10 It seems like, because this has not been an issue
11 that we've discussed today, that we're heading in a
12 direction where the technical reference document is being
13 incorporated by reference into the regulations, which
14 means that that whole 450-page document is regulatory text
15 going to OAL for review, which I think is potentially a
16 really big problem.

17 So to the extent that is happening, I think
18 there's a need to go through that document really
19 carefully to make sure it is consistent with the statute
20 and consistent with the regulations.

21 One of the things we noticed, for example, is in
22 the emergency response public benefits section. That
23 while the regulations are very clear, that to the extent
24 you're claiming an emergency response public benefit, that
25 needs to be stored water that is separate from the water

1 that you are regularly operating using, so that in the
2 event of emergency, we know how much water will be
3 available, and that it will be there.

4 Whereas, the technical reference document says
5 that you don't have to set aside a quantity of water
6 separate from your operations, and you can just say, for
7 example, that 10 percent of your storage supply would go
8 to an emergency, which we think is problematic. Because
9 if you're storage is drawn down very low at the time of an
10 emergency, there would be no public benefit that would be
11 available.

12 So that's just one example. But I think it calls
13 for the need to look at that document really, really
14 carefully and fix that, and potentially some other things
15 that we could talk about.

16 CHAIRPERSON BYRNE: Thank you, Rachel.

17 Commissioner Daniels.

18 COMMISSIONER DANIELS: That did serve as a
19 reminder for me that I actually did have a point on that,
20 and I understand what she's saying. I don't know if this
21 was discussed -- the technical reference document was
22 discussed at the September meeting. I wasn't here. I
23 tried to listen to it, but I had some technical issues
24 getting the webcast going, but it didn't seem like it was.
25 And we

1 CHAIRPERSON BYRNE: It was not -- it was -- I
2 made a comment that I would love to not have it included
3 in --

4 COMMISSIONER DANIELS: Incorporated by reference.

5 CHAIRPERSON BYRNE: -- incorporated, yeah, into
6 the regs. I think we've made those comments a few times.
7 And we've been told by counsel that we have to, so that's
8 kind of where we are.

9 COMMISSIONER DANIELS: Well, the only point I
10 wanted to make is that we -- what I recall from the August
11 meeting is that we got the technical reference document
12 that morning, I believe, or the night before, and we
13 haven't -- the Commission hasn't really discussed it. And
14 there were some issues in it that -- there's a point that
15 I've raised a few times.

16 And I may be alone in this, but I was concerned
17 about the monetary value put on some of the ecosystem
18 benefits, and some of the basis for that. And it seems to
19 me that it's a point that this Commission should
20 definitely discuss, because the document was presented,
21 obviously again not questioning, you know, the merit of
22 the work per se, but just to say that there's a lot in
23 there that deserves discussion and full consideration by
24 the Commission. That's the whole point of this public
25 process. And that would be one of the few things that I

1 think -- a few other things that should be discussed in
2 the technical reference document.

3 CHAIRPERSON BYRNE: Okay. I'm looking at our
4 timeline, and obviously I would -- you know, everyone has
5 had an opportunity to comment on it. And I know
6 Commissioners have had opportunities to have calls with
7 folks. And it really kind of hinges on whether we're
8 going to -- you know, what our schedule is as well. I
9 mean, I think it's a very valid point to raise. Certainly
10 not wanting to squash discussion on something.

11 So I guess where we are now then is how do the
12 rest of the Commissioners feel about process-wise Dave and
13 team are going to take everything that we've said here
14 today and come back with some draft. The original plan
15 was to release a draft on November 7th publicly. And then
16 we'd come back on November 15th and we would introduce
17 that into a formal public comment period, and that would
18 require -- that would start a 15-day public comment
19 period.

20 If we wanted to make changes, really our only
21 chance to make changes would be at that meeting, either
22 with any changes that staff has brought forward to propose
23 at that meeting or any edits that we make during that
24 meeting, because we'd have to go into 15-day, and we
25 wouldn't probably have enough time to -- with

1 Thanksgiving, have another 15-day after that.

2 So with that, I guess the question is do we want
3 to have another meeting where we look at either a full
4 draft or a draft of language that's on these issues, talk
5 about some of the quantification values prior to our
6 November meeting, that is still with enough time for staff
7 to make some adjustments based upon that input, and have
8 our November meeting with the same intent, which is to
9 send something formally to OAL that we're hoping will not
10 be changed?

11 What does everybody think?

12 Commissioner Orth, I see a green button.

13 COMMISSIONER ORTH: Well, I think the question,
14 in my mind, is, you know, do we want to have a second
15 meeting between the 7th and the 15th, right? I don't
16 feel, at this point, that another meeting between now and
17 the 7th does anything other than interfere with the
18 staff's --

19 CHAIRPERSON BYRNE: Agreed.

20 COMMISSIONER ORTH: -- need to get a draft done
21 by the 7th. And it probably, out of an abundance of
22 caution, if schedules allowed, it my be prudent to try to
23 schedule a meeting between the 7th and the 15th to have an
24 initial review, recognizing that the 15th is kind of the
25 drop-dead date, right? I mean, that's an

1 abundance-of-caution approach, otherwise, you know, we'll
2 sit here -- we could sit here for a long, long time on the
3 15th. So I'd be open to a second meeting that might
4 allow, you know, some other conversations on other issues
5 that any come up, so...

6 CHAIRPERSON BYRNE: I guess the question is when
7 does staff think that they would have something, based
8 upon today, to have a more detailed discussion?

9 Because I'm looking at the calendar the 7th --
10 the 15th is a Tuesday.

11 COMMISSIONER ORTH: The 7th is a Monday.

12 CHAIRPERSON BYRNE: The 7th is a Monday, so it
13 would have to probably be -- I mean, it could be -- it
14 could be like November 3rd, if you thought you were going
15 to be done, or it could be the week of the 7th. Dave's
16 right. But there would need to be enough time for --

17 COMMISSIONER ORTH: You would need to give the
18 public time to read --

19 CHAIRPERSON BYRNE: Public a time to read what it
20 is, and then you enough time to respond and make any
21 adjustments.

22 Commissioner Quintero.

23 COMMISSIONER QUINTERO: I have a suggestion. We
24 could also -- I mean, I think we're -- everybody is going
25 to need time to really take a look at this. And I might

1 suggest a 2-day meeting, being the 14th and the 15th. I
2 know that's a big deal, but that would allow us the time
3 to really get through it and potentially make changes.

4 CHAIRPERSON BYRNE: Well, the only thing about
5 that, and I'm not opposed to that, other than personally,
6 but --

7 (Laughter.)

8 CHAIRPERSON BYRNE: -- I think we'd be doing it
9 on the fly then, as far as staff being able to respond to
10 what we have -- what input we give. So they'd have to
11 make any changes, you know, the 14th, come back the 15th
12 with some, which I think is maybe doable.

13 ACTING EXECUTIVE OFFICER RAVAZZINI: Did you mean
14 a 2-day meeting on the 15th or did you mean a 2-day
15 meeting before the 15th?

16 COMMISSIONER QUINTERO: 14th and 15th.

17 ACTING EXECUTIVE OFFICER RAVAZZINI: As a 2-day
18 meeting?

19 CHAIRPERSON BYRNE: Right, so if we did the 14th,
20 15th, and it was released, we got comments, we'd have
21 to -- we'd have to really be making the adjustments --

22 ACTING EXECUTIVE OFFICER RAVAZZINI: So, yeah --

23 CHAIRPERSON BYRNE: -- on the 14th.

24 ACTING EXECUTIVE OFFICER RAVAZZINI: If I may
25 just to help with a visual for the schedule that you have

1 set. Bri, do you have -- will you have the opportunity to
2 put that on the screen. This is some -- this is a
3 schedule that was already posted, so it is available on
4 the web and we will re-post it. But Bri is going to put
5 this up for the members.

6 So just for perspective here, in order for the
7 Commission to meet the timeline that is set, this is
8 somewhat descriptive, and I'll kind of walk through it.
9 And then maybe that can be helpful to understand what the
10 purpose -- what type of meeting you want in recognition of
11 this conversation.

12 So we're at October 18th, where direction has
13 been provided to staff to move forth on concepts and
14 specific language to provide a revised draft regulation.
15 Those regulations -- that draft would be provided on
16 November 7th. That was the target date that Rachel had
17 discussed at the last meeting. That was intended then to
18 provide about a week's time before the Commission meeting.

19 At which point, the Commission was, I guess,
20 looking towards setting a 15-day comment period for the
21 public, and then coming back December 14th to adopt the
22 regulation. So that would be a final public --

23 CHAIRPERSON BYRNE: 15th.

24 ACTING EXECUTIVE OFFICER RAVAZZINI: December
25 15th, thank you -- final public comment period before

1 formal adoption of the regulations.

2 So in looking at when language can be tweaked,
3 what staff can do, I think it's just we need to kind of
4 take a look at how we're meeting your schedule, your
5 calendar at least per this. So, for staff, to be able to
6 provide something by November 7th, what you're
7 proposing -- and please excuse me trying to articulate
8 what I think you said -- have that kind of gestation
9 period of November 7th to, say, November 14th, and then
10 have a 2-day meeting where there is potential language
11 wordsmithing by the Commission? Is that -- and then those
12 changes being done at that meeting can be done or turned
13 around fairly quickly.

14 That intent would be those 2 days would be so
15 fruitful that the direction would be very clear for staff,
16 so that then they can meet that -- putting those regs out
17 for the public comment period. It's -- are we -- am I
18 close to describing that?

19 CHAIRPERSON BYRNE: I think that's what
20 Commissioner Quintero had suggested. And my only thought
21 would be if the staff is comfortable with having enough
22 time to respond to feedback that is received between the
23 14th and the 15th. I mean, obviously there will be
24 feedback back and forth.

25 The other alternative would be to have a meeting,

1 let's say, like on the 10th or something, where we -- the
2 public has a few days to look at it, we have a few days,
3 and you've got 4 days or so to do it. I mean, it
4 doesn't -- it's really a question of --

5 MR. GUTIERREZ: It would be hard for us to turn
6 it around in one day, if the first day was a meeting like
7 today.

8 COMMISSIONER BALL: Well, hopefully it won't be
9 another meeting like today. Hopefully, we've accomplished
10 something today with all this discussion.

11 MR. GUTIERREZ: That's good. That's true. If it
12 comes out perfect on November 14th, it will be easy. If
13 it doesn't, it's going to be difficult.

14 CHAIRPERSON BYRNE: So are you there, Taryn?

15 ACTING EXECUTIVE OFFICER RAVAZZINI: Yeah, I
16 think -- I'm a little afraid to ask this question, but
17 I -- what I do want to make sure is that at that point
18 there are no big issues that need extreme deliberation on
19 the part of the Commission.

20 So excuse my editorializing. But I mean that in
21 terms of the -- in order to meet the time frame that you
22 have set out, it will be challenging to take those issues
23 on. So if you do believe that you have specific issues
24 that you really would like to kind of get down to the
25 wordsmithing and more policy discussion, I would recommend

1 potentially having a meeting before the 14th or 15th.

2 I'm just -- if you have that issue. If you don't
3 have an issue, and you think we're looking at the draft
4 regs with review by staff of those issues, with policy
5 level discussion essentially completed, and this really
6 would be more looking at ensuring that how you viewed the
7 discussion to be translated into the regulations. I'm
8 trying to just manage this as best we can.

9 COMMISSIONER QUINTERO: So could we do something
10 like put a meeting on the 10th, if needed?

11 CHAIRPERSON BYRNE: Well, we have a 10-day notice
12 requirement, so we'd have to have -- we could post a --

13 ACTING EXECUTIVE OFFICER RAVAZZINI: We can make
14 a 10-day.

15 COMMISSIONER QUINTERO: Yeah, but if we can put
16 it on there now, if needed. And then if we have the
17 meeting on the 7th and it works, then we just cancel that
18 meeting.

19 CHAIRPERSON BYRNE: But we're not --

20 COMMISSIONER BALL: But we're not meeting on the
21 7th.

22 ACTING EXECUTIVE OFFICER RAVAZZINI: Now, there's
23 no -- yeah, right now there's no --

24 COMMISSIONER BALL: There's issuance on the 7th.

25 COMMISSIONER QUINTERO: Oh, the 15th, I see what

1 you're saying.

2 CHAIRPERSON BYRNE: What Taryn has described, if
3 we stick to the schedule on the screen, then the
4 opportunity for input is going to be the public
5 communicating with staff, and staff communicating with
6 Commissioners, and we get something on the 14th that -- or
7 15th that they're going to want us to -- if we have any
8 small edits, we can make it, but we need to send it out
9 the 14th.

10 So the question is if we want to have another
11 opportunity to look at things and have more discussion,
12 then we need to have another meeting. And also, I mean,
13 it's a question of public opportunity. We've heard a lot.
14 The reason why I'm maybe leaning towards it is we've heard
15 a lot of talk about, well, it's hard to tell without
16 seeing the language. And, I mean, I don't want to open it
17 up and have -- here's the language, and then we have a
18 million comments.

19 But at the same time, we're at the end of a
20 year's process, and it is what it is. And I don't want
21 to, you know, discourage comments. And I think it's up to
22 us to limit our interactions on the 10th to close things,
23 knowing that when we come back on the 15th, that that's
24 where we stand. So I don't know.

25 COMMISSIONER ORTH: I think a meeting on the 10th

1 makes sense. I really do. I think it gives the public
2 some opportunity. It's deferential to the staff. And I
3 think we just --

4 CHAIRPERSON BYRNE: Public comment here.

5 COMMISSIONER BALL: I think that that meeting
6 gives us the only opportunity really to be realistic about
7 saying that on the 14th we're going to advance something
8 that we expect to --

9 CHAIRPERSON BYRNE: Feel good about.

10 COMMISSIONER BALL: -- be approved, yeah.

11 ACTING EXECUTIVE OFFICER RAVAZZINI: I just
12 received word that there's a potential large stakeholder
13 conflict on the 10th.

14 COMMISSIONER BALL: What about the 9th?

15 ACTING EXECUTIVE OFFICER RAVAZZINI: So if you
16 would -- if the Commission would allow us, staff --

17 CHAIRPERSON BYRNE: What is it?

18 ACTING EXECUTIVE OFFICER RAVAZZINI: -- to work
19 with some date that week to hope -- we're still aiming for
20 the November 7th for having the regs done, but I would
21 like us to be able to manage that. I think there's a big
22 San Joaquin Water Users Conference or something that could
23 prevent the stakeholders that you are looking for feedback
24 from to be here, so...

25 CHAIRPERSON BYRNE: Is there -- does the State

1 work on Veterans Day?

2 GENERAL COUNSEL STOUT: No.

3 ACTING EXECUTIVE OFFICER RAVAZZINI: No.

4 COMMISSIONER BALL: So the 8th or the 9th also.

5 ACTING EXECUTIVE OFFICER RAVAZZINI: So we might
6 be limited to the 8th or the 9th, yeah.

7 CHAIRPERSON BYRNE: Election Day, I think, would
8 probably be a problem for people.

9 COMMISSIONER BALL: The 7th would not be good,
10 not good.

11 ACTING EXECUTIVE OFFICER RAVAZZINI: So we'll aim
12 for the 9th and see what we can do. Bri, we'll try to
13 turn this around as soon as --

14 CHAIRPERSON BYRNE: 7th or the 9th or yeah --

15 ACTING EXECUTIVE OFFICER RAVAZZINI: 7th or the
16 9th.

17 CHAIRPERSON BYRNE: -- we'll figure -- we'll
18 talk.

19 COMMISSIONER BALL: The 7th doesn't work, but the
20 8th or 9th would work. The 9th would be preferable.

21 CHAIRPERSON BYRNE: What does -- maybe we can dig
22 into the conflict too, because the 10th is best for me,
23 but I don't want to -- we'll talk -- we can talk about it.
24 So that week we'll shoot something around and --

25 COMMISSIONER BALL: Yeah, sounds good.

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CHAIRPERSON BYRNE: Okay. Can we wrap?

COMMISSIONER BALL: Yes.

CHAIRPERSON BYRNE: A motion to adjourn.

COMMISSIONER BALL: Yes, absolutely.

COMMISSIONER ORTH: Second.

COMMISSIONER QUINTERO: Thank you, guys.

CHAIRPERSON BYRNE: And thank you to everyone in
the public.

ACTING EXECUTIVE OFFICER RAVAZZINI: Thank you,
everyone, for staying so late.

(Thereupon the California Water Commission
meeting adjourned at 5:47 p.m.)

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C E R T I F I C A T E O F R E P O R T E R

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing California Water Commission meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California.

That the said proceedings was taken before me, in shorthand writing, and was thereafter transcribed, under my direction, by computer-assisted transcription.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of October, 2016.



JAMES F. PETERS, CSR
Certified Shorthand Reporter
License No. 10063